First Time Abatements Made E-Z • The U.S. Tax Court: How It Works

VOL.33 NO.2 MARCH • APRIL 2015

EA JOURNAL

WWW.NAEA.ORG THE NATIONAL ASSOCIATION OF ENROLLED AGENTS

STOCK SALES

Taxation of Foreign Shareholders of U.S. Corporations

Farewell President's Message • Future Enrolled Agents Make a Community Impact
Capitol Corner • Growing Your Practice

NAEA
POWERING AMERICA'S TAX EXPERTS

THOMSON REUTERS
CHECKPOINT®

INTRODUCING THE NEW *Quickfinder*® TAX & FINANCIAL TOOLS

ONE COMPREHENSIVE TOOL SET. **ONE** DOWNLOAD. **ONE** LOW PRICE.

The new Quickfinder Tax & Financial Tools will save you countless hours throughout the year—especially during busy tax season.

This easy-to-use set of tools will help you handle clients' health, tax and financial needs quickly and efficiently—and it's all availble from one download.

With Quickfinder Tax & Financial Tools you'll get instant access to:

- 2-Year Individual Income Tax Planner
- Tax Calculators and Worksheets
- Affordable Care Act tools
- Client Handouts
- Client Organizers
- Financial Calculators
- Forms
- Flowcharts
- And much more

It's easy to boost client service and productivity all year long with this timesaving new tool set from Quickfinder.

Purchase online at tax.thomsonreuters.com/qftools and start using the tool set today or call us at 800.510.8997 to purchase or find out more.

NAEA Members:

Use Code Q670 when placing an order to ensure NAEA gets donation credit for the sale.

TBXI_4C_1213

THOMSON REUTERS™

EA JOURNAL

WWW.NAEA.ORG • THE NATIONAL ASSOCIATION OF ENROLLED AGENTS

Inside This Issue

EA Journal (ISSN #1091-8256) is published bi-monthly for $200 per year (membership and associate dues include subscription price) by the National Association of Enrolled Agents, 1730 Rhode Island Ave., NW, Ste 400, Washington, DC 20036, 202/822-6232, e-mail: ***mmitchell@naea.org***, online: ***www.naea.org***. Periodicals postage paid at Washington, DC 20036 and at additional mailing offices. This publication is designed to provide accurate and authoritative information on the subject matter covered. It is distributed with the understanding that neither the publisher nor the author is engaged in rendering specific legal, tax, or accounting advice or other professional services. Only a qualified professional with all the facts at his or her disposal can determine the appropriateness of the application of any law to a given fact situation. If assistance is required, a competent professional should be consulted. ***Postmaster***: Send address changes to: **EA Journal**, 1730 Rhode Island Ave., NW, Ste 400, Washington, DC 20036.

The TAXSHOW for the TAXPRO!®

tax talk TODAY®

ATTENTION ENROLLED AGENTS
Tax Talk Today is Approved
by the IRS for CPE Credit

Upcoming Live Webcast Programs

MAY

Tuesday, May 12, 2015
2:00 - 3:40 PM ET

Ethics & Standards; Circular 230 Update - Getting It Right

2 Hours of CPE Credit

View the Schedule and Archives of all programs on the Tax Talk Today website

CPE Subscription Plan
Get 15 CPE Credits for $255.00, $17.00 per credit – Save $30
Other CPE Credit Amounts Available

JUNE

Tuesday, June 16, 2015
2:00 - 3:40 PM ET

Charities and Other Tax Exempt Groups

2 Hours of CPE Credit

Scan to View Facebook Page

Like Us On facebook

Follow Us On twitter

Tax Talk Today content is provided by:

NAEA Powering America's Tax Experts

IRS

PRODUCED BY
Tax Talk Today, Inc.

Tax Talk Today, Inc. is registered with the National Association of State Boards of Accountancy (NASBA), as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org

EA JOURNAL
202/822-NAEA • FAX: 202/822-6270
www.naea.org

Let's Keep the Momentum Going

Lonnie Gary, EA, USTCP

It is a widely held prediction that the Affordable Care Act will cause numerous problems for those of us who prepare taxes this year. As I write this message, the tax season is just beginning, so I do not have the answer. If you have time to read this message in March, obviously the prediction was not true. On the other hand, if you are reading this message after April 15, perhaps it turned out to be true after all.

This is my final message to you as president, and I want to express my extreme gratitude to you, the members, for allowing me to serve you in this capacity. I have enjoyed the opportunity to visit several affiliates since May—large and small—and I have experienced the warmth and fellowship each had to offer. I rekindled old relationships with former board members, watched current board and committee members interact with their local affiliate, and met other members for the first time. It was gratifying to watch affiliates conducting the business of the society and focusing on member needs.

During these visits, I extolled the benefits and programs NAEA provides to the affiliates and members. I offered assistance to affiliate leaders as they strove to provide services to their members. But most of all, I talked about our new campaign, *Educating America*, which I believe to be the future of our profession and NAEA. We have embraced the Educating America program, and we are working to harness the energy and excitement it has created to help make it a success. Perhaps it is the ability to teach the SEE course in community colleges, or perhaps it is the public awareness that comes from having the SEE course listed in the college program, or perhaps it is just the non-dues revenue the program will generate for affiliates that has created the buzz surrounding this program. Whatever the reason, let's keep the momentum going.

All year long I have been talking about strengthening our affiliates, and we got off to a great start. The Affiliate Council began reaching out to affiliates to obtain their governance documents and helping affiliate leaders develop them where they did not exist. Many affiliates took this opportunity to review and update their documents to allow for better governance. The new Mem-

bership Committee also reached out to affiliate leaders to assist them with membership issues. Three Schuldiner/Smollan Leadership Academies were held this year, providing fundamental training in the skills necessary to participate at the board/officer level of the affiliate or NAEA. We have made progress, but we cannot stop here. I hope the momentum will continue until every affiliate has strong governance and the ability to deliver necessary member services.

The year was full of exciting events and challenges. A group of members proposed a bylaws amendment for the first time in NAEA history. The proposed amendment was eventually voted on at the Annual Meeting in August. Although the amendment did not pass, the process was a success. We had a "Fun Run" in Orlando that raised over $2,500 for the Education Foundation. The Great West Society was formed from the Utah Society, and members in the neighboring states of Wyoming, Montana, and Idaho obtained Great West's charter in November. The Board approved the strategic plan to guide NAEA for the next three years. This plan elevates "Member and Affiliate Services" to goal number 2, emphasizing the importance of this area.

Finally, it has been both an honor and a privilege to serve as your president this past year. We are making great progress toward our goals, and I have had the pleasure of being part of the leadership team. But we cannot rest on our laurels, so let's keep the momentum going. Terry Durkin, EA, will become our next president on May 15. She and her team will lead us this next governance year. Let's all give her our full support. **EA**

The Keys to Success

By Robert Kerr

Last year at this time, this article was devoted to our rocky journey toward return preparer oversight, which has had the "one step forward, two steps back" feel about it. We return to the same topic this year, largely because the landscape has changed, and the trend looks, if we can tempt the fates, encouraging.

We'll start with an unpleasant development: IRS's ill-considered Annual Filing Season Program. IRS lurched into this proposal much the same way as one who is drunk grabs onto a lamppost, desperate for support, not illumination.

The trouble: After the unfavorable *Loving v. IRS* ruling, IRS found itself unable to require return preparers to demonstrate initial competency or to require continuing education. IRS did not wait for the cavalry (more later), nor did it simply promote the program it already had in place (the enrolled agent program) for reasons that are still completely mystifying nine months later. Instead, the Service decided to offer Annual Filing Season Program records of completion to preparers who in 2014 completed nine hours of CE, passed a 100-question quiz, and agreed to hold themselves to some Circular 230 standards. In addition, IRS also offered other carrots: inclusion in an IRS-provided return preparer search engine and limited practice.

NAEA leadership saw this for what it was: a gold star program with no integrity whatsoever. NAEA President Lonnie Gary, EA, USTCP, wrote a blistering critique of the program, highlighting its many deficiencies (readers may find the letter and IRS's non-responsive response in the advocacy section of our website). He outlined our concern that the program would mislead taxpayers and practitioners alike into believing that someone with the new imprimatur had demonstrated competency and was held to meaningful standards, i.e., held a credential. In late November, he once again wrote IRS to urge decisionmakers to represent the program accurately (this letter is also available on our website).

The GR team jumped on the bandwagon and aggressively recommended (both in *E@lert* and on Facebook) that members "just say no" to the new ersatz credential. Further, we engaged in a damage control campaign. First, we insisted that IRS describe the Annual Filing Season Program record of completion accurately and contrast it with accurate descriptions of legacy Circular 230 practitioners.

Second, we insisted that the Service refrain from using an acronym (AFSP) to describe the new program. The acronym confused the public and the preparer community and left them with the false impression that the program conferred a bona fide credential, which of course it does not.

I'm pleased to report that our efforts, while not shaming IRS into withdrawing the program altogether, caused IRS to modify significantly how it describes the program. One high watermark was Commissioner John Koskinen's pre-filing season press conference when he refrained from using the dreaded acronym and described the program in an accurate, and therefore not particularly inspiring, fashion:

About the Author

Robert Kerr has served as NAEA's senior director, Government Relations since 2004. Prior to joining NAEA, Kerr worked on the Senate Finance Committee Oversight and Investigation staff, where he assisted the committee chairman in providing oversight to, among others, IRS, U.S. Postal Service Office of Inspector General, and General Services Administration. He also spent a dozen years in a variety of positions at IRS and is well-versed in a variety of tax administration issues. Kerr holds an MBA from Case Western Reserve University and a BA from Mount Union College.

"As part of this effort [to provide taxpayers additional information to help them understand the options available if they need professional assistance], we will also be offering a new directory on IRS.gov beginning early next year which will help taxpayers find tax professionals with credentials or certain qualifications in their local area. The database will be sorted by type of preparer, including CPAs, attorneys, enrolled agents and other preparers, including those who have participated in IRS' new voluntary education program, called the Annual Filing Season Program … *I would note that while it's helpful for a preparer to participate in our Annual Filing Season Program, and gives taxpayers some comfort in their choice of preparer, the training offered under the program does not give a preparer the same level of expertise that CPAs, attorneys, and enrolled agents have.*" [Emphasis added.]

In addition, should taxpayers consult the IRS website, which distinguishes between credentialed return preparers (legacy Circular 230 professionals) and non-credentialed return preparers, they will see enrolled agents listed first, which means that IRS did not list alphabetically but made the decision to highlight its own credential.

Finally, two data points lead us to believe uptake has been lackluster. First, IRS has not released numbers for the new program. Second, Drake Software conducted a survey of its users and found tepid, at best, support.

****

But wait, there's more! Congress returned in early January and during its first week in session Sen. Ron Wyden (D-OR, the new Senate Finance Committee ranking minority member) and Sen. Ben Cardin (D-MD, also on the Senate tax writing committee) introduced a clean, simple bill that if enacted, it would allow IRS to operate a genuine return preparer oversight program.

The bill, the Taxpayer Protection and Preparer Proficiency Act (TPPPA) of 2015, modifies Title 31, not Title 26 (not the Internal Revenue Code but the Treasury Code, which is where Circular 230 is based). TPPPA would allow IRS to resurrect its Registered Tax Return Preparer (RTRP) program, though it is written broadly and does not require IRS to take the same path as it did four years ago.

We prefer the RTRP model, frankly, and we have some concerns that this language will not address fundamental erosion of Circular 230 authority in several post-*Loving* legal decisions (for instance, *Ridgely v. Lew*). Rest assured, we will continue to advocate for a statutory and regulatory environment that protects taxpayers and maintains the integrity of Circular 230.

****

While we are on the subject of success, and more specifically, successful advocacy, please allow me a minute to thank the 400 or so members who supported NAEA PAC during the PAC year that is drawing to a close at the end of March. We're charging strong toward the close of our first decade and your dependable—and always growing—support allows us to advocate on the issues most important to enrolled agents (return preparer oversight, tax code stability, EA protection, and taxpayer rights, to name a few) and at the same time to raise awareness of enrolled agents. We stand on the shoulders of those who believed in us in the beginning—the late Bill Payne, EA, and current NAEA PAC Chair Alexander B. Thomson, EA, whose message is on page 7—and on those of prior committee chair Rose Fulton, EA, and the significant efforts of NAEA Steering Committees past and present.

J. Paul Getty said the keys to success are: rise early, work hard, and strike oil. Success is often confused with luck because the most obvious of the steps is the last one. One rarely strikes oil, however, without the discipline of rising early and working hard. **EA**

NAEA | PAC
POLITICAL ACTION COMMITTEE

Dear Members,

On behalf of the NAEA PAC Steering Committee, I thank you for your tremendous support during the 2014–2015 PAC year. In the face of an aggressive goal, we have had a record-breaking year. The Steering Committee wants to acknowledge our supporters again and share how excited we are about our upcoming efforts to engage congressional policymakers in the 114th Congress.

While we thank all our PAC members for their support this past year, we especially want to express our gratitude to those who have become our inaugural Congressional Club-level members. Your generosity has helped our PAC grow larger than ever, and we wish to extend a special thank you for all you have done to help promote the EA credential.

If you would like to become a member of the PAC but have not yet done so, please make your contribution online by visiting www.naea.org/donate. All PAC members are recognized on NAEA's PAC page (www.naea.org/pacdonors).

As leaders of our organization are fond of saying, enrolled agents are better together. Nowhere is that more true than as a part of NAEA PAC. We thank you for your support—past, present, and future—and we remind you that we cannot succeed without your continued commitment.

Sincerely,

Alexander B. Thomson

Alexander B. Thomson, EA, CFP
Chair, NAEA PAC Steering Committee
National Association of Enrolled Agents

NAEA PAC is a multi-candidate political action committee that helps elect federal candidates who support effective tax administration and policies favorable to enrolled agents. Contributions to NAEA PAC are voluntary and are not deductible from federal taxes. All contributions must be drawn from personal accounts and must not exceed $5,000 per calendar year. Contributions from corporations and foreign nationals are prohibited. Members may refuse to contribute without reprisal. By NAEA PAC policy, 100 percent of all member contributions to NAEA PAC are used to support candidates; administrative and promotional expenses are absorbed by NAEA or contributed independently.


7428773
BANK VAN BELGIE
AN288451
1000
Banco de Portugal
QUINHENTOS ESCUDOS
OURO
500
5
AA9254487D4
The Hongkong and Shanghai Banking Corporation
Promises to pay the bearer on demand at its Office here
DEUTSCHE BUNDESBANK
Banknote

STOCK SALES

Taxation of Foreign Shareholders of U.S. Corporations

BY ANTHONY MALIK, EA

Introduction

Foreign persons pursue a variety of economic interests by investing in the stock of U.S. corporations. Common scenarios include portfolio investment and expansion of business operations in the U.S. through domestically incorporated entities. While the varying reasons for U.S. corporate ownership are usually premised on myriad non-tax considerations, it is imperative for the tax practitioner to know that the different economic arrangements trigger various tax laws. This article focuses on the tax implications of sales of foreign-owned U.S. stock.

Determining the correct tax treatment of a foreign shareholder's sale of U.S. stock requires an understanding of the shareholder's relation to the corporation's function. Unlike a U.S. shareholder, the tax treatment of a foreign shareholder's U.S. stock sales depends on a broader set of facts and circumstances extending beyond the transaction itself. Narrowly focusing on, and simply reporting, the transaction is improper and in most cases will subject the foreign shareholder to global double taxation. Gathering the relevant facts underpinning the stock sale is imperative because two identical transactions with different underlying economics will have completely different tax implications to the foreign shareholder. Thus, tax practitioners must consider the economic backdrop of the transaction to ascertain the applicable tax laws.

In the ensuing sections, we will examine the rules governing the treatment of such capital gains and losses. The examination will reveal that the taxation of such unfolds

STOCK SALES

Taxation of Foreign Shareholders of U.S. Corporations

in a legal maze demanding an exploration beyond the peripheral assumptions surrounding common stock sales. To keep the topic manageable, this article will explore these rules as they pertain to non-U.S. individuals. Furthermore, to achieve the same end, this article will also not delve into possible modifications to federal law by the invocation of international tax treaties.

Capital Gains: The General Rule

By default, stocks are classified as personal property under two broad property types. Stock is typically a capital asset in the hands of the shareholder, the disposition of which generates capital gains or losses. Generally, gain from the sale of personal property is sourced to the seller's country of residence (IRC Sec. 865(a)(2)). Therefore, unless an exception applies, capital gains resulting from U.S. stock sales by foreign persons are taxable in their respective countries of residence, not in the United States. Counterintuitive as it may seem, international tax literature and practitioners alike routinely and correctly refer to such gains as "foreign source income."

Based on this, one can see that for the most part, capital gains from the sale of foreign-owned U.S. stock will neither be reportable to, nor subject to tax by, U.S. tax authorities. This general rule applies indiscriminately of whether a foreign person holds a minimal amount of U.S. stock in portfolio investments or is the sole shareholder of a U.S. corporation conducting business operations in the United States. Understanding the rationale concerning the somewhat mystifying second scenario necessitates grappling with a term of art—"U.S. trade or business."

Basically, in order for a foreign person's non-investment income to be subject to U.S. taxation, the person must be considered engaged in a U.S. trade or business. The international tax provisions of the Code do not explicitly define a U.S. trade or business (IRC Sec. 864(b)). However, case law has defined the concept as profit-oriented activities conducted in the United States that are regular, substantial, and continuous in nature (*Higgins v. Commissioner*, 312 U.S. 212 (1941) and *Continental Trading, Inc. v. Commissioner*, 16 T.C.M. (CCH) 724 (1957)).

Certainly, ownership of a U.S. corporation itself does not rise to the level of a U.S. trade or business within the meaning of this jurisprudentially crafted definition. Furthermore, under IRC Sec. 871(a)(2), a foreign person's capital gains not attributable to a U.S. trade or business are exempt from U.S. taxation as long as the foreign person is present in the United States for fewer than 183 days during the tax year. As such, the foreign person in the scenario under consideration would not be taxed on capital gains, provided the statutorily imposed U.S. presence limitation is not exceeded.

U.S. Real Property Interests: The Game Changer

As in the domestic realm, U.S. real estate invites its own special taxing rules in the international realm. And these rules trickle down to foreign shareholders of U.S. corporations, the primary business of which is U.S. real estate. Capital gains taxation connected to the disposition of stock of such a corporation sits in contrast to the general rule in the sense that the gains are subject to U.S. taxation by deeming attribution to a U.S. trade or business.

As mentioned previously, under the general rule, a foreign investor not engaged in a U.S. trade or business would not have U.S. source gain on the sale of a capital asset because U.S. capital gains derived by foreign persons are sourced to their respective countries of residence. However, if a foreign shareholder sells an equity interest in a U.S. real property holding corporation (USRPHC), the foreign shareholder is automatically deemed to be engaged in a U.S. trade or business, whether or not he or she is actually engaged in a U.S. trade or business, thereby sourcing the capital gains to the United States.

While a detailed discussion regarding USRPHC status determination is outside

Generally, a foreign person engaged in a U.S. trade or business through an office, store, or plant in the United States is considered as having an office or other fixed place of business in the United States.

the scope of this article, it is necessary to consider the basic notion for purposes of the topic at hand.

Essentially, a corporation is a USRPHC if the fair market value of the corporation's U.S. real property interests is at least 50 percent of the fair market value of the corporation's total worldwide assets (IRC Sec. 897(c)(2)). Based on this limited definition alone, barring additional conditions and exceptions (such as 5 percent or less ownership of a publicly traded corporation), tax practitioners can immediately infer that they must necessarily conduct a USRPHC study before ascertaining the tax treatment of the appurtenant capital gains.

Further stupefying is the fact that USRPHC status is not static. Depending on the company's ongoing asset exhaustions, acquisitions, and dispositions, it may fail the USRPHC test in a given year, but may very well meet it in a subsequent year. Tax advisors serving foreign clients with U.S. real estate investments held in corporate formations need to be especially aware of USRPHCs and the related international tax laws.

Office or Other Fixed Place of Business in the United States: Beyond the Pale

While highly unlikely, it is theoretically possible for a foreign shareholder's U.S. stock (non-USRPHC) sales gains to be sourced to the United States. This theoretical possibility may be a function of bad tax planning, unavoidable realities, or perfectly legitimate business reasons. The rarity of these scenarios accounts for the fact that neither the Internal Revenue Code nor the regulations directly address this issue. Nonetheless, the letter and application of various statutes provide a semblance of an answer via a process of induction.

A significant exception to the taxing rules of IRC Sec. 865(a) discussed earlier articulates that gain from any sale of personal property attributable to an office or other fixed place of business maintained in the United States by a non-resident is U.S. source income (IRC Sec. 865(e)(2)(A)). Moreover, many streams of income otherwise classified as foreign-source are treated as U.S. source once attributable to an office or other fixed place of business in the United States.

Generally, a foreign person engaged in a U.S. trade or business through an office, store, or plant in the United States is considered as having an office or other fixed place of business in the United States. (Treas. Reg. Sec. 1.864-7). Notice here that engaging in a U.S. trade or business is a *sine qua non* for meeting the legal definition of an office or other fixed place of business in the United States. Thus, barring bad tax planning and unavoidable realities, foreign shareholders with legitimate business reasons to specifically meet this test would most likely be high-earning employee-owners of personal service corporations present in the United States for short periods of time.

It bears mentioning that the jurisdictional shift under IRC Sec. 865(e)(2)(A) is in line with customary international law. Under the "first-bite-at-the-apple rule" adopted by the League of Nations in 1923, the source jurisdiction has the primary right to tax income arising within it, and the residence jurisdiction is obligated to prevent double taxation by granting an exemption or credit. So it follows that the application of the aforementioned guidance to capital gains derived by foreign persons with an office or other fixed place of business in the United States from the disposition of U.S. stock, authorizes U.S. federal (IRS), and as appropriate, state and local revenue agencies to flex their taxing muscles.

Capital Losses: The Other Side of the Coin

Losses from sales of foreign-owned U.S. stocks are sourced in the same manner as gains. However, depending on the taxpayer's global financial position, tax practitioners need to be aware that the details regarding the utilization of losses are governed by a complex network of tax rules. Treas. Reg. Sec. 1.865-2 provides details regarding the allocation and apportionment of losses.

Conclusion

It is crucial for tax practitioners to gain an understanding of a cross-border stock sale's context. This understanding is a necessary element to rendering any sort of evaluative professional judgment. Slight circumstantial changes surrounding an international stock sale implicate entirely disparate sets of tax rules. Considering the underlying economics of a foreign-owned U.S. stock sale draws into the practitioner's purview the legal oscillation necessary to ascertain the applicable laws and the resulting tax treatment of the appurtenant gains or losses. **EA**

About the Author:

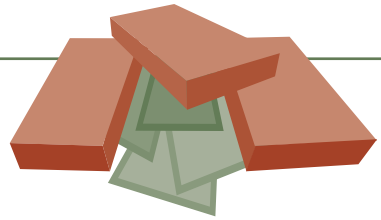
Tony Malik, EA, is the principal consultant and owner of Point Square Consulting in Atlanta, Georgia. He specializes in international taxation (individuals and businesses). Tony practices a wide range of multi-jurisdictional tax issues spanning across compliance, planning, and litigation. Tony enjoys answering international tax-related questions from the EA community. He can be reached at tony@pointsquaretax.com.

To learn more about this topic, visit the NAEA Forums.

IRS FIRST TIME ABATEMENTS

MADE E-Z

BY BILL NEMETH, EA



IRS account transcripts may have a substantial amount of "free" money trapped in them, and we, as tax practitioners, have an opportunity to release this money in the form of first time abatement (FTA) of penalties. FTA has been around since 2001, and e-Services has been around since 2004, but clever people have been around forever and have recently figured out how to quickly analyze transcripts for their clients' benefit.

The IRS FTA program was initiated as a reward for good behavior and to promote future tax compliance. FTA is a one-shot solution. As tax professionals, we get to choose how to use this silver bullet on the biggest qualifying penalty years, and we aim for the earliest year because interest on the penalties is abated as well. Right now, it seems that each taxpayer gets one FTA per lifetime, but I have observed cases where a single taxpayer received an FTA, then later married and he/she qualified for a second FTA as married filing jointly.

To receive any financial benefit from first time abatement, the taxpayer must currently owe the IRS or must have made payments against balances due within the last two years per IRC Sec. 6511. Taxpayers with no outstanding tax liabilities or no payments against liabilities made within the last two years are *not* candidates for FTA.

Based on Internal Revenue Manual Sec. 20.1.1.3.6.1, FTA applies to the following penalties:

- failure to file (FTF)
- failure to pay (FTP)
- failure to deposit (FTD) (Payroll – Forms 941/944)

Note: The underpayment of estimated tax (ES) penalty (Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts) does *not* disqualify the taxpayer from FTA. Identified as Transcript Code 170, the ES penalty is primarily an interest charge, and it is specifically exempted from the FTA protocol.

Failure to File and Failure to Pay

For the remainder of this discussion, we will focus on FTF and FTP for individual and business returns.

Most tax practitioners think of FTA when they, or their client, discover they did not file an extension and subsequently are being hit with a current-year FTF and/or FTP penalty. If the taxpayer or business is compliant and has not had any FTF or FTP penalties in the prior three tax years, FTA works like a charm! Because FTA is considered an administrative waiver, it has no defined dollar threshold ceiling. For instance, I once had an FTA of more than $10,000 on a phone call.

Over a recent two-month period involving seven taxpayers, I successfully requested over the phone abatement of more than $20,000 in prior-year FTA penalties. The IRS assistor runs the Reasonable Cause Assistant (RCA) program that provides an option for

IRS FIRST TIME ABATEMENTS

MADE E-Z

FTA penalty relief. Feedback is immediate, followed by IRS Letter 3503C in approximately ten days.

Qualifications for FTA

As mentioned previously, to qualify for first time abatement, the three years prior to the penalty year must be clean, i.e., no FTF or FTP. The taxpayer must be in compliance (all returns filed or timely extended), and an installment agreement must be in place for any outstanding tax liabilities. If there are any outstanding tax liabilities and no installment agreement, FTA "wakes up" Collections.

Example

This is an actual example of the analysis and request to IRS. Taxpayer Smith has a clean history for three or more years (2004–2006) and then stops filing. IRS creates a substitute for return (SFR) for 2007 and assesses a tax liability. Taxpayer Smith ultimately files a complete and accurate return for 2007 which reduces the balance due (but not to zero), and Taxpayer Smith's transcripts show FTF and FTP penalties for 2007. Taxpayer Smith is in a full-pay installment agreement for $300 per month. Figure 1 shows the penalties eligible for FTA.

I called the IRS Practitioner Priority Service (PPS) and said, "I am calling under POA to determine if Taxpayer Smith qualifies for first time abatement for tax year 2007."

I received an immediate FTA on 2007 FTF and FTP penalties in the amount of $6,702.61, plus interest on these penalties.

The FTA Process

The process is relatively simple:

- Obtain account transcripts.
- Analyze transcripts for FTA opportunities.
- Call or write the IRS.

Account Transcripts

Transcripts can usually be obtained as far back as the 1980s using either Form 8821 (Tax Information Authorization) or Form 2848 (Power of Attorney and Declaration of Representative). Anyone enrolled in IRS e-Services can pull account transcripts using Form 8821. Circular 230 practitioners (EAs, CPAs, attorneys) can pull the transcripts with either the Form 8821 or Form 2848. To look for the best FTA, I recommend getting transcripts from 1990 to the present.

There are multiple methods available to obtain account transcripts:

- Call IRS and request a faxed or mailed copy.
- Use e-Services to pull transcripts in paginated, 8.5 x 11-inch print format.
- Use e-Services to store the transcripts in the e-Services secure repository (mailbox) and then view, print, or download the HTML files for subsequent importing into a spreadsheet program for analysis.
- Use a commercial software tool to download the transcripts, give them meaningful and unique names, and then analyze them to produce an information report from a substantial amount of data. One of the byproducts of the report is the identification of all FTA opportunities.

Although taxpayers can pull their own transcripts using the IRS Get Transcript app, they can only go back ten years. This may not give the taxpayer any benefit if no year in the last ten years qualifies for FTA, but there actually is a qualifying FTA in the last twenty-five years.

Analysis for First Time Abatement

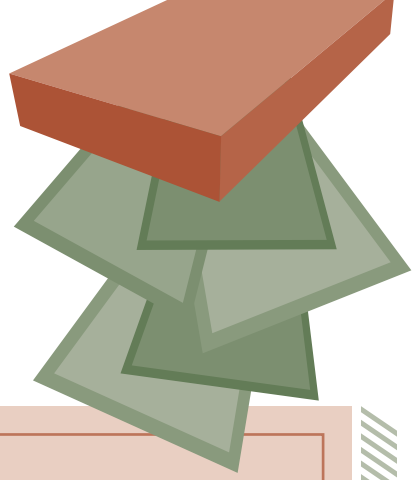
The basic logic behind an FTA is to locate and identify the following two penalty codes in the account transcripts for each year:

- Code 166: FTF – Penalty for filing tax return after the due date
- Code 276: FTP – Penalty for late payment

This is complicated by the fact that there may be partial removal of these penalties

Figure 1. Penalties Eligible for FTA

Tax Year	Return Filed	FTF-Code 166 Failure to FIle	FTP-Code 276 Failure to Pay
2001	Original		
2002	Original		
2003	Original		
2004	Original		
2005	Original	Prior 3 Years – NO FTF or FTP Penalties	
2006	Original		
2007	Original filed after SFR	$4,315.27	$2,387.34
2008	Original		
2009	Original	Eligible for First Time Abatement	
2010	Original		$102.96
2011	Original		
2012	Original		
2013	Original		
	TOTALS	$4,315.27	$2,490.30



when the taxpayer files an actual return to replace an SFR, which reduces the tax due, or the taxpayer files an amended return, which reduces (but does *not* eliminate) the penalties. Watch for the following codes which may appear in the transcripts:

- Code 161 – Reduced or removed penalty for filing tax return after the due date
- Code 271 – Reduced or removed penalty for late payment of tax
- Code 197 – Reduced or removed interest charged for late payment. (Interest is statutory and cannot be abated, but a 1040 replacing an SFR usually reduces the tax due and so the interest is recalculated and reduced; likewise, an amended return may reduce the tax due.)

In addition, when an FTA is successful, the FTA year transcripts will be updated to reflect codes 161 and 271, which will zero out codes 166 and 276.

Visually scanning twenty-five years of transcripts and recording the results is time-consuming. Using a program that creates a spreadsheet is much more efficient. Commercially available software that analyzes transcripts is very fast and correctly handles the complicated codes 161, 271, and 197.

While analyzing the transcripts, practitioners may find multiple code 276 (FTP) entries for the same tax year "sprinkled" throughout a complex transcript. Be sure to total the dollar amounts to find the net FTP penalty for each year.

If a refund from another year is applied to the year in question, the balance is reduced and the account transcript will reflect the reduced interest due to the offset refund with Code 277 (Reduced or Removed Penalty for Late Payment of Tax). This does *not* affect FTP penalty calculations; but some IRS assistors will not process an FTA if they see code 277. The options in this case are to call back and get a more knowledgeable assistor or reference IRM 20.1.1.3.6.1 for first time abatement.

Internal Revenue Manual Guidance

IRM 20.1.1.3.6.1 (08-05-2014) provides guidance on modified FTA policy.

Reasonable cause assistant (RCA) provides an option for penalty relief for the FTF, FTP, and/or FTD penalties if the taxpayer:

1. Has not previously been required to file a return or has no prior penalties (except the ES penalty) for the preceding three years
2. Is current with all return filing requirements and has paid or is paying any balance due.

Making the Call: Requesting First Time Abatement

Follow these steps when requesting FTA:

1. Call the IRS using either PPS or 1-800-TAX-1040.
2. Ask for FTA for a *specific* tax year. The representative must have POA authorization on the selected FTA year and the prior three years. The practitioner must identify the FTA year as the IRS assistor will not "go fishing" to find an FTA opportunity.

   Some IRS personnel are not familiar with the process and will tell you the penalty is too old or does not qualify for some other reason. You can either try to escalate to a supervisor or reference IRM 20.1.1.3.6.1 for first time abatement.
3. You should have your answer immediately. The IRS assistor will tell you during the call if the FTA is granted. If approved, the taxpayer will receive IRS Letter 3503C in the mail. Taxpayers may also benefit from the reduction of interest charged on the penalties.

FTA: Pitfalls and Strategies

If the taxpayer owes less than $10,000 and IRS Collections is not active, consider delaying the request for FTA. The taxpayer is "under the radar" and may not appreciate having collection activity restarted.

Example

Taxpayer Jones timely filed her 2010 1040, but she did not pay timely. Taxpayer Jones has $3,150 FTP and is in a full-pay installment agreement with $50,000 remaining balance. It took three attempts to get IRS to grant FTA. Some assistors will say that FTP qualifies *after* the IRS debt is satisfied. IRM Sec. 20.1.1.3.6.1 item (10) does not require that the debt has to be fully paid in order to be abated, but be aware that TIGTA has recommended that in order to better ensure future tax compliance, the FTA waiver should not be applied until the outstanding tax is paid.

Conclusion

Enrolled agents can use the FTA identification strategy to demonstrate that EAs are indeed America's tax experts. I describe this specialized knowledge to my clients as the EA secret handshake. It plays very well. **EA**

About the Author:

Bill Nemeth, EA, and his wife Merry Brodie, EA, are partners in Tax Audit Guardian, assisting troubled taxpayers. Bill serves on the NAEA Affiliate Council and is president and Education chair of GAEA. He has been quoted in *USA Today* and the *Wall Street Journal*. The author is also an amateur beekeeper.

To learn more about this topic, visit the NAEA Forums.


TAX

The United States Tax Court

How It Works

By David S. Shashoua, EA

Chief Justice John Marshall said, "Power to tax, is the power to destroy."[1] I'm sure many of us and our clients who have been through tax audits with the IRS sometimes have the same thought as Marshall and think that after an adverse result (perish the thought) that it is all over.

However, this is not necessarily so. Our constitutional framework requires, by holding the executive branch of government to account (which the IRS is part of),[2] that a person who has exhausted all administrative remedies has the fundamental right and proper standing to appeal to, as Col. Hamilton calls it, "the least dangerous branch of government,"[3] which is the federal judiciary.[4]

One part of the federal judiciary is the U.S. Tax Court. The U.S. Tax Court is a specialized Article I court because Congress created and established this court under its constitutional powers: "To constitute tribunals inferior to the Supreme Court."[5] It is unlike Article III federal courts, which have general jurisdiction over all aspects of federal law.[6]

Before the U.S. Tax Court was a fully recognized federal court of record, as well as part of the federal judiciary, it was known as the Federal Board of Tax Appeals and was not part of the federal judiciary.[7] It may have been an "independent review board," but it was still part of the executive branch of the federal government. As chief justice, and former president, William Howard Taft commented:

> The Board of Tax Appeals is not a *court* [emphasis added]. *It is an executive or administrative board* [emphasis added], upon the decision of which the parties are given an opportunity to base a petition for review to the courts after the administrative inquiry of the Board has been had and decided.[8]

The United States Tax Court

How It Works

It was not until 1969 that Congress finally created the U.S. Tax Court as a fully integrated court—and part of the federal judiciary[9]—with full-time federal judges; currently, there are nineteen.[10]

The judges are nominated by the president and are confirmed by the "advise and consent" of Senate, just like every federal judge and/or justice.[11] However, unlike the rest of the federal judiciary, who serve during "good behavior,"[12] which is a lifetime appointment, each U.S. Tax Court judge serves a fifteen-year term.[13]

Getting Before the Tax Court

The U.S. Tax Court can provide an additional pathway for the failed audit. So how do we get our failed (or should I say adverse-result) tax audit before the U.S. Tax Court? First, we need to understand that the U.S. Tax Court is the only federal court where a client does not have to pay any additional taxes/tax deficiencies prior to filing a petition. This is because what generally invokes the jurisdiction of the U.S. Tax Court is the infamous notice of deficiency, or the "ninety-day letter."[14] This ninety-day letter is the final proposed assessment (usually after the conclusion of a tax audit) that gives the taxpayer an opportunity to file a petition before the U.S. Tax Court stating why the IRS's proposed additional assessment is wrong. I (and some of you) prefer to call this the "ticket to Tax Court," because without this ninety-day letter our clients cannot bring their cases before the Court.[15]

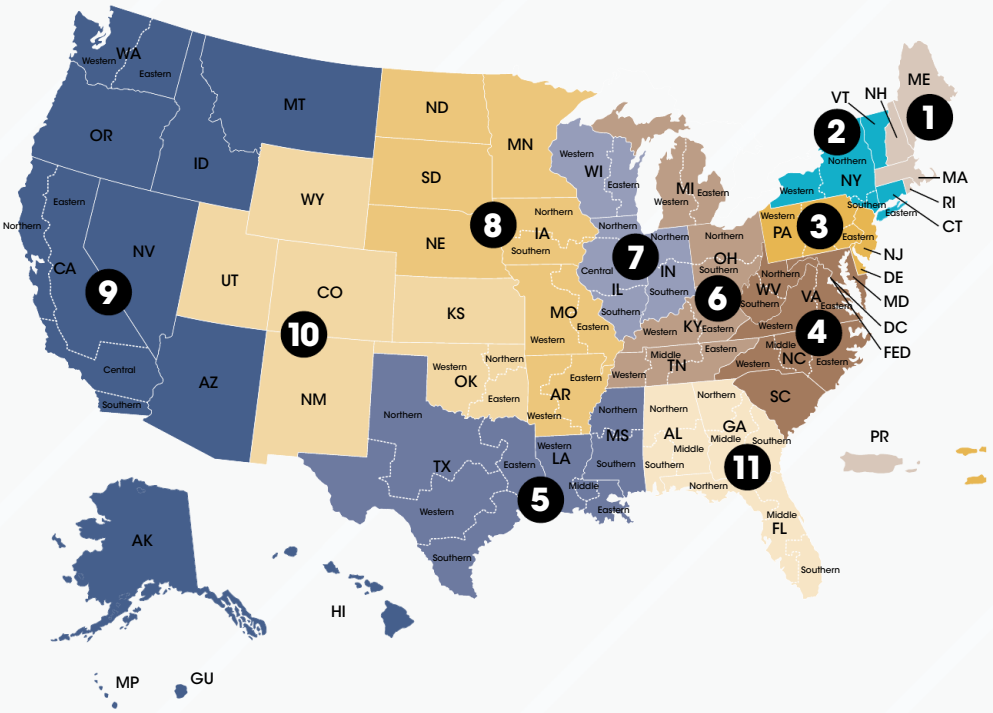
The significance of the notice of deficiency/ninety-day letter is that the Internal Revenue Code mandates that it must issue a notice of deficiency stating how much and why there is additional income tax owed, and clearly state that the taxpayer has *ninety calendar days* to file a petition before the U.S. Tax Court[16] before the tax is formally assessed. Since the ninety-day deadline is set by congressional statutory law, there is no extension to the deadline. The last date to file is printed on the top right-hand corner of the letter, and it is imperative to note this date and file the petition in a timely manner.

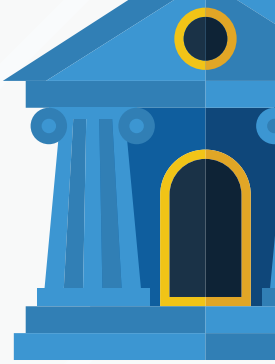
If the deadline is missed, the additional taxes will be formally assessed, and the taxpayer will owe the additional taxes. There is no other relief unless the taxpayer pays the additional assessed taxes in full and then files a claim for refund that will most likely be denied.[17] After the taxpayer receives the notice of denial from the IRS for the claim for refund, a proper standing has been established to bring a federal tax refund lawsuit in the regular federal courts. This is not the easiest pathway, but at least there is a remedy for the taxpayer who missed the Tax Court petition deadline.

For timely filed petitions the process begins with the clerk of the U.S. Tax Court, who serves and notifies the IRS District Counsel Office of the filed petition[18] and then district counsel will refer the case back to Appeals for settlement.[19] The secret is that neither the government nor the taxpayer-client would want to litigate every case and/or petition that has been filed before the U.S. Tax Court, because it is time consuming and costly. Furthermore, if a case is going to be tried before the U.S. Tax Court, the taxpayer must make stipulations,[20] which are concessions of issues and facts that would cause a desire to settle the case before trial, just like every other case that is filed in our courts.

So if a client's case goes to trial, just be warned that it is simply a bench trial, meaning a trial without a jury.[21] The Tax Court has its headquarters and main offices in Washington D.C., but it does "ride circuit," which means there are cases scheduled to be tried in certain cities throughout the nation.[22] It is similar to how some federal judges functioned during our early agrarian days of the nineteenth

Figure 1. Geographic Boundaries of the U.S. Courts of Appeals and U.S. District Courts





century, where they traveled from town to town within certain geographic regions of the nation, or circuits, to hold sessions of court and try scheduled cases.

Opinions of the Tax Court

Of course, the U.S. Tax Court issues opinions on cases it tries. There are three types of opinions. First, there are published, reported opinions, which are reported and published by the government in the publication *United States Tax Court Reports*.

Second, there are the unpublished memorandum opinions, which are more fact-based opinions. Unlike the regular reported opinions, they do not give in-depth interpretation of the provisions of the Internal Revenue Code.

Third, there are the summary opinions which come from small cases.[23] Summary opinions are not published nor can they be cited for precedential value because these small-case opinions are not appealable.[24]

These three opinions are public record, and they are useful reference tools for enrolled agents when working with their clients and when they are in need of case precedent to interpret and apply the Internal Revenue Code for their client's specific circumstance.

One more point on opinions of the Tax Court: Since it is a court that rides circuit on a nationwide basis, it hears and tries cases in different federal appellate circuits around the country, as shown in Fgure 1.[25]

The U.S. Tax Court has to apply and interpret the federal tax code based on what the particular federal appellate circuit has ruled and interpreted. For example, for any of our California-based clients, the U.S. Tax Court would need to follow the precedents and interpretations of the U.S. Court of Appeals, Ninth Circuit.[26]

Enrolled Agents and the Tax Court

Finally, can we, as enrolled agents, practice before and argue our clients' cases before the U.S. Tax Court? The answer is yes, but with a condition. We must be admitted by the U.S. Tax Court by demonstrating our competency by passing an essay-like examination, which is given once every two years and covers federal tax law, the U.S. Tax Court Rules, the Federal Rules of Evidence, and the American Bar Association Model Rules of Professional Responsibility.

Conclusion

To summarize, the Tax Court is a specialized Article I court, which rides circuit on a nationwide basis where taxpayer-clients can bring a petition without paying any additional taxes that have been assessed by a notice of deficiency.

We have the option to be admitted to practice before the U.S. Tax Court if we choose to take the exam or engage the assistance of someone who has been admitted to practice before the Tax Court. Ultimately, the Tax Court allows taxpayer-clients' cases to be brought one step further, not only to make sure they receive proper due process as the Constitution mandates, but also to keep IRS auditors, revenue agents, appeals officers, and all other IRS administrators in check and fully accountable to the judiciary. EA

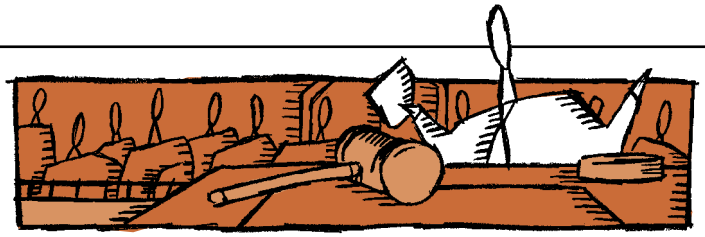
About the Author:

David Shashoua, EA, graduated with both a JD and a Master of Laws in Taxation from William Mitchell College of Law. Currently, he is a tax law specialist/associate at Kaya Tax & Bookkeeping Services, Inc. in California. He is also chairman of the Bylaws Committee, parliamentarian, and a member of the board of directors for the Orange County Chapter of CSEA.

To learn more about this topic, visit the NAEA Forums.

ENDNOTES

[1]*McCulloch v. Maryland*, 17 U.S. 316, 327 (1819).
[2]Treas. Reg. Sec. 601.101.
[3]*The Federalist* No. 78 (Alexander Hamilton).
[4]*Reiter v. Cooper*, 507 U.S. 258 (1993).
[5]U.S. Const. Art. I, Sec. 8, cl. 9; IRC Sec. 7442 and IRC Sec. 7443.
[6]U.S. Const. Art. III, Sec. 1 and Sec. 2.
[7]Revenue Act of 1924, Sec. 900, Ch. 234, 43 Stat. 253, 336 et seq. (June 2, 1924).
[8]*Old Colony TrU.S.t Co. v. Commissioner*, 279 U.S.716,725(1929). It was similar to California's current Board of Equalization, where it acts as an administrative appellate tribunal on income tax appeals, before a case can go before the California judiciary. See Cal. Rev. and Tax Code Sec. 19045, et seq.
[9]Pub. L. 91-172, Sec. 951, 83 Stat. 730 (Dec. 30, 1969).
[10]IRC Sec. 7443(a).
[11]U.S. Const. Art. II, Sec. 2, cl. 2; IRC Sec. 7443(b).
[12]U.S. Const. Art. III, Sec. 1.
[13]IRC Sec. 7443(e).
[14]IRC Sec. 6212; IRC Sec. 6213(a). The U.S. Tax Court has jurisdiction to hear and review innocent spouse cases, (IRC Sec. 6015(e)), and to hear and review collection due process hearings (IRC Sec. 6330(d)).
[15]IRC Sec. 6213(a).
[16]Ibid. It is 150 days if a taxpayer is outside the United States at the time the notice of deficiency is issued. See also *Deborah L. Smith v. CIR*, 140 T.C. 48 (2013). Where the taxpayer did move permanently outside the United States, came back to the United States to check her mail and visit family, and was issued a notice of deficiency when she was physically (albeit briefly) in the United States. A much divided court of 8–5, ruled that she was subject to the 150-day rule, and not the 90-day rule.
[17]28 U.S.C. Sec. 1346(a) (1); *Flora v. United States*, 357 U.S. 63 (1958). The U.S. Supreme Court ruled that the additional assessed taxes must be fully paid before a taxpayer can file for a claim of refund and thusly have proper standing in a federal tax refund suit against the federal government. See also IRC Sec. 6532, where if the IRS does not act on a claim of refund within six months from filing, the taxpayer can file for his/her federal refund suit in federal court. See 28 U.S.C. Sec. 2401, where there is an "outer limitation" of six years for any claim against the federal government. See also *Wagenet* 2009 WL 4895363 (C.D. Cal. Sept. 14, 2009); Adam R.F. Gustafson, An "Outside Limit" for Refund Suit, 90 Oregon Law Review 191. But see IRS Chief Counsel Notice 2012-012 (June 1, 2012) and *United States v. Bormes*, 568 U.S. ___ (2012), where it appears that 28 U.S.C. Sec. 2401, would not apply to IRC Sec. 6532, and thusly it appears that there is not a statute of limitations if the IRS does not act on a claim of refund within six months.
[18]U.S. Tax Court Rule 21(b).
[19]Rev Proc 87-24.
[20]U.S. Tax Court Rule 91; *Branerton Corp. v. CIR*, 61 T.C. 691 (1974); *International Air Conditioning Corp. v. CIR*, 67 T.C. 89 (1976).
[21]IRC Sec. 7453.
[22]IRC Sec. 7445 and IRC Sec. 7446; See also U.S. Tax Court Rule 140 and U.S. Tax Court Rule, Appendix I, Form 5, listing where the U.S. Tax Court would normally schedule trials.
[23]IRC Sec. 7463. See also U.S. Tax Court Rule 170, et seq. A small case in the U.S. Tax Court is where the amount in dispute is $50,000 or less.
[24]IRC Sec. 7463(b) & (c).
[25]The map is based on 28 U.S.C. Sec. 41.
[26]*Golsen v. CIR*, 54 T.C. 742 (1970). If there is a disagreement among the various federal appellate circuit courts on an issue of federal tax law, the Supreme Court would need to grant a *writ of certiorari* for further review, so that there is finality on the federal tax issue (U.S. Supreme Court Rule 10(a)).



TAX COURT CORNER

What Is the Definition of Gross Income for Purposes of Determining If the Six-Year Statute of Limitations on Assessment Applies?

G. Douglas Barkett and Rita M. Barkett, Petitioners
v.
Commissioner of Internal Revenue, Respondent
143 TC No. 6

By Steven R. Diamond, CPA

Generally, income tax must be assessed within three years after the original tax return is filed. However, if a taxpayer omits from gross income an amount in excess of 25 percent of the amount of gross income as shown in the return, a six-year period on assessment of tax applies. The U.S. Supreme Court in *Home Concrete Supply, LLC*[1] has determined that a taxpayer's overstatement of basis in an asset that results in an understatement of gross income from the asset's sale does not trigger the six-year limitations period because an overstatement of basis is not an omission from gross income.

About the Author

Steven R. Diamond is a CPA with a tax practice located in Westport, Connecticut. His practice is limited to compliance issues and representation before the IRS. He has his M.S.M. degree in taxation from Florida International University, and he is admitted to practice before the United States Tax Court. Steven also taught a course preparing EAs and CPAs to take the Tax Court admission exam for non-attorneys.

FACTS

Douglas and Rita Barkett (petitioners) filed their 2006 and 2007 federal income tax returns on September 17, 2007, and October 2, 2008, respectively. The commissioner issued a statutory notice of deficiency on September 26, 2012, which covered tax years 2006 through 2009.

The notice of deficiency alleged that the petitioners had omitted $629,850 of gross compensation income from their 2006 tax return and $431,957 of gross compensation income from their 2007 tax return. The petitioners did not dispute this. The petitioners did report gross income on their 2006 tax return of $271,440 and gross income of $340,591 on their 2007 tax return, not including the amounts of capital gains discussed in the next paragraph.

For the years 2006 and 2007, petitioners were 80 percent partners in Barkett Family

Partners, and they were 100 percent shareholders in Unicorn Investments, Inc., an S corporation. Combined, these entities reported capital gains from investment sales of $123,000 for 2006 and $314,000 for 2007. The amounts the entities reported as realized from the sale of investments were $7 million for 2006 and $4 million for 2007. The petitioners reported their shares of the entities' gains and losses on their personal income tax returns.

Generally, the IRS must assess a tax or send a notice of deficiency within three years after a tax return is filed. The limitations period is extended to six years if the taxpayer omits from gross income an amount which is in excess of 25 percent of the amount of gross income reported on the tax return. Therefore, since the notice of deficiency issued to the taxpayers on September 26, 2012, covered the years 2006 and 2007, it would only be timely if the six-year limitation period applied.

OPINION

The Tax Court noted that to determine the correct limitations period, it needed to divide the amount of gross income omitted by the petitioners by the total gross income reported. If the amount omitted was more than 25 percent of the amount included as gross income, the limitations period would be six years. The parties agreed that the omitted amounts were $629,850 for 2006 and $431,957 for 2007. However, the parties disagreed over the amounts of gross income that were reported in their tax returns. The petitioners argued that the amount of gross income should include the amounts realized on the sale of the investment assets. The commissioner argued that the gross income included only the gain that was reported from the sales, which would be the amounts realized less the basis of the assets sold.

The Tax Court has previously held that for purposes of determining the applicable limitations period, "capital gains, and not the gross proceeds,"[2] are considered the amount of gross income as stated in the return.

In 2010, the IRS provided regulations that were consistent with the Tax Court's view as to the calculation of gross income as stated in the return. The regulation also explained how to determine whether gross income has been omitted from a tax return. In 2012, the U.S. Supreme Court in *United States v. Home Concrete & Supply, LLC*[3] addressed the validity of this regulation and determined that the portion of the regulation regarding omitted gross income was invalid. The position of the petitioners was that this case also invalidated the regulation concerning the calculation of gross income as stated in the return.

The Tax Court went on to say that to understand the *Home Concrete* decision, it must first look at the Supreme Court decision in *Colony, Inc. v. Commissioner.*[4] In the *Colony* case, the taxpayer overstated his basis in property that was sold and, therefore, underreported the amount of gain in the sale. The commissioner argued that the underreported gain was omitted gross income for purposes of determining the applicable limitation period. The Supreme Court disagreed and stated that the purpose of the longer limitation period was to give the commissioner additional time to review a tax return when the taxpayer omitted a transaction.

The Supreme Court reasoned that since the taxpayer reported no information about a particular transaction, the commissioner was at a disadvantage because the return did not alert the commissioner to suspicious activity. However, when an understatement resulted from *misreported* information, rather than an omission, the commissioner was at no such disadvantage and the longer limitation period did not apply.

The 2010 regulation, as promulgated by the IRS, provided that when a gain is understated due to an overstatement of basis, the amount of the understatement was to be considered gross income. This regulation directly conflicted with the decision in *Colony*.

The Supreme Court resolved the conflict between the regulation and *Colony* in its decision in *Home Concrete*. In the latter case, the Supreme Court determined that the regulation was invalid because it conflicted with the *Colony* decision. The Supreme Court followed its decision in *Colony* that stated that underreported gain was not omitted gross income and did not belong in the statute of limitations calculation. The *Home Concrete* decision only discussed when gross income is to be considered omitted; it did not discuss how to calculate gross income.

The petitioners, on the other hand, wanted to use the *Home Concrete* decision to support their position that gross income includes amounts realized from the sale of investment property without being diminished by a corresponding basis adjustment. They argued as follows:

> Only when amounts realized are left out of the computation of gross income are they omitted for purposes of the six-year statute of limitations of Sec. 6501(e)(1)(A). If amounts realized are not left out of the computation of gross income, they are not omitted; when they are not omitted, they are included: when they are included, they are stated

However, the Tax Court said that the petitioners' argument, while logical, did not address the question of whether gross income stated in the return includes only the excess of the amount realized over the basis of assets sold.

in the return: when they are stated in the return, they are included in the denominator of the 25 percent omitted calculation of Sec. 6501(e)(1)(a).[5]

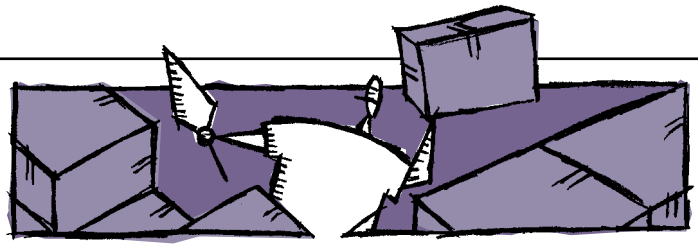
However, the Tax Court said that the petitioners' argument, while logical, did not address the question of whether *gross income stated in the return* includes only the excess of the amount realized over the basis of assets sold. The Tax Court has consistently held that it does, and the decisions in both *Colony* and *Home Concrete* have held that it does. If that is the case, then gross income only includes the amount of gain from the sale of investment assets and not the amounts realized from those sales.

In conclusion, the Tax Court held for the commissioner and found no reason to stray from prior precedents. As only the gain from the sale of investment assets, i.e., sales price less basis, is included in gross income and not the total amount realized on the sale, the denominator in the calculation of gross income as reported on the tax return only includes the gain from the sale. Therefore, using the Court's reasoning, the petitioners' omitted gross income for 2006 and 2007 in excess of 25 percent of the gross income they stated in the tax return, the six-year statute of limitations period applied to years 2006 and 2007, and the commissioner's notice of deficiency was timely. EA

ENDNOTES

[1] SCt, 2012-1 USTC
[2] *Insulglasss Corp v. Comm*, 84 T.C. 203
[3] *United States v. Home Concrete & Supply, LLC*, 566 U.S., 132 S. Ct. 1836
[4] *Colony, Inc. v. Commissioner*, 357 U.S. 28
[5] *Barkett v. Commissioner*, 143 TC No 6, 10

The Obvious Solution.



PRACTICE BUILDER

Growing Your Practice

By Paul Roberts, EA

Effective marketing is a critical component in building a successful, profitable tax business. Keep in mind that marketing should be a continuing, persistent effort rather than a series of isolated activities. This article presents information about marketing concepts in general, and provides suggestions for reliable, low-cost marketing initiatives that will help tax professionals expand their client base.

Marketing Basics

Consider the following marketing concepts and apply where appropriate in your practice:

- Engage in at least one marketing activity every day.
- Determine a percentage of gross income to spend annually on marketing.
- Set written marketing goals. Review and adjust frequently.
- Marketing is everyone's business, regardless of title or position in the organization.
- Code your advertisements and keep records of results.
- Don't neglect or ignore your current clients while pursuing new ones. Remember that it costs more in terms of money and effort to obtain a new client than it does to retain an existing client.
- Marketing activities should be designed to increase profits, not just sales.
- People don't buy products or services, they buy the benefits and solutions they believe the products or services provide.
- The average business will not hear from 96 percent of its dissatisfied customers.
- Most customers who complain would do business with the company again if their complaints were handled satisfactorily.

Client Services

Take action to provide professional and consistent communications with your clients by doing the following:

- Return phone calls promptly.
- Set up an e-mail system to easily respond to client inquiries.
- Send handwritten thank you notes for referrals.
- Create an area on your website specifically for your clients.
- Redecorate your office or location where you meet with your clients.
- Distribute advertising specialty products such as pens, mugs, or other client giveaways.
- Publish a newsletter for clients and prospects.
- Develop an online brochure of services.
- Include client testimonials in your literature.
- Keep the message consistent with all communications.

Specific Marketing Techniques

The workplace megaphone. Obtain the client's phone numbers for both home and work. During the interview when you give the client a timeframe stating when the return will be completed, ask if it's OK to call him or her at work with the results. Most people will allow you to call. Be sure to mark this in the client's file. Once the return is complete, if the result is neutral or good news, call the client at work. If the result is bad news, call the client at home.

Frequently, when a person answers the phone at work, there are other people

About the Author

Paul Roberts, EA, is co-author for TheTaxBook™ line of publications, published by Tax Materials, Inc. Paul is currently in his twenty-ninth year as a practicing tax preparer in Minneapolis, Minnesota, preparing individual and small business tax returns. Paul is a member of NAEA and MnSEA. E-mail Paul at paul@thetaxbook.com.

nearby. If a client gets good news, chances are the client will be anxious to tell his or her coworker the good news. This will often contain a bit of bragging about how good you are at finding all those deductions:

> "I just got great news! I was worried we'd owe on our taxes this year, but my tax lady just called and we're getting a refund! She's great. She knows how to find all the hidden deductions!"

The exchange will set up conditions that will often lead to a referral and a new client. This technique can produce a surprising number of referrals. Don't forget that handwritten thank you note.

Turn the "quick question" into an appointment. All tax offices receive phone calls from non-clients who ask for answers to tax questions instead of asking to set up an appointment. Many preparers are annoyed at "freeloaders" who try to extract valuable information from them without paying a fee for preparation. After all, tax professionals earn their living with their knowledge. Giving free tax advice is no different from a grocery store owner who gives out free loaves of bread to anyone who asks. These phone calls are often looked upon as an annoyance by tax professionals.

Think of this situation from a different perspective. You've spent time and money in an effort to bring new clients into your office. The first thing you have to do is get their attention. Once you get their attention, at that point you can demonstrate the value of your services. If you have a "live one" on the phone, half your marketing effort is done and with no effort on your part. Look at the call as an opportunity to turn someone with a question into a paying client. Done correctly, this situation can result in a surprising number of transfers to the front desk to set an appointment.

Answer the quick question. If the answer to the person's question is truly a quick one, such as whether there will be taxable gain on the sale of a home, give a quick, general answer. One thing is guaranteed: There will be a follow-up question.

When the follow-up question comes, use it as your cue to explain the value of your services to the prospective client (see how easy it was to turn that freeloader into a prospective client?).

Explain that you earn your living with your knowledge, giving value to your time. Ask for permission to pose some questions about the person's tax situation so that you can provide an estimated price range for preparing and e-filing the return. You've already given the caller something of value.

More importantly, you've respectfully shut off additional free questions, creating the concept of value for your knowledge. You offer to give the caller something additional, which is an explanation of what you can do and how much it will cost. In most cases the person who calls will be glad to go down this road. Once he or she knows how easy you'll make it for them—and the cost—you'll be surprised at how often this exchange leads to a booked appointment.

> Prospective Client: "Hi, I just have a quick question. I did some casual labor for a guy this summer, but he didn't give me a W-2 or anything. Do I have to report that on my taxes?"
>
> Preparer: "Yes, all income is required to be reported unless specifically excluded by law. You'll want to be careful because in these situations the person will often report the income but might be late doing it."
>
> Prospective Client: "OK. That's what I thought. What form should I report that on?"
>
> Preparer: "To be honest, I earn my living giving tax advice. I'm glad to answer a quick question, but if you don't mind, at this point I'd like to ask you a few questions about your tax situation, let you know what I might be able to do for you, and give you an idea of what it would cost."
>
> Prospective Client: "Sure, that sounds fine."

It's also possible the person on the phone would like to ask for help, but is afraid to because he or she is not familiar with how the process works. It doesn't take very long to establish a rapport. This technique often results in a transfer to the front desk to set an appointment.

NAEA Tools for Members

Since you're reading the *EA Journal*, it's likely you are a member of the National Association of Enrolled Agents. NAEA has a treasure trove of marketing resources available at no charge for members. You can gain access to these valuable resources by following the links to "Member Resources," then "Tools for Members" on their home page, naea.org. These resources represent an economical means of presenting a professional image to the public.

Taxpayer brochures. Brochures include *Enrolled Agents: America's Tax Experts*, which explain the credentials and qualifications of enrolled agents. The tri-fold brochures are customizable to show the enrolled agent's name and address, and can be printed, downloaded to send to a print shop, or ordered in quantities of 100 or 500.

Also available is the *NAEA Record Retention Requirements* brochure, which contains charts showing recordkeeping requirements for a wide variety of subjects such as taxes, bank records, corporate records, and real property records. This brochure is also customizable.

Print ads. Print advertising copy in PDF format is available at no charge for members of NAEA. The ads are laid out in quarter-page, half-page, and full-page formats. These print ads are developed to add the practitioner's contact information while maintaining the highest visual quality. The ads are easily adjusted for placement in standard publications.

Commercial videos. The "Tools for Members" section contains several versions of a thirty-second commercial spot

that promotes EAs. The commercials are set up to allow a tag with the preparer's contact information.

Client newsletters. Periodic client newsletters provide information about a variety of subjects. Following is a list of newsletters available free of charge to NAEA members:

- Mid-Year Tax Planning
- Time to Start Organizing Your Deductions
- Beware of IRS Phone Scams
- Client Organizer for Tax Year 2014

Customizable news releases. To bring media attention to your professional qualifications and achievements, as well as facilitate client development efforts, NAEA has produced several customizable news releases for submission to the editors at your local publications. Local coverage is frequently easier to garner than national coverage, and it can successfully bring in new clients.

Use a news release to announce your membership in NAEA and your state affiliate organization, if appropriate. A second news release announces successful completion of continuing education requirements in order to serve your clients better. If you recently passed the Special Enrollment Exam, the third news release will announce to the public and your peers your professional competency in the areas of taxation and representation. The fourth news release may be used to announce your participation in an IRS tax forum. See the website for more releases.

E-mail, fax, or mail the release to the editors at newspapers and other media outlets in your area. E-mail is usually the format of choice for most reporters, but given the sheer volume of e-mail today, it's a good idea to mail or fax it also. Find the editor's name and his/her contact information simply by calling the news desk. Include your photograph because eyes are drawn to items that include a visual. If available, send a high-resolution (300 dpi or above) digital photo. Make sure it's a headshot.

Public speaking. One of the best ways to market yourself and your business is to become a recognized "industry expert" on the subject of taxes. If you are comfortable with public speaking, NAEA has sample PowerPoint presentations to get you started. Speakers who provide engaging and interesting presentations will soon find themselves in demand. Examples of venues that will contain potential clients include:

- local chambers of commerce
- churches
- business groups
- individual membership societies
- service groups, e.g., the Kiwanis or Lions Club

To get your foot in the door with any of these organizations, ask friends if they are willing to contact their groups and request you as a speaker. Also, inquire with groups you are a member of. Highlighting your expertise can prompt people to hire you or refer others to you for tax preparation.

"Let's Talk Taxes" columns. Small community newspapers can provide opportunities to be of service to the community while raising your profile and that of the EA credential. The Tools for Members section of naea.org provides starting points for members' own articles. The articles can be edited for style and rewritten to address the special concerns of the community. The articles can then be submitted under the member's byline.

Find community newspapers and magazines serving your area. The masthead located near the front of the publication should identify the editors and provide contact information for them. The following is a sample script to get the conversation started:

> "Hello, my name is Jack Frost and I have an idea I think your readers will appreciate. I'm an enrolled agent here in Springfield, which means I'm a tax practitioner licensed by the U.S. Treasury Department to represent taxpayers before the IRS. I've put together a series of columns addressing common tax issues, things my clients ask about most frequently. I'd like to send over a couple for you to look at, with the goal of running a regular column in your paper under my byline. Where would you like me to send them?"

Once you're in the door, you have a starting point for columns from the Tools for Members section to work with. Use those or create more articles based on specific interests in your community.

Use of Taxpayer Information

Be careful when using taxpayer information obtained in the tax preparation engagement when distributing marketing materials. Internal Revenue Code Sec. 7216 sets forth penalties for improper disclosure or use of client information by tax professionals. The rules for disclosure or use of client information are examined in depth in the 2014 May/June edition of the *EA Journal*.

Use allowed without formal consent from the taxpayer. A tax return preparer is allowed to maintain a list with information used solely to contact taxpayers for purposes of providing tax information and general business or economic information for educational purposes, or soliciting additional tax return preparation services to the taxpayers. The list may not be used to solicit non-tax return preparation services to these taxpayers. For example, a tax preparer is allowed to send out newsletters explaining changes in tax law and whether the changes support filing amended returns or other actions recommended by the tax return preparer.

Summary

Hopefully, this article provides some useful ideas for implementing marketing strategies to grow your business. Remember to monitor and track all marketing efforts, and don't be afraid to try new methods if the ones you're using aren't working as well as you expected. Be enthusiastic and persistent, and don't forget to engage in at least one marketing activity every day! EA

Perf here (will not print.)

Georgia Association of Enrolled Agents

21st Annual Continuing Education Workshop & Convention May 10-13, 2015
St. Simons Island, Georgia

Join the festivities, learn, and earn up to 18 hours of CE Credits

Open to All Tax Professionals

→ Register & Pay Online at: www.4gaea.org

This year's theme is "The 1960s."

There will be a hula hoop contest at the Tuesday night banquet with prizes awarded to the top three hoopers!

Hotel Information

The King and Prince Beach & Golf Resort
201 Arnold Road
St. Simons Island, GA 31522
Reservations: (800) 342-0212
Direct: (912) 638-3631

Web: www.kingandprince.com

GAEA Room Rates:
Standard Room $141 Ocean Front $174
Partial Oceanview $158

To ensure rate, make reservations by April 8, 2015. Use reservation code **"Georgia Association of Enrolled Agents"** when booking a room by phone or code **GAEA15** if booking online.

Speakers and Topics

SUNDAY "EARLY BIRD" PROGRAM (5:30 P.M.–7:30 P.M.)
Ben Tallman, EA, NTPI ® Fellow
- Ethics with Group Case Study

MONDAY PROGRAM (8:00 a.m.–5:30 p.m.)
Ben Tallman, EA & John Sheeley, EA
- Obamacare 2014 Tax Season Feedback
- Obamacare 2015 and Later

John Sheeley, EA, NTPI ® Fellow
- Cap vs. Repair & Form 3115 (What do we do next?)

Mark Dombrowski, EA, NTPI ® Fellow
- IRS Correspondence Audits – Trick or Treat?

TUESDAY PROGRAM (8:30 a.m.–12:15 p.m.)
Mark Dombrowski, EA & John Sheeley, EA
- Modern Representation
- Penalty Abatement Strategies
- Installment Agreements
- OIC – Understanding This Powerful Tool
- Factoring Bankruptcy into Tax Debt

WEDNESDAY PROGRAM (8:30 a.m.–12:15 p.m.)
John Sheeley, EA, NTPI ® Fellow
- S-Corps – Benefits and Pitfalls
- Tax Court Strategies for Enrolled Agents

Questions? E-Mail Convention Chairman John Beazle at jfbeazle@gmail.com **Visit www.4gaea.org to register and pay online!**

If not registering online, separate and return this registration form with your check. ***Please copy this form if you are registering more than one attendee or guest.***

Registration Fee for members of NAEA, NATP, NSTP or NSA: **$395**

For all others, the fee is **$435**

Registration deadline is **April 18, 2015**. For registrations after this date, please **add $30** to the fee.

- Includes banquet, Monday lunch, continental breakfasts, refreshment breaks, and hospitality suite

Guest Fees (No class attendance):

- **Full - $135** includes banquet, one lunch, breaks and hospitality suite
- **Partial - $95** includes banquet and hospitality suite

Please register me as an attendee. I am including payment of ☐**$435**☐**($395** for members of NAEA, NATP, NSTP or NSA) Note: **After April 18, 2015,** add **$30** late fee.

Attendee Name: _____

Address: _____

City, State, Zip: _____

Phone: _____ **Fax:** _____

E-Mail : _____ **PTIN:** _____

Use this name on my name badge: _____

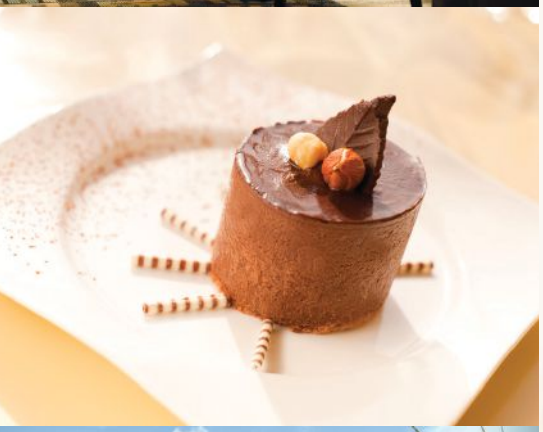
I will☐ / will not☐ (check one box) attend the Sunday early bird session

I am registering a guest for the ☐ Full ($135) or ☐ Partial ($95) participation (please check one).

Guest Name: _____

Make checks payable to: GAEA
Mail to: GAEA C/O Brodie Accounting Services, LLC
2970 Clairmont Rd., NE Suite 960, Atlanta, GA 30329

Total: $
(Attendee + Guest)



North Carolina Society
&
South Carolina Society
of Enrolled Agents
announce

Perf here (will not print.)

THE 10th ANNUAL CAROLINA CONNECTION 2015 CONVENTION and CPE SEMINAR

When: May 17–May 19
Where: Hilton Hotel – Myrtle Beach, SC
Why: Earn 18 hours of the best CPE

We are offering two different educational tracks. Network with tax pros from east to west. Participate to win great items in the silent auction every day. Earn a total of 18 hours of CPE. Registration cost includes two lunches and breaks. Room rates include two continental breakfasts.

Representation Track with L.G. Brooks, EA

- Advanced Tax Research Techniques
- Application and Defense of the Trust Fund Recovery Penalty
- Offer In Compromise Issues
- Tax Penalties – Abatement and Avoidance
- Anatomy of a No Records Audit
- Advanced Criminal Investigations
- Advanced Schedule C Audits

Tax Track with Andrew Poulos, EA

- Property & Casualty Loss
- Worker Classifications
- Employee Business Expense
- Business vs. Hobby
- S-Corporation Reasonable Compensation
- Section 530 Safe Haven
- Plus more!

Registration and payment forms are available online at www.NCseaonline.org or www.SCsea.org

Perf here (will not print.)

NATIONAL ASSOCIATION OF ENROLLED AGENTS
EA JOURNAL TEST FORM

PERSONAL INFORMATION (please print clearly)

Name:* _____

Address: _____

City/State/Zip: _____

Phone: _____ **Fax:** _____

Email: _____

PTIN: P _ _ _ _ _ _ _ _ **NAEA ID:** _____

**Name must appear exactly as listed in the PTIN system. PTIN must be in the proper format. (Example: P12345678)*

☐ **Check here if this is a new address.**

PAYMENT METHOD

Regular Issue (2 CE: 20 questions)

☐ Member _____$45.00

☐ Non-Member _____$55.00

Bonus Issue (4 CE: 40 questions)

☐ Member _____$80.00

☐ Non-Member _____$100.00

Payment must accompany your completed test form and is not refundable.

Payable by:

☐ Check ☐ AMEX ☐ MC ☐ VISA

Card Number: _____

Expiration: _____ **Amount Paid:** _____

Name as it appears on card: _____

Signature: _____ **Date:** _____

Online testing is now available at www.naea.org. Purchase blocks of 8 or 16 hours for even more savings (good with online testing only).

MAIL TEST AND PAYMENT TO:	OR	FAX TEST WITH CREDIT CARD INFO TO:
NAEA CE 1730 Rhode Island Ave, NW, Ste 400 Washington, DC 20036-3953		NAEA CE 202-822-6270

Perf here (will not print.)

LAST NAME

Please be certain to provide this information so that your test can be properly attributed.

REQUIRED

EA JOURNAL - MONTH/YEAR

Please be sure to provide this information. It is crucial in grading your test accurately.

☐ **Check here for an answer key.**

ANSWER SHEET

1.	A☐	B☐	C☐	D☐	E☐	**21.**	A☐	B☐	C☐	D☐	E☐
2.	A☐	B☐	C☐	D☐	E☐	**22.**	A☐	B☐	C☐	D☐	E☐
3.	A☐	B☐	C☐	D☐	E☐	**23.**	A☐	B☐	C☐	D☐	E☐
4.	A☐	B☐	C☐	D☐	E☐	**24.**	A☐	B☐	C☐	D☐	E☐
5.	A☐	B☐	C☐	D☐	E☐	**25.**	A☐	B☐	C☐	D☐	E☐
6.	A☐	B☐	C☐	D☐	E☐	**26.**	A☐	B☐	C☐	D☐	E☐
7.	A☐	B☐	C☐	D☐	E☐	**27.**	A☐	B☐	C☐	D☐	E☐
8.	A☐	B☐	C☐	D☐	E☐	**28.**	A☐	B☐	C☐	D☐	E☐
9.	A☐	B☐	C☐	D☐	E☐	**29.**	A☐	B☐	C☐	D☐	E☐
10.	A☐	B☐	C☐	D☐	E☐	**30.**	A☐	B☐	C☐	D☐	E☐
11.	A☐	B☐	C☐	D☐	E☐	**31.**	A☐	B☐	C☐	D☐	E☐
12.	A☐	B☐	C☐	D☐	E☐	**32.**	A☐	B☐	C☐	D☐	E☐
13.	A☐	B☐	C☐	D☐	E☐	**33.**	A☐	B☐	C☐	D☐	E☐
14.	A☐	B☐	C☐	D☐	E☐	**34.**	A☐	B☐	C☐	D☐	E☐
15.	A☐	B☐	C☐	D☐	E☐	**35.**	A☐	B☐	C☐	D☐	E☐
16.	A☐	B☐	C☐	D☐	E☐	**36.**	A☐	B☐	C☐	D☐	E☐
17.	A☐	B☐	C☐	D☐	E☐	**37.**	A☐	B☐	C☐	D☐	E☐
18.	A☐	B☐	C☐	D☐	E☐	**38.**	A☐	B☐	C☐	D☐	E☐
19.	A☐	B☐	C☐	D☐	E☐	**39.**	A☐	B☐	C☐	D☐	E☐
20.	A☐	B☐	C☐	D☐	E☐	**40.**	A☐	B☐	C☐	D☐	E☐

INSTRUCTIONS

CE tests may be completed online and are graded immediately. Certifications for online tests are emailed upon completion.

To use this print form, please completely fill in the square beside the appropriate letter. Unclear responses or multiple answers for a question will be marked incorrect, even if one of the markings is correct. If you erase an answer, be certain to erase it completely.

Questions on this test are derived from the contents of this issue of the *EA Journal.*

Please be advised the May/June *EA Journal* qualifies as ethics CE hours. Bonus issues, such as the November/December *EA Journal,* qualify for 2 or 4 CE hours: two (2) hours for 20 questions and/or four (4) hours for 40 questions.

To qualify for CE credit, you must complete the test within one year of the publication date.

You must receive a passing score of 75% or higher to receive CE credit. A certificate of completion will be sent to those with a passing score. Those who do not pass the first time will have a second opportunity to take the test without additional payment.

If you have any questions, please contact NAEA at 202-822-6232 or email education@naea.org.

TAKE THE TEST ONLINE!

APPROVED CONTINUING EDUCATION PROVIDER

HEADS UP! EA JOURNAL CE GOES GREEN IN MAY 2015!

Everyone's favorite tax magazine is taking steps toward reducing paper waste by making the *EA Journal* CE test available online *only*, beginning with the May/June 2015 issue. This doesn't mean you'll stop receiving the *EA Journal* in the mail—it will continue to be printed and mailed to you—but we're taking this one small step to help the planet by eliminating the e-mail and fax options for the CE test.

Two-Hour Home CE Test

March/April 2015
IRS Program Number: X9QQU-T-00273-15-S
2 CE

The following test will provide 2 hours of CE credits. The test questions are drawn from the articles in this issue. The test form is perforated for your convenience. Please remove the form before completing the test.

INSTRUCTIONS

There are three ways to submit the test for grading: Take the test online – the fastest, most convenient way to earn CE. You will need your login and password to take the test online. All questions must be answered before the test is complete. Once you have marked all your answers, entered your credit card information, and clicked "Submit Test and Payment," your test will be graded immediately. Please complete the test before leaving your computer, otherwise the system will time-out and your responses will be lost. You cannot leave and return to a test. • Use the test form provided in the *Journal* (as a tear out), providing the information requested on the front, and filling in the appropriate bubbles on the answer sheet on the back. This form should be mailed along with payment to NAEA Home CE, 1730 Rhode Island Ave, NW, Ste 400, Washington, DC 20036. • Use the tests and forms included with the digital version of the magazine. Complete the application and simply circle the appropriate answer directly on the CE test. Fax the application and test to 202-822-6270 or mail it to the address above. You must earn at least 75% on the test to pass, and you will receive an immediate e-mail notification of your CE hours earned. If you do not pass on the first attempt, you will have the opportunity to immediately retake the test. If you wish to retake the test at another time, you must then do so on paper and either fax or mail the form, along with a note stating that you are retaking the online test. To qualify for CE credit, you must complete the test within one year of the publication date.

Members $45, nonmembers $55 for 20 questions. Payment must be submitted with completed test form for test to be processed. Those who do not pass the first time will have a second chance to take and pass the test without additional payment. See the test form for payment choice options.

TAXATION OF FOREIGN SHAREHOLDERS

1. Gains from the sale of personal property are generally taxable in:
A. The seller's country of residence
B. The buyer's country of residence
C. Both A and B
D. Neither A nor B

2. The U.S. tax treatment of a sale of foreign-owned U.S. stock depends on:
A. The amount realized in the sale
B. A broader set of facts and circumstances extending beyond the sale itself
C. The age of the seller
D. None of the above. Sales of U.S. stock are always taxable in the United States.

3. According to case law, profit-oriented activities conducted in the United States by foreign persons constitute a U.S. trade or business as long as such activities are:
A. Rare, insubstantial, and sporadic in nature
B. Rare, insubstantial, but continuous in nature
C. Regular, substantial, but sporadic in nature
D. Regular, substantial, and continuous in nature

4. A foreign person's noninvestment income is subject to U.S. taxation if the person is engaged in a U.S. trade or business.
A. True
B. False

5. USRPHC stands for:
A. U.S. real persons health care
B. U.S. retired persons heart condition
C. U.S. real property holding corporation
D. U.S. retirement pensions holding company

6. If a foreign person sells an ownership interest in a USRPHC, the person is ___ engaged in a U.S. trade or business.
A. Never
B. Actually
C. Forever
D. Deemed

7. With proper tax planning, a foreign person can maintain an office or other fixed place of business in the U.S. without being considered engaged in a U.S. trade or business.
A. True
B. False

8. Capital losses from sales of foreign-owned U.S. stock are:
A. Recharacterized as ordinary in nature
B. Always treated as suspended losses
C. Sourced in the same manner as gains
D. Sourced differently from gains

FIRST TIME ABATEMENT

9. FTA cannot be requested for the:
A. Failure to file penalty
B. Underpayment of estimated tax penalty
C. Failure to pay penalty
D. Failure to deposit penalty

10. If the taxpayer has no current IRS balances due, FTA can recover payments made to the IRS (IRC Sec. 6511) in the past:
A. Two years
B. Three years
C. Four years
D. Ten years

11. Using the IRS Get Transcript app, a taxpayer can pull his/her account transcripts for the preceding:
A. Two years
B. Three years
C. Four years
D. Ten years

12. Underpayment of the estimated tax penalty disqualifies a taxpayer from FTA.
A. True
B. False

13. A taxpayer can request that the IRS find a year where they may qualify for FTA.
A. True
B. False

14. FTA is available for a given tax year if there are no unpaid balances or unfiled returns for three out of the preceding five tax years.
A. True
B. False

15. IRS e-Services users can access account transcripts if they have filed which form?
A. 8801
B. 8811
C. 8821
D. 8848

FEDERAL TAX COURT

16. When must a petition be filed once a notice of deficiency is issued?
A. 30 days
B. 60 days
C. 90 days
D. 120 days

17. Additional taxes have to be paid before filing a petition in Tax Court.
A. True
B. False

TAX COURT CORNER

18. In the *Barkett* case, the Tax Court ruled that the applicable statute of limitations period that applied to the 2006 and 2007 tax returns was:
A. Six years—because the statute was three years per tax year, or six years
B. Six years—because the petitioners omitted more than 25 percent of the gross income they reported in their tax returns for those years
C. Three years—as this is the general rule of IRC Sec. 6501
D. None of the above

19. If gross income included the entire amounts realized from the sale of assets:
A. The Tax Court would have had to throw the case out for lack of jurisdiction
B. The Tax Court would have ruled for the petitioners
C. Bernie Madoff would have been given a jail sentence twice as long as the one he received
D. The concept of basis would no longer exist

PRACTICE BUILDER

20. The following use of information obtained by a preparer during a tax engagement is allowed without formal consent from the client:
A. Use of the client's address for mailing a tax newsletter
B. Contact information for offering investment products
C. Sending the client referral coupons to hand out to friends and relatives
D. Adding contact information to a list for sale to a marketing company

Your Direct Path to Tax Season Success

Super Seminar 2015

The SUPER SEMINAR experience:

Your source for quality Enrolled Agent education

- **96%** attendee satisfaction rate
- Up to **24** hours of quality CPE in **3** days
- Learn from **13** tax industry experts
- Customize your schedule from **36** sessions
- **34** years of exceptional tax education
- Save up to **$210** as a CSEA/NAEA Member

May 12-14 • Las Vegas, Planet Hollywood
May 28-30 • Reno, Grand Sierra Resort

To register, visit www.superseminar.org
Use Promo Code NAEA4 to receive $5 off

CSEA
California Society of Enrolled Agents
Powering California's Tax Experts

Presented by California Society of Enrolled Agents

IRS APPROVED CONTINUING EDUCATION PROVIDER · CTEC · CFP BOARD · CPE SPONSORS · CALIFORNIA BOARD OF LEGAL SPECIALIZATION

Future Enrolled Agents IMPACTING a Community

BY CHRISTINE KUGLIN, EA

It's a chilly Thursday night in March in downtown Denver, Colorado. Two hundred weary men, women, and children line the hallways of Emily Griffith Technical College anxiously awaiting tax preparers to arrive on site. Many have been sitting patiently for almost eight hours, nervously clutching their folders or bags of tax data. Children run up and down the halls to pass the time.

There's no guarantee they will leave with a completed tax return, but they hope they arrived in time to receive the help they need from volunteers—college students who have already put in a full day themselves. These families are depending on the student volunteers to help them with one of the most important financial obligations they will encounter—tax compliance.

Contrary to what some believe, college students are making a positive difference in their communities.

The scenario described above is a common scene that plays out in Volunteer Income Tax Assistance (VITA) sites all over the United States every tax season. When I was hired to coordinate the Metropolitan State University of Denver's (MSU Denver) VITA program two years ago, I immediately began to research how I could improve the existing undergraduate curriculum to assist our local families. In addition, I wanted to devise a way to introduce the VITA program at the graduate level, thereby expanding its scope. As an enrolled agent with over 20 years of accounting and tax experience, I knew I was facing a tremendous challenge. I also knew I had invaluable resources at my fingertips. I began to use my EA and National Tax Practice Institute™ training to create a vibrant and integrated service learning program for our university and our community.

Enrolled Agent, Community Need, and an Urban University Come Together

MSU Denver, located in the heart of Denver's metropolitan community, was chartered in 1963 as a state college. It has grown to more than 23,000 students, and it is now a full-fledged master's degree-granting university. Along with the energy found on an urban campus, we also encounter classic issues relating to diversity. MSU Denver's mission statement reads, in part:

> To fulfill its mission, MSU Denver's diverse community engages the community at large in scholarly inquiry, creative activity and the application of knowledge.

Thus, service learning programs integrated into our university curriculum are truly a civic ideal.

My first task as the new VITA coordinator was to ensure that our relationship with our community associates was on solid ground. MSU Denver partners with two organizations: the Piton Foundation and the Denver Asset Building Coalition. Both of these organizations, coupled with the IRS, provide income tax assistance for low-income and elderly families. They also serve as a liaison between the university and the IRS.

After lengthy discussions with our community partners about the high demand for tax assistance in the urban Denver area, I began to think about how I could expand

the program to serve the community's needs. At the time I was hired, the VITA course was offered only to undergraduate students. The course had a lower profile at the university than I preferred. It needed higher-level recognition and promotion. The course had been taught by affiliate faculty who were not on campus other than to teach their assigned courses; therefore, they were unavailable to promote the previous successes of the program. I was the first full-time faculty and the first EA hired to lead the effort. I knew it was essential to build a higher profile for the program and to create increased energy around it within our institution.

I envisioned a graduate-level course, now called Tax Site Leadership and Management, that would integrate graduate-level accounting students into the VITA effort to serve as co-site coordinators and consequently increase the prestige of the undergraduate involvement. The graduate students would apply for a position and would be interviewed before being selected. They were required to have served in VITA or have worked in tax preparation in order to demonstrate tax knowledge proficiency. The increased supervision of the undergraduate students would contribute to a more efficient and effective tax preparation service.

One of the most important outcomes of the development of this program was the awareness for students about the EA designation. Many of them had never heard of it and mistakenly thought that becoming a CPA was their only option if they were interested in a career in tax. They were excited to learn they could sit for the Special Enrollment Exam (SEE). Their current education, along with the experience they would obtain through the VITA program, would prepare them to become EAs.

When I was hired to coordinate the Metropolitan State University of Denver's VITA program two years ago, I immediately began to research how I could improve the existing undergraduate curriculum to assist our local families.

Student Reactions, Success, and Program Growth

In our first season of tax preparation, I had 38 undergraduate and two graduate students enroll in the course. Together, we prepared over 900 tax returns and returned more than $1.7 million in refunds to the urban Denver community. This year, I have 48 undergraduates enrolled and three graduate students preparing to assist in VITA for the 2015 tax season.

Michael Montoya, who participated last year as an undergraduate and this year will be a graduate co-coordinator, stated:

> "I originally joined VITA to gain more professional experience than I would receive in the classroom. The VITA program allowed me a better opportunity to connect and build relationships with other students, as well as the community, than a traditional class. I came back to the VITA program through the master's course because I enjoyed my experience. It allowed me to work closely with a diverse group of both students and clients. It also provided me with important professional skills, such as planning, teamwork, effective communication, and problem-solving, as well as technical skills. But most of all, it allowed me to give back to my community by promoting financial sustainability to the citizens of Denver."

One of my first graduate students, Kimberly Beck, stated:

> "It was an opportunity to keep my individual tax preparation skills up to date while teaching students and helping the public. A big reason for signing up was that I would have the opportunity to help lower-income families."

As the first EA to lead this effort for MSU Denver, it has been and continues to be my honor and privilege to serve my community, develop student accountants into tax preparers, and increase awareness of the EA designation. EA

About the Author

Christine Kuglin, EA, is a professional-in-residence at Metropolitan State University of Denver in Colorado. She is continuing her education through the National Tax Practice Institute™ and will graduate in August.

Truth is...

CPAs and tax professionals are our business.

We can help you grow yours.

Cetera Financial Specialists is a wealth management firm with a difference. We are the leading growth consultant for tax and accounting professionals and CPA firms that have successfully integrated wealth management into their practices. We know your business, and truly understand what it takes for an independent like you to thrive in today's ultra-competitive marketplace.

Learn how we can help you maximize your value as your clients' financial quarterback at **response.cetera.com/ourbusiness** or call us at **888.410.9444**.

Cetera® | FINANCIAL SPECIALISTS