The IRM: A Resource for the EA • The Grandparent Tax • Up in the Air with IRD

VOL.34 NO.1 JANUARY • FEBRUARY 2016

EA JOURNAL

WWW.NAEA.ORG THE NATIONAL ASSOCIATION OF ENROLLED AGENTS

2016 HEALTHCARE UPDATES

2015 & 2016 Key Numbers • Read Between the Lines • 2015 Award Winners
NTPI Orlando Highlights • 2016-2017 Election Results

NAEA
POWERING AMERICA'S TAX EXPERTS

Client Tax Question #625

MOBILE HOME DEDUCTION

Page 5-9

QUICKFINDER **EBOOKS** ON **PROVIEW** HAVE YOU COVERED.

From house trailers to houseboats, your clients enjoy staying mobile, and so can you. Now you can access trusted Quickfinder content from your office or home, iPad or PC, online or offline. Take advantage of lightning-fast search tools, print and email pages with ease, add notes and bookmarks and highlight text that automatically syncs to your other devices. Quickfinder eBooks work everywhere you do.

> *"eBook offers advantages such as the find or search feature so that you can reach key titles easily. I used this to access it anywhere I wanted, and I also had it on my iPad, so it was handy all the time. I could email important info to clients from the eBook itself, which was an impressive tool."*
>
> — Individual Tax Preparer, IL

Quickfinder®

Tax.ThomsonReuters.com/Quickfinder

©2015 Thomson Reuters. Thomson Reuters, Checkpoint, Quickfinder and the Kinesis logo are trademarks of Thomson Reuters and its affiliated companies.

THOMSON REUTERS
CHECKPOINT™

EA JOURNAL

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

Inside This Issue

6
2016 Heathcare Updates
By Ben A. Tallman, EA, USTCP

14
The IRM: A Resource for the EA
By Frank X. Degen, EA, USTCP

20
The Grandparent Tax
By Monica Haven, EA, JD, LLM

24
Up in the Air with IRD
By Monica Haven, EA, JD, LLM

3 President's Message: It's a New Day for NAEA
By Terry Durkin, EA

4 Capitol Corner
By Robert Kerr

32 Tax Court Corner
By Steven R. Diamond, CPA

34 Two-Hour Online Home CE Test

36 2015 & 2016 Key Numbers
By David Mellem, EA

42 Read Between the Lines
By Raven Deerwater, EA, Ph.D

46 2015 Award Winners

50 November Meeting Summary

52 2016-2017 Election Results

***EA Journal* Staff**

PUBLISHER
A. Cedric Calhoun, CAE
ccalhoun@naea.org

MANAGING EDITOR
Julia Shenkar
jshenkar@naea.org

TECHNICAL REVIEWER
Robbie Roberson, EA
taxdad@hotmail.com

PUBLICATION DESIGN
Bates Creative
info@batescreative.com

GRAPHIC DESIGNERS
Emily Biondo
Cecile Jordan
Eliza Rownaghi

EA Journal (ISSN #1091-8256) is published bi-monthly for $215 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: ***jshenkar@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. © 2016 by the National Association of Enrolled Agents. Materials may not be reproduced without written permission. ***Postmaster***: Send address changes to: **EA Journal**, 1730 Rhode Island Ave., NW, Ste 400, Washington, DC 20036.

The TAX SHOW for the TAX PRO!

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

Upcoming Live Webcast Programs

JANUARY

Tuesday, January 12, 2016
2:00 - 3:50 PM ET

Tax Update 2015, Part I: Individual Federal Tax Including ACA

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 $270.00, $18.00 per credit – Save $30
Other CPE Credit Amounts Available

FEBRUARY

Tuesday, February 9, 2016
2:00 - 3:00 PM ET

Tax Update 2015, Part II: Business Federal Tax Including ACA

1 Hour of CPE Credit

Scan to View Facebook Page

Tax Talk Today content is provided by:

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

NAEA 2015–2016 BOARD OF DIRECTORS

OFFICERS

President
Terry Durkin, EA

President-Elect
Richard Reedman, EA, USTCP

Secretary/Treasurer
Laurie Ziegler, EA

Immediate Past President
Lonnie Gary, EA, USTCP

DIRECTORS

James Adelman, EA
Michael Fioritto, EA, CPA
Jerry Gaddis, EA
Nancy Lyman, EA
Joyce Mohr, EA
Jean Nelsen, EA
Angela Radic, EA
Don Rosenberg, EA
Jeffrey Schneider, EA
Craig Smith, EA
Andy Stadler, EA

NAEA COMMITTEES

Affiliate Council
Jeff Gentner, EA

Audit
Dave Shaw, EA

Awards
Rose Fulton, EA

Bylaws
Beth Keppel, EA

Education
Alan Pinck, EA

Ethics and Professional Conduct
Fred Davison, EA

Governance
Mike Fioritto, EA, CPA

Government Relations
Gary Anspach, EA

Membership
Rich Rhodes, EA
Michelle McBride, EA

Nominating
Lonnie Gary, EA, USTCP

PAC Steering
Alexander B. Thomson, EA

Public Relations
Kerry Freeman, EA

Schuldiner/Smollan Memorial Fund Advisory Board
Wes Parker, EA

It's a New Day for NAEA

Terry Durkin, EA

Not only is it a new day for NAEA, but it is a grEAt day to be an EA. We welcomed Cedric Calhoun, CAE, FASAE, as our new Executive Vice President in December. We have the Search Committee to thank for its diligent work in finding Cedric to lead us in the next chapter of NAEA.

Cedric brings over two decades of experience in executive leadership, membership development, market research, marketing and communications plan development, as well as strategic planning. Cedric is an athlete and still runs in road races. Needless to say it was natural for him to hit the ground running at NAEA and utilize his leadership skills to move NAEA forward. The Board of Directors and the NAEA staff have already started working with Cedric on our strategic goals and action plans. I am pleased to announce we have created a Finance Task Force to review the financial health of our organization and provide recommendations to ensure NAEA is positioned for strong growth. We remain focused on our mission which is to advance the recognition of enrolled agents and to enhance the professional growth of our members through promotion, member support, advocacy and education. I know NAEA's future is bright as we enter this new chapter in our organization with Cedric.

I want to thank all the affiliates who welcomed me and other board members to your annual conferences and education events. It was wonderful to meet quality EAs from all around the country. I enjoyed seeing how you operate as affiliates and sharing with you what is going on at NAEA. Together, the Board connected with over twenty affiliates these last few months. During my visits, there was a common theme throughout: Enrolled agents are supportive of each other, proud of our profession, and passionate about getting the word out to the public. Let's keep the excitement going. Let everyone know at every chance we get—whether it is at an education event, at a community event, in an elevator, or on a golf course - why enrolled agents are America's Tax Experts!

I wish you all a fruitful tax season with many happy returns. EA

CAPITOL CORNER

Do What You Can

Editor's Note: On December 18, after press deadline, the Protecting Americans from Tax Hikes (PATH) Act made permanent many expired tax law provisions. Refer to E@lert *for details.*

By Robert Kerr

Two thousand sixteen. We're another year older and (I hope) another year wiser. We are also on the cusp of yet another filing season.

If all played out in DC as we forecasted, Congress at the tail end of 2015 punted on the entire tax extender package. Unfortunately, EAs are used to this maneuver because this will be the third year out of the last four in which Congress has not seen fit to provide untold numbers of individuals and small businesses by which tax rules they will be playing.

Here's a quick and non-exhaustive recap on what provisions are in play on the individual side:

- non-taxable treatment of cancellation of mortgage debt;
- deduction for mortgage insurance premiums;
- parity for employer-provided mass transit and parking benefits;
- deduction of expenses of elementary and secondary school teachers; and tax-free charitable distributions from IRAs.

On the business side, the biggies include:

- bonus depreciation;
- increased maximum amount and phase-out threshold for Section 179 expensing;
- Fifteen-year straight-line cost recovery for qualified leasehold improvements;
- the research and experimentation tax credit.

Just to be clear, not a single legislator—Democrat or Republican—with whom I've spoken about this issue suggests this state of affairs is desirable or even defensible. By the way, I have the chance both during the course of office meetings on the Hill as well as at fundraisers I attend on behalf of NAEA PAC to speak with dozens of members.

But still…here we are.

While the extenders story looks all too drearily familiar, we have seen a number of changes on Capitol Hill. A reluctant Paul Ryan (R-WI) became Speaker of the House after John Boehner (R-OH) resigned his seat in late October. A much more eager Kevin Brady (R-TX) moved in behind Paul Ryan to become House Ways and Means Committee Chairman.

In the longer term, I believe these changes are good for those of us who are interested in tax reform. Speaker Ryan (a phrase that, in its newness, still doesn't exactly roll off the tongue) is seriously interested in tax reform, both in the international space (to prevent corporate inversions—an issue not of much professional interest to enrolled agents but, at the same time, a significant issue for the competitiveness of America's largest corporations) and domestically—for both individuals and businesses. His interest is a nice contrast to Speaker Boehner's famous "blah, blah, blah" response to former W&M Chairman Dave Camp's 2014 tax reform blueprint. Chairman Brady is interested. On the other side of the Hill, both lead tax writers (Senate Finance Committee Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR)) are interested.

So far, so good. But…

The challenge with tax reform (as I've said in this space before and as when taking my "Tax Reform 101" course on the road to state affiliates) is that real, significant tax reform is difficult. While the purpose of the federal income tax regime is to raise the funds required to run the government, we as a matter of course use the tax code to promote certain behavior, to discourage certain behavior, to redistribute income, and to achieve a variety of policy goals.

I suspect we will not see significant tax reform in 2016. The election year makes legislating even more difficult than usual (and that, my friends, is already very difficult). Our window is 2017—with the possibility of some movement between now and then on the international front (again, not an area of great interest to very many EAs)

*****

But where does that leave us for this filing season?

Aside from the challenges inherent in the late extenders resolution (assuming we

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.

have a one-year retroactive resolution—I believe we will, but given how obstreperous some in Congress have been, it ain't over until it's over to quote Yogi Berra), I suggest two significant items: identity theft and Affordable Care Act (ACA) issues.

You've already made it through the initial ACA issues, but two ACA provisions that apply only to applicable large employers (ALEs) are now in effect: the employer shared responsibility provision and the employer information reporting provision for offers of minimal essential coverage. You will see two new forms this year: Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, used by employers with fifty or more full-time employees, and Form 1095-B, *Health Coverage*, primarily used by insurers and health coverage providers, including employers that sponsor self-insured plans.

Identity theft is a large and growing filing issue. IRS has partnered with stakeholders, including tax software firms, state departments of revenue, financial institutions, and those representing professional preparers, and releases "Security Summit" statements, which generally contain useful information. For instance—and we've reported this in *E@lert*—IRS is collecting more information on e-filed returns (e.g., IP address of the computer creating the return, the amount of time it took to create the return) and some states may be requiring drivers license information (e.g., license number, expiration date).

While IRS will not be asking for driver's license information, the agency will require IP PINs (identity protection personal identification numbers, issued to those who have reported their identities stolen/compromised) for all taxpayers on a return (not only primary filer but secondary filer and dependents for the purposes of EITC and child tax credit claims).

A word to the wise: fraudsters are rampant and you hold in your offices significant amounts of sensitive taxpayer data. Do you have policies and procedures in place that reasonably protects this information? Have you read IRS' resources for tax preparers (a half-dozen publications that are worth your while)?

*****

As we go to press, Congressman Xavier Becerra (D-CA) is introducing taxpayer bill of rights legislation that will include, among other things, return preparer oversight and the EA credential protection act. Further, we believe the Senate Finance Committee plans to revisit its own identity protection bill markup, which was abruptly postponed in mid-September. That markup will include both return preparer oversight language and, once again, the EA credential protection language.

We've made great progress with the EA credential bill: it has been voted out of the Senate Finance Committee as part of a February 2015 package of non-controversial tax titles and we have eighteen cosponsors on the stand-alone House bill (including many Ways and Means members). We're also pleased to see a return to return preparer oversight and to language that will address the issues raised in the *Loving* case.

The government relations team remains fully engaged on both issues. With respect to return preparer oversight, we are among the few organizations taken seriously on the issue and our conversations with the tax writing committees focus on our basic principles: the necessity of a uniform basic competency test and continuing education. We are encouraged by steps to resurrect the former registered tax return preparer program, which while not perfect did adhere for the most part to the principles we find of critical importance.

Though it goes without saying, we will keep the membership informed through *E@lert* and special all-member messages as necessary.

*****

Finally, I would be remiss if I didn't take an opportunity to thank our loyal NAEA PAC supporters. We have an aggressive goal this year and members of the PAC Steering Committee will be reaching out to past donors to remind them of our rapidly approaching year end.

The PAC is only part of our advocacy toolbox, but it is unique insofar as it is an excellent tool to raise EA awareness (job #1 at NAEA) among a small but critical group of people: legislators who write tax policy. They are precisely the people who need to know that enrolled agents are America's tax experts.

Please consider a contribution. The process is easy: simply go to NAEA's website (www.naea.org/pac) and make a onetime or ongoing contribution. I cannot thank you enough for doing so.

*****

One more item: EAs with SSNs ending in 0, 1, 2, or 3 are in cycle and need to renew their licenses to practice by January 31st. Please, please, please make sure to do so on time. Renewing late is much more painful (trust me on this one). Also, every EA needs a current PTIN, so please make sure you've renewed your PTIN as well.

Wrapping up, we're once again about to launch into a challenging filing season. Make sure you've done all you can to prepare—your clients after all expect America's tax experts to do so.

Theodore Roosevelt, not a man who kept his thoughts to himself, once famously said: "Do what you can, with what you have, where you are."

I'm hoping Congressional leadership, IRS leadership, and enrolled agents all adhere to this advice. **EA**

2016 HEALTHCARE UPDATES

By Ben A. Tallman, EA, USTCP

The following is designed to review healthcare changes impacting your clients for the 2016 filing season. The changes that began in 2013 and 2014 are intensifying in 2015. So, strap yourself in and get ready for the latest changes and information that is coming. Since this article was written in the fall of 2015, review of more recent updates is recommended.

NEW HEALTHCARE COVERAGE FORMS FOR TAX YEAR 2015

You've seen the 1095-A Form already. Are you ready for the 1095-B and 1095-C forms? Since it will be new, taxpayers may decide to file it away with their insurance paperwork or even throw it away. You must reach out to them before this happens. If you have previewed the new IRS forms, you are probably wondering what the other forms are. If you are filing Form 1040, you will only need Form 1095 (A, B, or C) from the client to satisfy the ACA filing requirements. The 1095-A is used exclusively with the IRS Form 8962. What, then, is done with the 1095-B and 1095-C? These Forms do not include subsidies or the Advance Premium Tax Credit, so we only use them to verify coverage. If the taxpayer had full-year coverage on the entire family you will use the check box on Line 61 of Form 1040. If there is not full-year or family coverage, you will need to run through Form 8965 and/or the Shared Responsibility Payment worksheet to see how much penalty your taxpayer owes. They may not owe a penalty if they meet the exemptions discussed later in this session. So, what should we rely on if these 1095-B or 1095-C forms are not provided? These are the only Forms that verify total or partial year coverage. The insurance card will not. I would ask the taxpayer to obtain a duplicate Form 1095 to file their return.

HELPING EMPLOYERS OR INSURANCE PROVIDERS WITH NEW HEALTHCARE COVERAGE FORMS

If you work with employers or do payroll, then you will need to know what is required in 2016 for businesses or healthcare providers. Form 1095-B must be filed by insurance companies, healthcare providers, small businesses (non-ALE (Applicable Large Employer)), or self-insured employers for each taxpayer/family member being covered. The transmittal sheet is Form 1094-B. This is similar to Form 1096 serving as a transmittal sheet for 1099s. ALE Health Plans which need to file Form 1095-C on each taxpayer/family member being covered. So which employers fall into this large group? Resuming in tax year 2016, any employer with fifty or more Full-Time Equivalent (FTE) employees. For tax year 2015, that number starts at 100 FTE employees. Mailing deadline is January 31, 2016 for Form 1095. The transmittal sheet for the 1095-C is Form 1094-C. The transmittal sheet and attachments must be mailed in by February 29, 2016 or e-filed by March 31, 2016 (e-file mandatory 250).

Is there any way to get an extension? Yes, Form 8809 can be filed for an automatic thirty day extension. An additional thirty days may be requested using Form 8809, but IRS will need to approve it. Now you are probably

Icon © hunotika/the Noun Project

wondering what if Forms 1095 & 1094-B/C are submitted late? If after August 1st, the penalty is $500 for each 1095-B/C. For 100 employees, this penalty would be $50,000!

There will be a learning curve in completing Form 1095 & 1094. Safe harbor codes are listed in the instruction books and are used to avoid penalties. In this case, the monthly break-down sheet will be used and it will break everything into twelve separate months. If you have been contemplating increasing your fees, this may be your tipping-point to do so.

WARNING FOR EMPLOYERS USING AN HRA OR OTHER REIMBURSEMENT ARRANGEMENT

This is a critical issue described in Sec. 4980D and IRS Notice 2013-54. Businesses can no longer offer HRAs (health reimbursement arrangements) or reimburse premiums on an employee's private plan as a pre-tax benefit. The funds must be counted as taxable compensation, unless the HRA is integrated with an minimum essential coverage (MEC) compliant health plan. So why all the drama? It's the penalties, which will cost an employer $100/day per employee or $36,500/employee per year. Why should we be concerned? Employers count on us to keep them informed, especially on something of this magnitude. HRAs do not meet MEC or minimum value requirements (MVR) under the current ACA rules. Let me explain: The HRA sets aside a specific amount to pay for the employee's health costs during the year. Once that is gone, the employee is out of pocket for the balance. Under the current ACA Rules, the plan must cover at least sixty percent of all the services listed under MEC requirements. So how is this different from a health savings account (HSA)? Simple, the HSA is "coupled or integrated" with a high deductible health insurance plan. The HRA is not. So what if the HRA is coupled with a health insurance plan that meets MEC and MVR requirements? You are back in business with the HRA.

HRAs do not meet MEC or MVR under the current ACA rules.

There is transitional relief for small employers (less than fifty employees) or two percent shareholder-employees under IRS Notice 2015-17. Small employers receive eighteen months relief ending June 30, 2015 and the two percent shareholder-employees receive twenty-four months ending December 31, 2015.

To avoid the penalty for an employer that missed the memo, simply make the HRA "taxable" instead of a pre-tax benefit. A payroll adjustment is the easiest way, but if this is no longer convenient or possible, Form 1099-MISC could be used to resolve the problem. So will the employee still receive a 1095 form stating they had coverage for the year? No, not for a stand-alone HRA. So will the employee now owe an ACA penalty? Yes, unless they had another plan that met MEC and MVR requirements. Large employers may still request abatement or a waiver of the penalty due to this being the "implementation year" and the "complexity of the regulations." See Sec. 4980D, IRS Notices 2015-17 and 2013-54 for more detail.

SO WHAT ARE THE CURRENT GUIDELINES FOR HEALTH COVERAGE?

All plans should meet the minimum essential coverage listed next. Your choice of deductible plans comes first. If you rarely use your health insurance, you might choose to select 60% coverage with a 40% deductible (your responsibility). On the other hand, if you routinely have a lot of medical expense, you may choose to select 90% coverage, leaving you with a 10% deductible. Let us look at the four MVR levels available.

1. Bronze Level will pay 60% of the benefits covered under the plan.
2. Silver Level will pay 70% of the benefits covered under the plan.
3. Gold Level will pay 80% of the benefits covered under the plan.
4. Platinum Level will pay 90% of the benefits covered under the plan.

If you are looking for the cheapest plan, then the Bronze Level is where you will start. The marketplace uses the silver plan which covers 70% of qualified health care costs.

MINIMUM ESSENTIAL COVERAGE

The Affordable Care Act has set uniform minimum health care coverage that affects all health care providers (insurance companies).

Minimum essential coverage must now have the following benefits:

- Ambulatory Services
- Emergency Services
- Hospitalization
- Maternity and Care for New-born Babies
- Pediatric Services
- Preventative & Wellness Care
- Prescription Drugs
- Mental Health & Substance Abuse Services
- Rehabilitative Services & Devices
- Lab Fees

Unless the taxpayer and/or family are covered under a "grandfathered plan" (discussed later), the above requirements become the standard on all ACA approved health care plans.

TAKING ON THE INDIVIDUAL SHARED RESPONSIBILITY PAYMENT

So who pays the penalty? It depends on whether the taxpayer had a full-year or

partial-year of coverage. The program has set up a two-month grace period for those that have partial coverage for the remaining nine to ten months of the year. If they were covered for at least one day during a month, they get credit for the entire month. If they only had partial coverage during the year, then the penalty will be prorated on the number of months they were without coverage (unless it is two months). Before you throw up your hands in frustration, remember the earlier comment that your program is doing all the heavy lifting. You just need to input the months without coverage and the family members not covered on the Shared Responsibility Payment worksheet—your tax program should do the rest. Don't forget to check for any possible exceptions or exemptions to the requirement for healthcare. This alone could save you client hundreds of dollars in penalty. This information is listed next.

EXCEPTIONS & EXEMPTIONS FOR THE ACA HEALTHCARE REQUIREMENT

Let's start with the fourteen hardship conditions that require an exemption certificate number or ECN (discussed below). Remember that the exemption only covers thirty days before and thirty days after the event. I have identified these hardship conditions in the following order:

1. You were homeless.
2. You were evicted in the past six months, or you are facing eviction/foreclosure.
3. You received a shut-off notice from a utility company.
4. You recently experienced domestic violence.
5. You recently experienced the death of a close family member.
6. You experienced fire, flood, natural disaster, or human-caused disaster that substantially damaged your property.
7. You filed for bankruptcy in the past six months.
8. You acquired substantial medical expenses over the past twenty-four-months resulting in a debt that you cannot pay.
9. In caring for a disabled, ill, or aging family member, you experienced unexpected costs that disrupted your ability to cover necessary living expenses.
10. Your dependent child was being denied medical coverage by a person required to provide it under a court-order. Furthermore, Medicaid and CHIP also denied coverage. The penalty is only exempted on the child.
11. Under an appeal decision, you became eligible for a qualified health plan (QHP) through the Marketplace at a reduced or lower premium. You are now exempted for the time period you were 'not covered' while your case was under review.
12. You would have normally been eligible for Medicaid coverage, but you were denied since your State failed to participate in the expanded Medicaid program.
13. Either your individual insurance plan was cancelled, or you believe that other Marketplace plans are unaffordable.
14. You experienced some other hardship in obtaining health insurance.

Now that we have covered the fourteen hardship exemptions, we will need to encourage your taxpayer to complete the multi-page application from www.healthcare.gov to obtain their exemption certificate number. The applications must currently be mailed and are expected to take about two weeks to process. This document is required in order to complete Form 8965 (the exemption form). We can only hope that the process will become automated and allow taxpayers to file on-line in the future.

It may be a good time to look at the original exempt categories, so we have them all in one place for future reference. The first four on the list below are exempt from the health care mandate and the last eight (five through twelve) are exempt from the individual health care penalty. The result is the same, but let's look at the list.

1. A recognized religious group or sect that has a conscientious objection to accepting or depending on health care benefits. The Sect must obtain religious conscience exemption certificates for its members stating the teachings and beliefs of the group.
2. Members of a Health Care Sharing Ministry authorized under a Sec.501(c)(3) in which the group shares a common set of healing, ethical, and religious beliefs.
3. Non-resident aliens and non-citizens can provide a visa or other papers to show their non-resident status.
4. Incarcerated persons or individuals are provided health care by the correctional institution and would not need to be under a separate healthcare plan.
5. Households that cannot afford premiums that exceed 8% of the family's household income.
6. Households that are below the income tax filing threshold and are not required to file a tax return.
7. Native Americans from a federally recognized tribe are exempt from the penalty. Many healthcare services and benefits exist through the tribe or through tribal organizations.
8. Special hardship cases can apply for an exemption certificate number if they certify a financial inability to purchase minimum essential coverage.
9. Short lapses of less than three months during the year. IRS language for two months.
10. Persons living outside the United States are treated as exempt even if filing for the foreign earned income exclusion. The health coverage question is not addressed for this group.
11. Dependents as a group are exempt from penalties. For 2015, those claiming them as dependents will be responsible for their health care coverage and any penalty.
12. Adopted children, like dependents, are exempt from penalties. The adoptive parents will not be responsible for providing healthcare until the adoption

has been accepted and finalized. At that point, penalties would accrue where health coverage was not provided.

TYPES OF COVERAGE EXEMPTIONS & CODES

This list covers the 8965 Codes and when an ECN is required from the marketplace.

- No Code/Part II check box – Individual income below the tax filing threshold
- No Code/Part II check box - Household income below the tax filing threshold
- Code A/Part III - Coverage considered unaffordable (above 8% of household income)
- Code B/Part III – Short coverage gap during the year (two months or less)
- Code C/Part III - Citizens living abroad and certain noncitizens
  - * 330 full days outside of the U.S. during the year
  - * Bona fide resident of a foreign country or U.S. territory
  - * Resident alien who was a citizen of a foreign country exempted by U.S. tax treaty
  - * An individual not lawfully present in the U.S. or not meeting the substantial presence test (generally 183 days or less)
- Code D/Part III - Members of a health care sharing ministry under Sec.501(c)(3)
- Code E/Part III - Members of a federally-recognized Indian tribe
- Code F/Part III – Incarcerated individuals
- Code G/Part III - Aggregate self-only coverage considered unaffordable (above 8%)
- Code G/Part III – Resident of a state that did not expand Medicaid (below 138% FPL)

Other exemption groups that require an exemption certificate number for Part I:

- Members of certain recognized religious sects
- Ineligible for Medicaid in a state that did not expand Medicaid coverage
- General hardship – See the list of fourteen hardship exemptions mentioned earlier
- Employee premiums exceed 9.56% of household income and considered unaffordable
- Unable to renew existing coverage and other plans are unaffordable
- AmeriCorps, VISTA, or NCCC programs coverage was short-term duration or self-funded
- Other exceptions or exclusions not listed elsewhere

Figure 1: Larger of Flat Rate Penalty or Penalty Factor

Year	Individual	Maximum/3	Penalty factor percentage
2014	$95	$285	1% of Household Income
2015	$325	$975	2% of Household Income
2016	$695	$2,085	2.5 % of Household Income

REPORTING LIFE CHANGES TO THE MARKET PLACE OR STATE EXCHANGES

So when should someone receiving a subsidy from the marketplace report back on life changes?

- When married or divorced during the year
- Changes in their family income (up or down)
- Loss of health insurance on a dependent (who had coverage elsewhere)
- IRA Withdrawals which effect income
- Forgiveness of Debt notices
- Other life changes that could impact eligibility with the marketplace

On the other hand, what life changes would allow someone the opportunity to obtain a subsidy when they are outside of the enrollment period which runs from November 1– January 31?

- Marriage or divorce
- Birth or death of a child
- If you move out of the area
- Become disabled or lose disability status
- Become pregnant
- Become incarcerate or get released
- Change in citizenship or immigration status
- Other changes in family or health status (adoption, terminal illness, or returning health)

A special sixty-day enrollment period would be allowed after a life-changing event.

INDIVIDUAL PENALTY FOR NOT HAVING HEALTH COVERAGE

With tax year 2015, individuals who do not have health coverage will be assessed a penalty at the time of their tax return filing. The individual penalty for not having health coverage will start at $325 (or a maximum of $975/family). In 2016, the penalty will increase to $695 for an individual ($2,085/family). The cap on this family penalty is three adults. Children aged eighteen and under are counted as half an adult. Information from third-party health insurance companies will provide the IRS with documentation to confirm or deny the existence of health coverage for the year in question. No penalty is assessed if taxpayers' maintain coverage for more than nine months during the tax year (grace period is less than three months). Partial-year penalties will be divided by twelve months for those with partial year insurance coverage (see figure 1).

A higher penalty is considered if the household income multiplied by 2% exceeds the penalties listed above. The penalty factor grows to 2.5% in 2016. All penalties after 2016 will be subject to an inflationary adjustment. To establish Household Income in 2015, subtract the minimum filing threshold (S-$10,300, MFJ- $20,600) from the adjusted gross income. Multiply this net figure times 2% for the penalty

comparison (larger penalty applies). Our tax program should handle this automatically. There is a stop gap on the penalty for wealthy taxpayers without coverage. It considers the cost of an individual bronze plan which is currently $207/month times the months without coverage. The maximum penalty for 2015 would be $2,484 per family member.

EMPLOYER PENALTY FOR NOT PROVIDING ADEQUATE HEALTH COVERAGE

After 2015, ALE Employers with at least fifty full-time, or full-time equivalent, employees will be subject to monthly penalties (or one-twelfth the annual penalty) for not offering an affordable health care plan or not offering the right affordable health care plan to their employees. Transitional relief for 2015 increases the FTE employee total to 100, so only in 2015, small employers are identified with ninety-nine or fewer employees. In order to utilize this ninety-nine employee transitional relief the employer must certify to three things:

1) They have ninety-nine or fewer FTE employees for 2015
2) They have not reduced their work force to reach this level
3) They have not eliminated or reduced their health care coverage.

If the employer cannot certify to the above, transitional relief does not apply to them and they are an ALE at fifty FTE. So let's look at the 2015 ALE penalties.

- In 2015, $2,080 penalty/employee will apply if the employer does not offer affordable health care coverage to at least 70% of their full-time employees; and at least one of those employees picks up coverage from the State or federal exchange using a premium tax credit. See Sec.4980H(a); or
- In 2015, $3,120 penalty will apply if the employer offers health coverage to 70% of their full-time employees, but at least one employee finds it unaffordable and goes to the exchange to purchase health coverage using a premium tax credit. The employer penalty is based on employees that received the premium tax credit from the exchange and not on all employees. See Sec.4980H(b).

The smaller penalty actually applies to the employer that does not offer coverage to at least 70% of his employees. However, it applies to all employees. The larger penalty only applies on the employees that received a premium assistance credit from the state exchange or federal marketplace. The Sec.4980H(a) penalty allows subtracting eighty full-time employees from the penalty. The penalties are only computed on full-time employees, not part-time or seasonal. The "lesser penalty rule" allows employers to assess penalties for both and pay the lesser penalty.

IDENTIFYING APPLICABLE LARGE EMPLOYERS (ALE)

Under the Affordable Care Act, how do we identify an applicable large employer? After 2015, a large employer has at least fifty full-time (or full-time equivalent) employees. Unlike the standard forty hour work week required under the Small Business Health Care Credit (discussed later); the larger employers consider a thirty hour work week for full-time employees. The impact on a large employer is costly. Employees that normally work three-fourths time are now actually full-time employees when it comes to health care coverage. Any previous thoughts of reducing employee hours to avoid ACA just disappeared with the thirty hour work standard. You must also consider employee benefit hours in your FTE computation. This would include vacation and holiday pay, sick pay, disability pay, jury duty, military duty, family leave pay, severance pay, lay-off period pay, and any other period an employee is paid during an absence from the job. Part-time employees hours under thirty hours/week must be aggregated (or totaled) and then divided by thirty to help compile the FTE number of employees for the company. Monthly hours are based on 130 hours (30*52 divided by 12) for those using monthly totals. In 2013, one national retail chain cut employee-hours across the board to twenty-nine hours/week!

MEASUREMENT PERIODS FOR LARGE EMPLOYERS

This is where things become complicated and could require some additional study and research. For now, just be aware there are three measurement periods that deal with the employer mandate:

1. The Standard or On-Going Employees Measurement Period. This covers a six to twelve month look-back and new employees are considered in the group.
2. Administrative Measurement Period. This allows ninety days for employees to get enrolled in the employer health care plan.
3. Stability Measurement Period. Cannot be shorter than the Standard Measurement Period (at least six months) and must give employees time to learn about coverage options.

Unless you are working with an applicable large employer and providing consultation on ACA employee coverage, you will not need to research this topic any further.

LOOK-BACK PERIOD AND VARIABLE HOURLY EMPLOYEES

The Look-Back Period allows employers to use any six consecutive month period from 2014 to determine an employee's current work status based on the prior year. If the employee was working full-time during this period, the employee must be considered full-time in 2015 regardless of their actual work status. IRS has tables and charts to assist you on this topic.

Variable hourly employees are hired under the condition that their hours would not be consistent or full-time. The conditions and demands of the job create uncertainty that must be accept with employment. Their hours are averaged according to the instructions shown by IRS.

2016 HEALTHCARE UPDATES

IF ATTRIBUTION RULES APPLY

If a company believes it can circumvent the fifty employee rule by setting up additional subsidiaries and hiring fewer employees in each one, it is mistaken. Review of Sec.414, Sec.1563, and Sec.4980H may reveal that Attribution or Aggregation Rules apply. All subsidiaries and related businesses with common ownership are aggregated into one business for ACA requirements. If you've heard this before, it was probably related to dental or medical practices that were trying to maximize SEP contributions for the owners with nothing for the staff. It didn't work then and won't work now! Additional information on related party rules can be found in Sec.267. An easy way to research these Code Sections is through the Cornell University website. It is free! Just pull up the US Code, go to Title 26 (title for income tax), drop in a Section number, and you are ready to research.

NEW EMPLOYERS & SUCCESSOR EMPLOYERS

Just because a company acquires a business or starts a new business, does not mean they can wait until reaching the fifty employee threshold to begin offering health care. If there is a *reasonable expectation* that the business will need at least fifty employees, then the ACA requirements apply immediately. See Sec.4980H for additional guidance on this matter.

SEASONAL EMPLOYEES, LEASED EMPLOYEES, AND OWNERS ARE EXCLUDED

There are a few exceptions to the fifty employee threshold. These include seasonal employees with less than four months or 120 days during the year. This is on-going for ski slopes, summer camps/resorts, holiday retail help, or other seasonal work. Leased employees also fit the exception under ACA, as long as the leasing company is treating them as employees and not sub-contractors. Finally, the owners that are sole proprietors, partners, or 2% S-corporation shareholders under Sec.4980H are excluded from the fifty employee threshold. For those wishing to learn more, see REG-138006-12, Explanation of Provisions Preamble, (I)(A)(1); Sec.4980H(c)(2); and Sec.54.4980H-2(b)(1) for further reference.

TYPES OF COVERAGE FOR APPLICABLE LARGE EMPLOYERS

A large employer must provide health coverage to all employees that is *affordable* and *meets minimum essential coverage* requirements. For 2015, there is a 30% grace factor built into the law to allow for dropped or missed coverage on new employees. Under the non-discrimination requirements, health insurance premiums for each employee may not exceed 9.56% of that employee's household income (don't confuse this with the 8% for the hardship exemption). Coverage offered to the employee must pick-up at least 60% of their medical costs. Under a minimum plan, the employee would be responsible for 40% of their medical costs as a co-pay or deductible.

AVOIDING PENALTIES FOR APPLICABLE LARGE EMPLOYERS

With all the regulations and requirements, how can a large employer avoid the pitfalls and penalties of ACA? There are safe harbors listed on Form 1094-C, Line twenty-two for ALE employers. The Instructions offer four main categories and several sub-sections offering relief from penalties. The most common problem will be the employee affordability issue. Even though the "9.56% of wages" covers most employees, it does not cover those families that fall into the Federal Poverty Level (PFL). In order to insure the employee's family is offered 'affordable' coverage, the employer needs the family size and the employee's household income. Since this information is not available to employers and in many states it is illegal to request; employers are offered three safe harbors based on penalties related to employee income.

1. The W-2 wages safe harbor (Code 2F). Is the employee's premium cost 9.56% or less of his or her W-2 Wages for the year? This could vary annually due to reductions in over-time or other factors. Safeguards must be in place to insure that the health insurance premium cost does not exceed 9.50%. See Notice 2012-58 and Notice 2011-73.
2. The rate of pay safe harbor (Code 2H) computes the employee's hourly rate times 130 hours/month. It then charges the employee the lowest premium for self-only minimum coverage and compares it to 9.50% to confirm compliance. See Sec.54.4980H-5(e)(2)(iii).
3. The federal poverty line safe harbor (Code 2G) considers FPL for a single individual and then charges the employee no more than 9.50% of that figure for health insurance premiums during the year. See Sec.54.4980H-5(e)(2)(iv).

The reason for these safe harbors is to avoid the $3,120 penalty on employees that consider the employer's plan unaffordable and go to the Federal or State Exchanges to obtain coverage with a premium assistance credit.

Penalties can still be is assessed for not offering health coverage at all. Offering inadequate or over-priced coverage can have the same effect on assessing a shared responsibility payment. What can be done to help an employer caught in this trap? Since these penalties are assessed monthly on full-time employees we need to determine the penalty assessment. Part-time employees are not considered in computing the penalty. The "employee de minimus rule" (only applicable on the $2,080 penalty) exempts the first 80 full-time employees from the penalty calculation in 2015.

Example: "Quick Fil-A" has ninety-two employees at their local store and has failed to offer health insurance for any of their employees in 2015. Mr. Johnson, the manager, has contacted you to see if you can help. Your first question is how many full-time employees do you have? The owner replies "fifty-eight full-time and the rest are part-time." You can advise the manager that his store is currently safe from the non-compliance penalties since he has less than eighty full-time employees. The part time employees were not counted in the penalty computation.

The importance of knowing the nuances of ACA are imperative for us. We are the watchmen on the wall and it is our responsibility to know and educate our clients on these new regulations. They expect us to protect and advise them of the financial entrapments and danger zones. Please continue to remain informed on these issues through research and work-shops.

GRANDFATHERED PLANS

If a large employer already has a health care plan or self-insured health plan under its Flexible Spending Account (FSA) or Cafeteria Plan, it may currently be grandfathered into ACA even though minimum essential requirements are not fully met. Coverage must have been in effect since March 23, 2010. There are discussions that these grandfathered plans may be expected to upgrade to meet minimum essential coverage in the near future.

SMALL BUSINESS HEALTH CARE TAX CREDIT

Small businesses offering health insurance for their employees can complete Form 8941 to determine if they qualify. The credit requires the same health insurance plan be offered to all employees. Owners and their families are excluded. The employer must pay 50% or more of the health insurance premium on all employees in the plan, excluding those that opt out or are seasonal employees. The credit is limited to twenty-five FTE employees averaging less than $50,000 in wages for the year. All employees' hours are totaled together for the year, including part-timers, and then divided by 2,080 hours (forty hours * fifty-two weeks) to establish the FTE total. For this reason, employees with overtime or additional hours are limited to 2,080 hours/year in computing the FTE. The maximum credit is 50% of the employer paid premiums (35% for exempt organizations). The maximum credit is achieved with no more than ten FTE employees in the plan averaging $25,000 or less in wages. The small business must purchase health insurance through the Exchange under the SHOP (small-business health options plan). Aggregation of related businesses and employees under IRC Sec.414 must be considered in determining FTE guidelines. State premium percentage adjustments, found in Form 8941 Instructions will also impose limitations on the small business health care tax credit.

A large employer must provide health coverage to all employees that is affordable and meets minimum essential coverage requirements.

FEES FOR PATIENT CENTERED OUTCOMES RESEARCH INSTITUTE (PCORI)

Issuers of Health Insurance Policies and Sponsors of Self-Insured Health Plans will pay a fee of $2.08 multiplied by the number of lives covered under the policy or plan. Form 720 is used to report these excise fees. These fees are earmarked for advancing comparative clinical effectiveness research.

SELF-EMPLOYED HEALTH INSURANCE AND THE PREMIUM TAX CREDIT

Taxpayers that are self-employed may continue to deduct their self-employed health insurance premium on the 1040, as long as, they do not include the amount of the subsidy (Advanced Premium Tax Credit) paid for them by the Exchange or Marketplace. A new Form that feeds from Form 8962 is Form 8885, Health Coverage Tax Credit. Your tax program handles this automatically and carries the credit over to Line 73 of Form 1040.

IRS LIMITATIONS ON COLLECTING PENALTIES

This is the one area that is different. Enforcement and collection of these penalties has been curtailed. There is no interest assessment on not paying the penalties. The penalties are not subject to liens, seizures, civil, or criminal penalties. In fact the only thing the IRS can do, is send out 'late notice' letters or 'off-set a taxpayer refund' with the penalty.

WHO ARE THE "OVERSEERS" AND HOW DO WE CONTACT THEM?

HHS Office of Inspector General
HHS Tips Hotline
PO Box 23489
Washington, DC 20026-3489
(800) 447-8477

Centers for Medicare & Medicaid Services
Medicare Beneficiary Contact Center
PO Box 39
Lawrence, KS 66044
(800)633-4227 EA

About the Author

Ben Tallman, EA, USTCP, is an alumnus of the University of West Georgia and has a tax practice in Atlanta. Ben has served on the NAEA National Board as Chairman of the Education Foundation, is a prior member of the IRS Regional Liaison Committee, and a prior Educational Director for two GA Affiliate Organizations. He often appears on Tax Talk Today in discussions on the Affordable Care Act, and writes extensively for national tax publications and journals. Ben is an NTPI Fellow and recently celebrated forty years in tax preparation.

APPENDIX & REFERENCE MATERIAL

HHS, US DOL, & IRS Notices, Publications & Website on ACA; Comments and Excerpts from the 'Patient Protection and Affordable Care Act of 2010', 'Health Care and Education Reconciliation Act of 2010', 'Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010'. Based on information available on August 19, 2015.

THE IRM

A RESOURCE FOR The EA

By Frank X. Degen, EA, USTCP

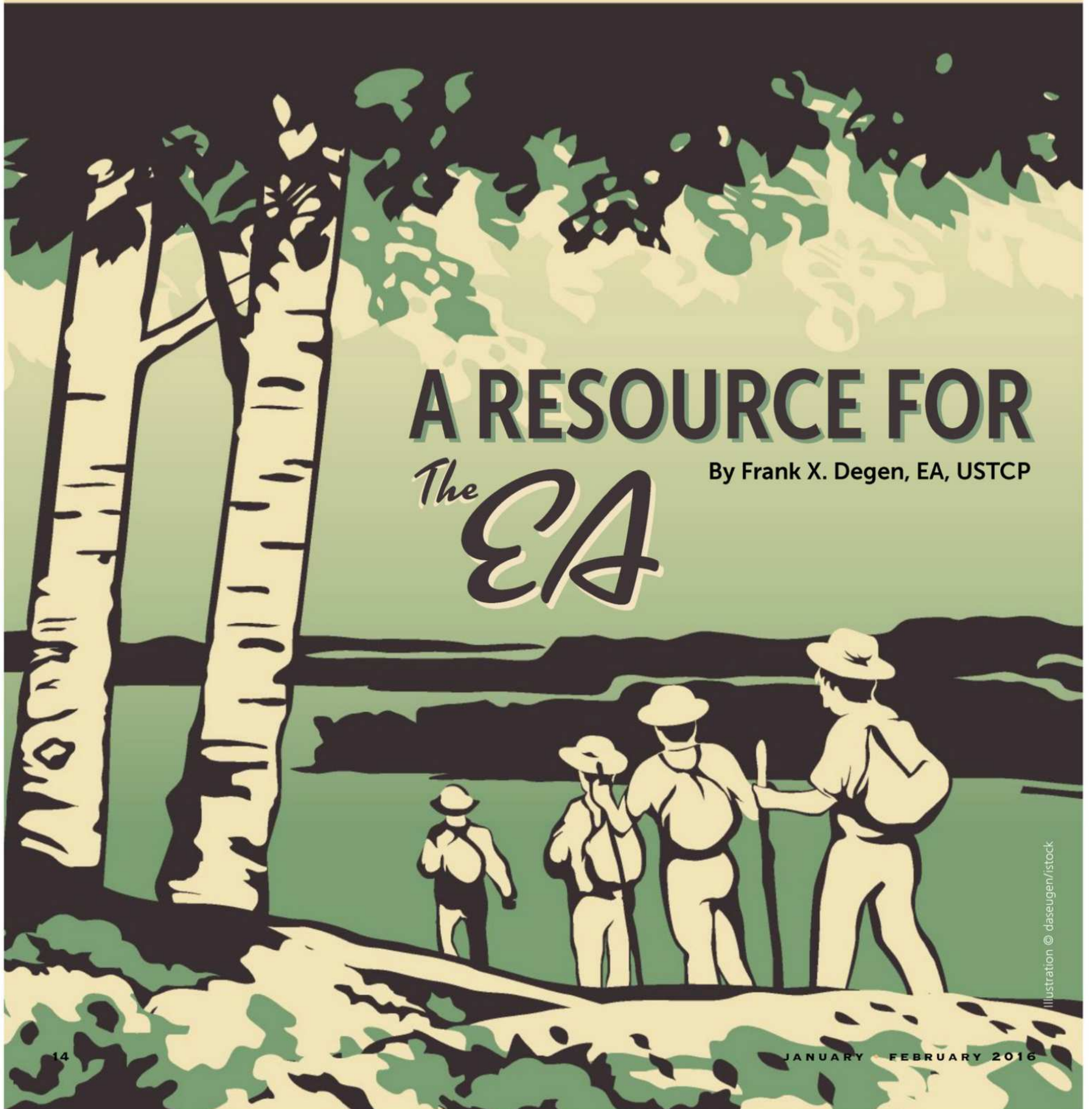


Illustration © daseugen/istock

It may not make the *New York Times* best seller list (and it certainly would not be light reading while waiting for a plane at the airport) but the Internal Revenue Manual (IRM) can be an extremely useful document for enrolled agents in their dealings with the Internal Revenue Service.

The Freedom of Information Act at 5 USC 552(a)(2)(c) requires agencies to make staff instructions available to the public.

> *(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—*
> ...
> *(c) Administrative staff manuals and instructions to staff that affect a member of the public;*

The Internal Revenue Manual serves to help fulfill that obligation. IRM Sec.1.11.2.2 states:

1. The IRM is the primary, official source of "instructions to staff" that relate to the administration and operation of the IRS. It details the policies, delegations of authorities, procedures, instructions and guidelines for daily operations for all IRS organizations. The IRM ensures that employees have the approved policy and guidance they need to carry out their responsibilities in administering the tax laws or other agency obligations.

The IRM is the "playbook" of the IRS. Certainly, EAs would be well advised to understand what the other guys (i.e. the IRS) are thinking as EAs enter into taxpayer engagements involving areas such as examination, collection, and appeals.

FOIA was updated in 1996 by HR 3802 to require the use of electronic information technology in publication of documents after November 1, 1999. As a result, the IRM can be accessed easily online at www.irs.gov/irm.

The IRM is composed of twenty-six parts numbered sequentially as Parts 1-11, Part 13, Parts 20-22, Part 25, and Parts 30-39. There is an enormous amount of information in these parts.

Part	Title
PART 1	Organization, Finance and Management
PART 2	Information Technology
PART 3	Submission Processing
PART 4	Examining Process
PART 5	Collecting Process
PART 6	Human Resources Management
PART 7	Rulings and Agreements
PART 8	Appeals
PART 9	Criminal Investigation
PART 10	Security, Privacy and Assurance
PART 11	Communications and Liaison
PART 13	Taxpayer Advocate Service
PART 20	Penalty and Interest
PART 21	Customer Account Services
PART 22	Taxpayer Education and Assistance
PART 25	Special Topics
PART 30	Administrative
PART 31	Guiding Principles
PART 32	Published Guidance and Other Guidance to Taxpayers
PART 33	Legal Advice
PART 34	Litigation in District Court, Bankruptcy Court, Court of Federal Claims, and State Court
PART 35	Tax Court Litigation
PART 36	Appellate Litigation and Actions on Decision
PART 37	Disclosure
PART 38	Criminal Tax
PART 39	General Legal Services

It needs to be noted that some of the content in the IRM may not be available to enrolled agents or anyone else researching the manual.

1.11.6.5.2 (04-17-2014)
Official Use Only (OUO) Content
Some of the IRM content is classified as Official Use Only (OUO). When OUO content is included in an IRM, it is clearly marked as such.

The OUO will be indicated by the symbol ▬ and some IRM sections make copious use of ▬.

OUO would be used in situations such as (but not limited to):

- Instructions relating to enforcement strategies, tolerances, and criteria where there is a reasonable expectation of harm to tax administration.
- Material where publication would hinder the law enforcement process.

IRS POLICIES

Part 1.2 of the IRM contains all the policies of the Internal Revenue Service. The numbering system has been changed in recent years.

The following is a listing of all sections in the Policy Statement series:

- IRM 1.2.1, *Policies of the Internal Revenue Service*;
- IRM 1.2.10, *Policy Statements for Organization, Finance and Management Activities*;
- IRM 1.2.11, *Policy Statements for Information Technology Activities*;
- IRM 1.2.12, *Policy Statements for Submission Processing Activities*;
- IRM 1.2.13, *Policy Statements for the Examining Process*;
- IRM 1.2.14, *Policy Statements for the Collecting Process*;
- IRM 1.2.15, *Policy Statements for Human Resources Management Activities*;
- IRM 1.2.16, *Policy Statements for the Rulings and Agreements Process*;
- IRM 1.2.17, *Policy Statements for the Appeals Process*;

- IRM 1.2.18, *Policy Statements for Criminal Investigation Activities*;
- IRM 1.2.19, *Policy Statements for Communications, Liaison and Disclosure Activities*;
- IRM 1.2.20, *Policy Statements for Penalties and Interest Activities*;
- IRM 1.2.21, *Policy Statements for Customer Account Services Activities;*
- IRM 1.2.22, *Policy Statements for Taxpayer Education and Assistance Activities;*
- IRM 1.2.23, *Policy Statements for Office of Chief Counsel Activities*; and
- IRM 1.2.25, *Policy Statements for Security, Privacy and Assurance Activities.*

There are approximately 170 policies posted in the list above. Some are arcane. Some are very old and actually no longer in practice such as Policy 3-13 from 1960. It reads, "As a service and convenience to taxpayers and to encourage voluntary compliance by reminding them of their obligation to file returns, the Service will, in general, mail blank tax return forms to persons who filed returns for the previous tax period ...".

In fairness, there are some policies which can very well be useful to enrolled agents. The following four examples will illustrate the potential usefulness for EAs who are familiar with the contents of the IRM.

Example 1: Your client receives an audit notice for a prior year tax return and the audit is scheduled for March 18. Rumor has it that is not a necessarily desirable date for many EAs. Based on anecdotal reports, some IRS auditors are not especially cooperative in rescheduling.

Perhaps Policy Statement 4-11 might be helpful in trying to reach a different starting date for the audit.

Policy Statement 4-11

1. Initiation of examinations may be postponed in certain cases
2. Where business or personal activities of an individual taxpayer would be adversely affected by the immediate initiation of an examination, such action may be postponed for a reasonable period. Except in unusual cases, as for example where the examiner has knowledge that the taxpayer has suffered a recent personal tragedy, the initial contact should not be deferred since the taxpayer must show that the taxpayer's activities would be adversely affected by an early examination. In addition, if the personal participation of an individual such as a particular employee, attorney or accountant is essential to the examination and business or personal activities of that individual at that particular time would be seriously affected, the examination may be postponed for a reasonable time. However, any postponement beyond sixty days must be approved by the group manager. No postponement will be permitted or continued under this policy if such action would jeopardize the assessment or collection of tax.

Example 2: Perhaps a taxpayer applies a refund to estimated tax for the succeeding year (or even worse - the preparer inadvertently or erroneously applies the refund to the following year) and then has a financial need for which the refund could be used earlier than the filing of the next year's tax return.

Generally, the application of an overpayment to estimated tax for the following year is irrevocable but Policy Statement 3-14 might be helpful when there is a financial hardship.

Policy Statement 3-14

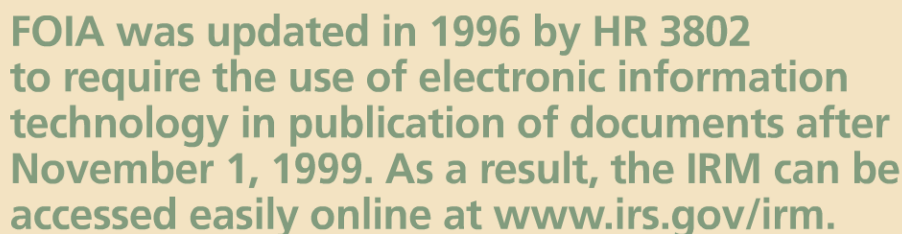
1. Elections to apply income tax overpayments to estimated tax may be reversed upon showing of undue financial hardship
2. When an income tax overpayment is elected for credit to estimated tax for the following year, it must be so applied. If the taxpayer wishes to change his/her election (after the filing of the overpayment return) in order to have the overpayment refunded, the refund may be made only upon a showing that the taxpayer would suffer undue financial hardship.

Example 3: A non-filer is referred to you and has not filed tax returns for many years (a minimum of ten years). It is difficult to secure records going back that many years. While it is your obligation to tell the taxpayer all returns must be filed, what is the realistic period you need to work on and file returns?

The general rule can be found in Policy Statement 5-133. It must be noted if the IRS filed SFRs and assessments have been made on older years, you will probably need to address all of those assessments.

Policy Statement 5-133

1. Delinquent returns—enforcement of filing requirements
2. Taxpayers failing to file tax returns due will be requested to prepare and file all such returns except in instances where there is an indication that the taxpayer's failure to file the required return or returns was willful or if there is any other indication of fraud.
3. Where it is determined that required returns have not been filed, the extent to which compliance for prior years will be enforced will be determined by reference to factors ensuring compliance and evenhanded administration of staffing and other Service resources.
4. Factors to be taken into account include, but are not limited to: prior history of noncompliance, existence of income from illegal sources, effect upon voluntary compliance, anticipated revenue, and collectibility, in relation to the time and effort required to determine tax due. Consideration will also be given any special circumstances existing in the case of a particular taxpayer, class of taxpayer, or industry, or which may be peculiar to the class of tax involved.
5. Normally, application of the above criteria will result in enforcement of delinquency procedures for no more than six (6) years. Enforcement beyond such period will not be undertaken without prior managerial



approval. Also, if delinquency procedures are not to be enforced for the full six year period of delinquency, prior managerial approval must be secured.

Example 4: It is well known that IRS Appeals Officers are empowered to conclude case under the concept of the "hazards of litigation". Examiners do not have that same level of authority but one policy from the IRM suggests there is the possibility of some negotiation.

Policy Statement 4-117

1. Examination authority to resolve issues
2. Examination's authority to resolve issues is derived from its authority to make determinations of tax liability under IRC 6201. It has broad authority to consider and weigh conflicting factual information, data, and opinions. Using professional judgement in accordance with auditing standards, it makes findings of fact and applies Service position on issues of law to determine the correct tax liability. Examining agents are encouraged to exercise this authority to obtain the greatest possible number of agreements to tax determinations without sacrificing the quality or integrity of those determinations, and to dispose of tax differences at the lowest level.

This policy in conjunction with a useful snip from Part 4 of the IRM might help in getting audits resolved rather than escalating.

IRM 4.10.7.4.2(6)

The practice of disallowing amounts claimed because there is no documentary evidence available, which will establish the precise amounts beyond any reasonable doubt (even though it is clear that the taxpayer did incur some expense) ignores commonly recognized business practice, as well as the fact that proof may be established by credible oral testimony. However, an arbitrarily computed portion of deductions in this situation will not be allowed merely for the purpose of expediting the closing of the case.

Review the policies in Part 1.2 of the IRM - they may be helpful in resolving problems.

SOME OBSERVATIONS

It must be noted that the IRM does have its limits as a source of taxpayer protection. The IRM serves as a guide - it is not the law.

For example, the 9th Circuit Court of Appeals in Fargo, 447 F.3d 706 (2006) noted:

> "The Internal Revenue Manual does not have the force of law and does not confer rights on taxpayers. This view is shared among many of our sister circuits *See, e.g., Carlson v. United States*, 126 F.3d 915, 922 (7th Cir. 1997); *Marks v. Comm'r*, 947 F.2d 983, 986 n.1 (D.C. Cir. 1991) (holding that "[i]t is well-settled . . . that the provisions of the [Internal Revenue M]anual are directory rather than mandatory, are not codified regulations, and clearly do not have the force and effect of law" (emphasis added)); see also *Valen Mfg. Co. v. United States*, 90 F.3d 1190, 1194 (6th Cir. 1996); *United States v. Horne*, 714 F.2d 206, 207 (1st Cir. 1983); *Einhorn v. DeWitt*, 618 F.2d 347, 349-50 (5th Cir. 1980)."

There are many really helpful sections in the IRM. The length limitations for this article prohibit complete details—thus only a few will be identified and highlighted.

- Sec. 4.13 deals with Audit Reconsideration (AR). Many EAs do not fully understand the requirements to seek AR. This section gives all the details including the special dedicated addresses for AR submission.
- Sec. 4.19.3 deals with AUR correspondence. Perhaps a taxpayer who jointly owns property receives a notice for a claimed mortgage interest deduction where the 1098 Form is issued to the other joint owner. The best response to the notice is very easy - just read Sec. 4.19.3.10.2.1(10).
- Sec. 5.15.1 contains the Financial Analysis Handbook. There are good explanations of ordinary, necessary, conditional, and shared expenses for preparing collection forms such as a Form 433.
- Sec. 20.1 is the Penalty Handbook. The content provides details on penalty abatement using reasonable cause and first time abatement (FTA).
- Sec. 25 is Special Topics which contains many items including the Fraud Handbook, Statute of Limitations, Summons procedures, and Innocent Spouse Relief.

CONCLUSION

The IRM can be an invaluable resource for EAs. The IRS may not tell you all the "rules of engagement" that are found in the IRM but those rules are there and EAs would be well advised to consult the manual as they serve in their role as taxpayer representatives. This article merely gives a brief overview—EAs are encouraged to treat the IRM as a resource and to delve into more of its contents.

About the Author

Frank X. Degen, EA, USTCP, lives in Setauket (Long Island), New York. He has a Bachelor's Degree in Mathematics from Iona College and a Master's Degree from Johns Hopkins University. Frank is an NTPI fellow and is admitted to practice in the United States Tax Court. Frank served two terms (2005-06, 2012-13) as President of NAEA. He was a three term president of NYSSEA and has been awarded both the NYSSEA and NAEA Founders Award. He has testified on behalf of NAEA before the IRS Oversight Board, the Senate Finance Committee and the House Ways & Means Oversight Sub-Committee. He served a three year term on the Internal Revenue Service Advisory Council (IRSAC) and was Chair in 2009.

getnetset®

WE BUILD WEBSITES

FOR ACCOUNTING & TAX PROFESSIONALS

~~Regular Price $588/yr~~

$399/yr

30-Day Money-Back Guarantee

Secure File Portal
Mobile Optimized
Automated Newsletter
Search Optimized
Client Resources
Social Media
& More

Requires Code:
NAEA61
Exp: 1/22/16

Professional Website

Your firm will have a professional online (and mobile) presence, customized by our experts to match your firm's unique branding.

Secure Client File Portal

Your firm will have the ability to securely upload and download files with clients. Perfect for PDFs, QuickBooks® files, and more.

Automated Tax Newsletter

We prepare a professional tax newsletter on behalf of your firm. Your clients can subscribe by email directly on your website.

Client Resources

Your clients can use your website to pay invoices via credit card, check the status of their tax refund, request an appointment, download common PDF forms, check tax rates and due dates, and much more.

Search Engine Optimized

We optimize your website based on your location and services so your firm can be found on popular search engines like Google, Yahoo and Bing.

Proud Partner of:

NAEA

Reserve Now (Exp. 1/22/2016)

877-207-4646

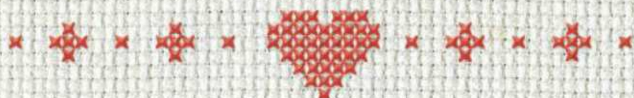
getnetset.com/NAEA61

support@getnetset.com

THE GRANDPARENT TAX

GST is imposed on a direct transfer of property to a grandchild that would otherwise be subject to two levels of estate taxation if first taxed as part of the parent's estate. It is then transferred from parent to child, taxed as part of the child's estate, and finally transferred to the grandchild. To ensure that such transfers do not entirely escape two levels of taxation, assets conveyed are subject to GST at the time they are transferred.

By Monica Haven, EA, JD, LLM



Often labeled the "Grandparent Tax", the Generation-Skipping Tax (GST) is imposed on a direct transfer of property to an individual two or more generations below the transferor if that transfer would otherwise have been subject to two levels of estate taxation—taxed as part of the transferor's estate and then transferred from that heir to a younger beneficiary and taxed once more.[1] A typical example would be a direct transfer from grandparent to grandchild, skipping the parent in the middle generation, thereby avoiding the intermediate level of estate tax that would have been due had the asset passed from grandparent to parent, taxed, and then transferred from parent to grandchild, and taxed again. Because the GST rate equals the top bracket of the estate tax rate currently in effect, this tax usually exceeds that which would have

otherwise been incurred at graduated rates if the property had been transferred and the estates taxed at each successive generation.

Each transferor is entitled to a GST exemption, although—unlike the estate tax exclusion—any unused portion of the GST exemption is not portable or transferable between spouses. Additionally, GST is not applied to outright gifts that are excluded by the annual gift tax exclusion or qualified transfers for medical and tuition payments. However, a gift to a trust which qualifies for the annual gift tax exclusion must meet additional requirements to qualify for the GST exclusion. For example, Crummey Trusts qualify for the gift tax but not the GST annual exclusion.

Direct skip transfers made during lifetime are reported on Form 709. Direct skips made at death are reported on Form 706.

History

While estate and gift tax regimes had been previously adopted and were used to tax permanent transfers of ownership, neither regime imposed a tax on life estates which granted temporary beneficial (but not outright) ownership to a beneficiary before transferring to another individual (or reverting back to the original transferor) when the first beneficiary died. By establishing a series of successive life estates, wealthy families were able to effectively pass assets from one generation to the next without becoming subject to estate taxation.

Congress sought to remedy the tax deferral and avoidance strategy employed by such multi-generational trusts by enacting a complex set of generation-skipping rules in 1976. This Generation-Skipping Transfer Tax (GSTT) was designed to treat the termination of an intervening life estate as a taxable event, subject to tax at a rate equal to the estate and gift tax rates which would have been applicable had the property been transferred outright first by the donor and then later by the first beneficiary.

But because the GSTT applied only to indirect transfers from trusts and not to direct transfers from grandparents to grandchild, it was retroactively repealed. With the passage of the Tax Reform Act of 1986, the GST was (re-)introduced much in the same format as remains in effect today.

The 1986 Act applied a flat tax equal to the maximum estate tax rate currently in effect to cumulative intergenerational transfers in excess of $1 million per donor. A $2 million exemption per donee was briefly in effect during 1989 but was then reset to the pre-1989 donor limit. Along with estate and gift taxes, the GST was temporarily repealed in 2010[2] but reinstated in 2011 with an exemption amount set to $5 million.[3] And, finally, with the passage of the American Taxpayer Relief Act of 2012, the exemption was been "permanently" set to $5 million, adjusted annually for inflation (in $10,000 increments).

Transfers Subject to GST

GST applies only to transfers made to a "skip person" that would normally be subject to either gift or estate tax. Therefore, transfers that are already exempted from gift taxation under applicable rules such as the annual gift exclusion or direct payments of tuition and medical expenses are also not subject to GST. If the transfer is made to any individual other than a skip person, it is exempt from GST.

Skip persons may or may not be related to the transferor. Generally, any relative who is at least two generations below the transferor is deemed to be a skip person.[4] However, if the transferor's child is deceased, the grandchildren by that child are not considered skip persons. If the transferor has no lineal descendants and a niece or nephew of the transferor is deceased, the children of the deceased niece or nephew are not skip persons. Spouses and former spouses are also non-skip persons, regardless of any age difference between the transferee spouse and the transferor.[5]

Non-family members may also be deemed skip persons if they are two or more generations below the transferor and at least thirty-seven and a half years younger than the transferor.[6] A nonlineal descendant is deemed to be of the same generation as the transferor if he is no more than twelve and a half years younger than the transferor. A nonlineal descendant who is at least twelve and a half but no more than thirty-seven and a half years younger than the transferor is deemed to be one generation below the transferor. Therefore, senior transferors concerned about a potential GST liability but nevertheless generously inclined toward a caretaker, for example, should beware of gifting to unrelated individuals who are more than thirty-seven and a half years younger.

The transferor is the individual who has made a gift and may be referred to as "donor" or "trustor", depending upon the mechanism by which the property is transferred. For example, an individual who makes a non-taxable gift to a spouse using the unlimited marital deduction will eventually become a transferor when the previously gifted property passes from the donee spouse to another transferee. And, an individual who holds a general power of appointment over property and eventually exercises, releases or allows the power to lapse will become a transferor for GST purposes.[7] Examples of transferors may include a grandfather who gifts property to a grandson or a grandfather who gifts property to a trust for the benefit of his son and later for the benefit of his grandson. Even the grandfather's son may be a transferor if he has a general power of appointment over a trust which was established by the grandfather to benefit his grandson.

GST applies to three types of transfers,[8] defined as:

1. **Direct Skips** are transfers to individuals but not trusts (unless the trust itself is characterized as a skip person because all interests in the trust are held by skip persons).[9] A transfer that skips two or more generations is treated as a single skip. Thus, gifts to great-grandchildren are deemed to be single skips—even if the transferor's children and grandchildren are still alive—and are not counted as though a transfer was first made to a grandchild followed by a second transfer to a great-grandchild.
2. **Taxable Terminations** generally occur when a trust terminates—as scheduled or when the non-skip beneficiary dies—and the trust's corpus passes to a skip person without being included in the non-skip beneficiary's estate. If assets being transferred are subject to estate taxation, they are not also subject to GST, only one or the other tax is imposed. Terminations may be non-taxable if only non-skip persons have an interest in the trust property or the distributions are made only to non-skip persons.[10]
3. **Trust distributions** of income or corpus—not already classified as direct skips or taxable terminations—are subject to GST if made to skip persons.[11] For example, income distributions to the trustor's grandchild

from a trust created for the simultaneous benefit of the trustor's child and grandchild would be subject to GST as long as the trust remains in existence.

Tax Computation

GST is a flat tax assessed at the highest gift and estate tax rate currently in effect on all subject amounts in excess of the applicable exclusion. For 2015, that rate is forty percent. It is a punitive tax intended to discourage taxpayers who seek to make an end-run around the gift and estate tax regimes by arranging transfers that might otherwise escape taxation.

For example, if Grandfather passes his wealth to Father who in turn passes it on to Son, two levels of gift or estate tax would be applied to these transfers. If instead, Grandfather passes his wealth directly to Son (his grandson), the intermediate level of taxation can be avoided. To dissuade Grandfather from employing this tax-saving tactic, GST is applied to the transferred amount at the highest marginal rate even if the transferred amount is comparatively small and would be subject to a lesser marginal rate if taxed under the gift or estate tax regimes.

The GST is computed on Form 709, Schedule D. Part 1 is used to list all generation-skipping transfers. Part 2 is used to reconcile the GST exemption. Part 3 is used to compute the GST liability.

The following formula is used to compute the GST liability:

GST = Taxable Amount * Tax Rate
* Inclusion Ratio

The taxable amount is equal to the value of the property transferred.[12] Valuation is generally determined on the date of transfer.[3] If, however, the property is includible in the transferor's gross estate, it must be valued on the date of death or on the alternate valuation date.[14] If the transferee paid for some or all of the property transferred, the valuation is reduced by the amount of consideration given.[15]

The inclusion ratio[16] is used to determine how much of the transferred property will be subject to GST and can range from zero to one. An inclusion ratio of zero means the transfer is fully exempt from GST; whereas an inclusion ratio of 1 means that the entire transfer is subject to GST.

The ratio is used to ensure that only gifts in excess of each individual transferor's GST exemption will be taxed. Since the exemption is currently set at $5.43 million (in 2015), a single transferor could generously gift that much to his grandchildren without ever incurring GST; a married couple could gift twice that amount if each partner elected to maximize his/her GST exemption. The inclusion ratio for direct skips will always be zero for cumulative transfers below the applicable exemption and no GST will be due until such time as the transferor makes transfers that exceed the exemption amount. REMINDER: No GST will be assessed on transfers equal to or less than the currently applicable GST exemption.

Where GST is due, an affirmative election may be made on Forms 709 or 706 to allocate a portion of the transferor's available exclusion to a particular transfer that would otherwise be subject to GST. To make the election, gift and estate tax returns must be filed even if no GST, gift or estate taxes would otherwise be due. By electing to exclude as much as possible at the time of the transfer, the inclusion ratio necessarily becomes as small as possible; maybe even as small as zero if an election is made to exclude the maximum allowable amount available in the year of a taxable termination or distribution.

In 2015, Father places stock worth $4 million to a trust set up for Son who should receive all of the trust's income for life; at Son's death, the remaining corpus should pass to Son's child (Grandchild). Father does not allocate his GST exclusion to the gift.

Tax Consequences and Reporting

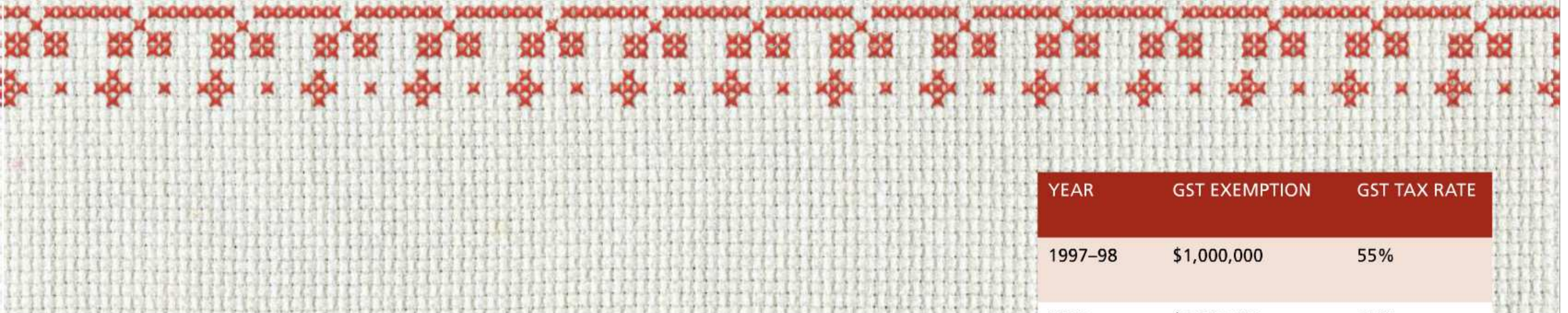
- Father does not incur any gift tax at the time of funding the trust since the value of the stock is less than the $5.43 million lifetime exclusion currently in effect. Nevertheless, the gift must be reported by Father on Form 709, Schedule A, Part 1 by April 15 of the year following the date of transfer.
- Father does not incur GST when funding the trust since the current beneficiary of trust (Son) is not a skip person. Instead, Father will report the skip transfer on Form 709, Schedule A, Part 2 at the close of the Estate Tax Inclusion Period. NOTE: Part 3 would be used to report indirect skips.
- At Son's death, the trust's corpus is worth $16 million. Upon receiving his inheritance, Grandchild becomes liable for GST at the then-applicable maximum federal estate tax rate and will have to file Form 706-GS(D) by April 15 of the year following the receipt of the trust's corpus.

But… if Father had allocated $4 million of his GST exclusion at the time of the gift, the inclusion ratio would have been 0, and no tax would be due when Grandchild inherits the trust's corpus!

With lifetime direct skips as well as indirect skips made after December 31, 2000, any as-yet unused portion of a transferor's GST exemption will automatically be applied to transfers, in order of occurrence, to produce an inclusion ratio of zero, whether or not a gift or estate tax return is filed. Any unused GST exemption upon the transferor's death will be *automatically* allocated to testamentary direct skips first and then to trusts from which taxable terminations and distributions could occur.[17]

An allocation of the GST exemption does not become effective until such time that the transferor dies or there is certainty that none of the transferred property will be includible in the transferor's estate (or the transferor's spousal estate if a split gift was made).[18] In other words, finality is only achieved when there is no further possibility that additional GST could be assessed at the close of the Estate Tax Inclusion Period (ETIP).

While the election of the GST exemption



allocation is irrevocable, the allocation does not in fact become effective until the ETIP has expired. An allocation prior to the close of the ETIP may lead to an inclusion ratio greater than zero if the value of the transferred assets changes between the time of the transfer and the expiration of the ETIP. As a result, some tax planners make it a practice to only make a GST exemption allocation when the ETIP expires and not at the time of transfer.

Mechanics of the GST

GST imposed on a direct skip must be paid by the transferor, who becomes personally liable for any GST due. If, however, the transferor or the transferor's personal representative does not meet his obligation, the liability for any tax due is passed to the transferee. If the transfer was made from a trust, the trustee becomes liable for any applicable GST. In the case of a taxable distribution, it is the transferee (distributee) who becomes liable for the GST and the filing of the requisite tax return.[19]

Since the source for the payment of any GST due is the transferred property, direct skips are taxed on a tax-exclusive basis. Taxable terminations and distributions, on the other hand, are taxed on a tax-inclusive basis since the taxable amount is not reduced by the GST generated from the transfer.

For example, if a trust makes a taxable distribution in 2015 of $100,000, the skip person who receives the property must pay GST of $40,000 and will receive a net distribution of $60,000. If, however, the trust instrument provides that the trustee shall pay the tax, the transfer will have been deemed to include the GST paid and therefore total $140,000, resulting in additional GST of $16,000. If the transferee pays the additional GST due, he will ultimately net $84,000 (= $140,000 deemed distribution - $40,000 GST paid by trustee - $16,000 GST paid by transferee); this is exactly equal to the net amount the transferee would have received had he paid the entire GST liability on the deemed distribution (= $140,000 – 40% GST).

Individuals, who are not US citizens and not US residents, are nevertheless subject to GST and gift tax for gifts of tangible personal but generally not intangible property.[20] These individuals must file Form 709 if they made gifts of future interest, or of present interest totaling more than $14,000 (in 2015) to any one donee, or to a non-citizen spouse in excess of $147,000 (in 2015).

The GST for a direct skip is generally due at the same time that the associated gift or estate tax is due.[21] Extensions of time to pay may be requested in the same manner as for estate and gift taxes.[22] If GST is attributable to the transfer of a closely-held business, the tax may be paid on an installment basis.[23]

The GST for an indirect skip is due on the fifteenth day of the fourth month following the close of the calendar year in which the termination or distribution occurred. If alternate valuation is elected, GST will be due ten months after the date of death that triggered the taxable event.[24]

Conclusion

GST, when applicable, can be an expensive tax but it is a tax that is only rarely imposed and then only if a generation-skipping gift exceeds the rather generous GST exemption now in effect. As a result, GST tax planning is typically only called for when dealing with high net worth taxpayers or clients with children who are themselves wealthy. **EA**

About the Author

__Monica Haven, E.A., J.D.__, is an alum and guest faculty member of the National Tax Practice Institute ™ (NPTI®), a recognized speaker on the professional circuit, and a welcomed lecturer on college campuses and at community organizations. Monica eagerly embraces every opportunity to share her experience and expertise even as she maintains her California-based tax practice which serves clients throughout the nation and abroad. For additional information, published articles and loads of useful tax information, please head to Monica's website at www.mhaven.net.

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

YEAR	GST EXEMPTION	GST TAX RATE
1997–98	$1,000,000	55%
1999	$1,010,000	55%
2000	$1,030,000	55%
2001	$1,060,000	55%
2002	$1,100,000	50%
2003	$1,120,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2009	$3,500,000	45%
2010	No generation skipping transfer tax	N/A
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,340,000	40%
2015	$5,430,000	40%

ENDNOTES

1 IRC Sec. 2601.
2 Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).
3 Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 (TRUIAJC).
4 IRC Sec. 2613.
5 IRC Sec. 2651(c)(1).
6 IRC Sec. 2651(d).
7 IRC Sec. 2652(a).
8 IRC Sec. 2611 (a).
9 IRC Sec. 2613(a)(2).
10 IRC Sec. 2612(a).
11 IRC Sec. 2612(b).
12 IRC Sec. 2623.
13 IRC Sec. 2624(a).
14 IRC Sec. 2624(b).
15 IRC Sec. 2624(d).
16 IRC Sec. 2642.
17 IRC Sec. 2632.
18 IRC Sec. 2642(f).
19 IRC Sec. 2603(a).
20 IRC Sec. 2501(a).
21 IRC Sec. 2662(a)(2).
22 IRC Sec. 2661.
23 IRC Sec. 6166.
24 Treas. Reg. Sec. 26.2662-1(d)(2).

2

WITH

By Monica Haven, EA, JD, LLM

"…income in respect of a decedent refers to those amounts to which a decedent was entitled as gross income but which were not properly includible in computing his taxable income for the taxable year ending with the date of his death or for a previous taxable year under the method of accounting employed by the decedent" reads Treas. Reg. Sec. 1.691(a)-1. Clear as mud!

Bob worked for Company XYZ and was paid weekly each Monday morning for work completed during the previous week. Unfortunately, Bob passed away and obviously could no longer collect his pay check for work that he had already performed. Sue, the executor of Bob's estate, will collect what was owed to Bob once she is duly appointed and can submit proper documentation. At year-end, XYZ will issue a W-2 which will include the final wages paid. On which return should this income be reported?

Bob was, of course, a cash-basis taxpayer and, as such, was responsible for reporting income that was actually or constructively received during the calendar year on his individual income tax return (Form 1040). Since Bob was not alive at the time XYZ issued the pay check, Bob did not receive that final payment. Does the income, then, truly belong on Bob's final return?

Executor Sue received the income as the personal representative of Bob's estate but did not perform the services necessary to earn the income. Does she correctly include the income on the estate's income tax return (Form 1041)?

Accrued income (earned but not yet paid) is actually an asset which increases the net worth of the individual who earned it. Should the accrual be added to the value of the decedent's estate on the date of death and be reported on the decedent's estate tax return (Form 706)?

Interestingly, XYZ offered to reissue Bob's uncollected pay check in his widow's name so that she could deposit it directly to her account. Should she, then, report the income on her personal return (Form 1040)?

So … where does it go?

IRD Defined

Income-in-Respect-of-Decedent (IRD) is not defined in the Internal Revenue Code but rather in Treasury regulations as a decedent's gross income which is not properly includible in his taxable income and, therefore, not reportable on his individual tax return. However, if that income does not belong on the decedent's final Form 1040, it must by necessity be included elsewhere.

Taxpayers are free to choose any method of accounting—cash or accrual—so long as that method "clearly reflects income" consistently from year to year.[1] In general, individual taxpayers use the cash method by choice or default. It is a system that is intuitive and relatively simple to apply in that income is reported once constructive receipt occurs and deductions are claimed once expenses are paid. Income is constructively received as soon as the recipient has control of it without substantial restrictions or limitations.[2]

If individual taxpayers employ the cash method, it soon becomes clear that accrued

income (not yet paid to the decedent) cannot be included on the decedent's individual tax return and must be reported elsewhere. While we cannot yet say with certainty to whom this income will be taxed, we know definitively that it will not be taxed to the decedent.

Furthermore, income to which the decedent merely had a contingent claim at death is also not includible on the decedent's final Form 1040, nor is income-in-respect-of-a-prior-decedent includible on the current decedent's tax return. In some instances, the most recent decedent may have been entitled to income from a previously deceased individual. But, as with income from any source, the prior accrual is not taxable to the current decedent if it was not yet paid to him before death.

In short, IRD is income that had been earned by a taxpayer prior to his death but that had not yet been paid to him. IRD is taxable to the recipient in the year of receipt; that recipient may be the decedent's estate or the decedent's beneficiary. If IRD is paid to the estate, it is reported on Form 1041, US Income Tax Returns for Estates and Trusts. If IRD is paid directly to a beneficiary, it is reported on the beneficiary's Form 1040, US Individual Income Tax Return.

Historical Perspective

The US Estate Tax—in its present incarnation—was enacted in 1916 with the intent of taxing assets as they passed from decedent to beneficiary. While the first $50,000 (over $11 million in today's dollars) of each estate remained exempt from taxation, excess amounts were taxed at rates ranging from 1 to 10% (applied to estates over $5 million). In the ensuing years, rates climbed in fits and starts (rising as high as 77% in the 1940s) and did not decline significantly until the mid-70s.

Thus, it came as no surprise that taxpayers desperately sought to avoid this heavy burden. Reasoning that the government imposed the estate tax on the transfer of wealth at death, taxpayers chose instead to transfer assets during life. Congress was but a step behind and by 1932, enacted the modern-day version of the Gift Tax with which we are still saddled. As a result, all transfers of wealth—whether during life or after death—are subject to one form of tax or another. To further discourage the potential pre- and post-death tax dodge, the rates at which gift and estate taxes are assessed are identical.

In short, IRD is income that had been earned by a taxpayer prior to his death but that had not yet been paid to him.

As clever as Congress was, one source of income managed to escape income taxation, if only briefly before even this loophole was closed. In earlier days, IRD was deemed to have been an asset – accrued but unpaid income which a decedent "owned" at death. As a result, IRD was rightfully includible on a decedent's estate tax return as a part of his taxable net worth. But IRD (Income-in-Respect-of-Decedent) was not taxed as income. Instead, IRD was included as an *asset* on the estate tax return where it received a stepped-up (or stepped-down) basis, as did all other assets. Under the theory that accrued income items became "corpus" at the time of death (reportable only on the estate tax return), the deductibility of accrued expenses was similarly not allowed on the decedent's income tax return.

Beginning in 1934,[3] Congress mandated that all *income* accrued to a decedent at death be reported as income on the decedent's final income tax return. Thereby, it was taxed even though the decedent had not yet received it. In that manner, the new law effectively (and unfairly) accelerated income recognition and forced payment of tax liabilities with dollars not yet available. Depending upon the source of the IRD, those tax dollars might not become available until years in the future.

With the Code change, IRD now became subject to both *income* and estate taxation; as income to the decedent on his final return, as well as an *asset* of the decedent's estate. To alleviate the effects of double taxation, Congress next introduced an income tax deduction allowing estates and beneficiaries to deduct an allocable percentage of any estate tax paid that was attributable to IRD.[4]

Sources of IRD

Any item of income attributable to the decedent but not included on his final individual income tax return may potentially be deemed IRD depending upon the decedent's accounting method. IRD then becomes taxable to the decedent's estate or beneficiary while retaining the same character it would have had if it had been reported by the decedent.[5] Thus, estates and beneficiaries of cash-basis decedents must report all IRD upon receipt (unless the decedent had constructive receipt prior to death) while estates and beneficiaries of accrual-basis decedents report only qualified death benefits and deferred compensation since all other income would already have been included on the decedent's Form 1040.

It is not always clear whether income from a particular source will be considered IRD. The following is a list—albeit not comprehensive or all-inclusive—of various sources of IRD taxpayers encounter most often. Practitioners are advised to research Treasury Regulations, Revenue Rulings and judicial decisions should a unique situation arise.

Compensation

Compensation for services performed by the decedent prior to death but paid after death is IRD, includible as an asset of the decedent's estate and as income to the estate or beneficiary when received. IRD wages are not subject to federal income tax withholdings, but remain subject to Social Security and Medicare taxes if paid during the calendar year of the decedent's death. These withholdings are reported on the decedent's final Form W-2. However, wages which were not subject to income tax with-

holding are, of course, not included in Box 1 of Form W-2. If IRS wages are paid in any year after the decedent's death, no withholdings should be deducted by the employer.

Bonus payments paid to the decedent's estate or beneficiary have been held to be IRD,[6] even if the amount of the bonus was not determined until after death and the deceased employee did not have an enforceable right to the bonus prior to death. Similarly, a discretionary post-death payment authorized by the employer's board of directors has been deemed to be IRD although the decedent again had no vested right to this payment.[7]

Deferred compensation—whether paid as a condition of retirement or death—will be IRD.[8] Employees sometimes agree to forfeit all payments of deferred compensation during life in exchange for the employer's promise to pay the accumulated deferral to the employee's spouse after death. It is important to note that IRD classification does not hinge only upon whether the decedent would have been entitled to the payments if still alive. Courts have often found in favor of IRD classification, if only to ensure that post-death income does not escape taxation.

Stock Options

The exercise by the estate's fiduciary or decedent's beneficiary of a stock option previously granted to the decedent but not yet exercised by him will result in IRD.[9] Tax treatment will vary depending upon whether the option in question is treated as an Incentive Stock Option (ISO) or a Non-qualified Stock Option (NSO).

If the decedent had been an employee of the issuing company within three months of death[10] and the option granted to him was transferrable, the decedent's estate may benefit from ISO tax treatment just as the decedent would have if he had remained alive. No income recognition results from the exercise of an ISO for regular tax purposes. However, for AMT purposes, income is recognized on the bargain element of the transaction; the difference between the fair market value (FMV) of the stock and the strike price of the option.

If the option is sold, rather than exercised by the estate or beneficiary, income is recognized on the difference between the sales price of the option and the value of the option at date of death (or alternate valuation date)—this income is IRD.

If the option is exercised and the stock is then sold by the estate or beneficiary, capital gain treatment will apply. IRD treatment does not apply to capital gains realized on the sale of the stock after the exercise of the ISO.

NOTE: The estate or beneficiary is not subject to the usual holding period requirements that would have been imposed on an employee wishing to avoid a disqualifying disposition.

An NSO if not previously exercised by the decedent prior to death will, in part, be taxed as IRD. The IRD portion equals the difference between the FMV of the stock on the date of death (or alternate valuation date) and the option's exercise price—in other words, IRD equals the bargain element. The NSO is not subject to AMT consequences. Any post-death appreciation in the value of the option prior to exercise is not IRD but is nevertheless treated as ordinary income to the estate or beneficiary.

If the NSO is not publicly traded and its value is not readily ascertainable—as is often the case – the bargain element is taxed at the time of grant rather than at exercise. No IRD would result because the employee would have already been taxed. Additionally, no tax consequences would ensue at exercise; the basis of the stock would equal the value of the option on the grant date plus the strike price used to obtain the stock at exercise.

If, prior to death, the employee had elected ordinary income treatment when the option was granted,[11] no IRD would accrue to the estate or beneficiary.

Retirement Distributions

Lump-sum distributions from a decedent's Traditional IRA are taxable as IRD (up to the decedent's taxable balance) in the year of receipt by the beneficiary on the theory that distributions would have been taxable to the decedent if he had been alive to receive them.

If the decedent had owned a Traditional IRA to which all contributions previously made had been tax-deductible, the full balance on the date of death (including all income and growth accrued prior to death) will be fully taxable as IRD and includible as income on the beneficiary's tax return. Of course, the beneficiary may claim a deduction for any estate taxes paid that were attributable to the IRD. Any distribution to the beneficiary in excess of the date of death account balance attributable to post-death appreciation is not IRD but merely ordinary income taxable to the beneficiary.

If the decedent had owned a Traditional IRA to which he had made some non-deductible contributions, the beneficiary must subtract all non-deductible contributions from the total amount received from the IRA, including income earned pre- and post-death, to determine the taxable inclusion amount. IRD, then, is this taxable amount less any income earned after the decedent's date of death.

Qualified distributions from a ROTH account—those made after the five-year holding period beginning with the first year in which the decedent made a contribution to the account[12]—are tax-free. The part (or all) of a distribution made after the IRA owner's death that does not satisfy the five-year requirement becomes taxable to the beneficiary—earnings attributable to the period prior to death are IRD. Post-death earnings are ordinary income to the beneficiary.

Investment Income

Dividends payable to a shareholder of record prior to his death are IRD.[13] Assume, for example that a dividend declared on January 1st is payable on February 15 to all shareholders who own the company stock and appear in the company's record on February 10. If the investor owns the shares on that date (the record date), he will get the dividend. If he does not own the shares on that date, he will not get the dividend.

Therefore, if a decedent was an owner of record on February 10, he was automatically entitled to the dividend. If he then died in the period between the record and payable dates, his estate or beneficiary would nevertheless receive the dividend that had already accrued to him.

If an investor purchases a bond that was originally issued at discount (OID)—even if the bond is later bought at par or premium on the secondary market—he is required to pro-rate the original discount over the life of the bond and include that amount as taxable interest in each year that he owns the bond.[14] This has the effect of "converting" a cash-basis taxpayer to one forced to use the accrual method for purpose of reporting OID interest. As a result, no IRD arises at death since the decedent will have already accounted for all accrued income.

Interest receivable on savings accounts is considered IRD regardless of whether the decedent had an enforceable right to withdraw the accrued income prior to his death.[15]

NOTE: Early withdrawal penalties are waived if the account is closed subsequent to the account holder's death.

Whether fixed or variable, annuities are contractual arrangements with insurance companies that offer tax-deferred growth during the pay-in (or accumulation) period and guaranteed payments during the pay-out phase. Payouts may continue throughout the contract owner's life and stop at the owner's death or continue beyond if the owner selected joint-and-survivor or term-certain payout options.

If the annuitant (the individual upon whose life expectancy the policy payouts are computed) dies *after* the policy owner has already begun to receive payments, continued payments to the deceased owner's surviving beneficiaries are taxed in the same manner as if the decedent had received the payments; the taxable portion is treated as IRD. If, on the other hand, the annuitant dies *before* the start of the pay-out phase, eventual payments from the annuity—whether received as a lump-sum or over time—are considered IRD only if they exceed the decedent's investment in the contract.

Flow-through Entities

Since a partner's death closes the taxable year of a partnership with respect to the decedent, a final K-1 will be issued to the partner and all income on the K-1 will be reported on the decedent's final Form 1040. A second K-1 reporting income earned independently of the decedent will be issued to the estate or successor partner. Therefore, none of that income will be IRD. However, payments for the distributive share of partnership income or guaranteed payments accrued to the deceased partner paid post-mortem are IRD. Proceeds from the sale of a deceased partner's interest are IRD to the extent of the decedent's share of the entity's unrealized receivables or goodwill.

Income from an S-Corp is not IRD since income earned prior to death will be included on the decedent's final Form 1040. Income earned after death will be reported on the fiduciary return.[16] While S-Corps generally pass items of income and loss through to a shareholder using a daily allocation, the entity may (with shareholder consent) perform an interim closing of the books on the date of death. Any income attributable to unrealized receivables is IRD which must be used to reduce the basis of the inherited or acquired shares of the decedent's stock.

Deductions-In-Respect-Of-Decedent

Just as there may be IRD, there may also be attendant deductions-in-respect-of-decedent (DRD) which the decedent would have had the right to deduct had he paid these expenses prior to his death.[17] Most deductions which could be claimed on Schedule A of Form 1040 are eligible for DRD treatment, except:

- Credit card charges made by decedent because they are considered paid when charged and, therefore, deductible on the decedent's Form 1040.
- Checks written before death if the decedent had sufficient funds (but DRD if there were insufficient funds to cover the decedent's obligations since the burden to pay the debt would shift the decedent's estate).
- Decedent's medical expenses since these outlays may be deducted on the decedent's final Form 1040 if 1) they are paid within one year of death; 2) are not deducted on Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return; and 3) a statement is filed with Form 1040 stating that the estate tax deduction is waived.[18]
- Decedent's unpaid alimony obligations are not IRD and are instead deductible as a claim against the estate on Form 706, Schedule K.[19]
- Depreciation is not deductible since the attendant assets get a stepped-up basis instead.
- Prior-year passive and net operating losses, as well as capital loss carry-forwards are deductible on Form 1040 only. Unused deductions are forfeited and not considered DRD.

Expenses that qualify as DRD include:

- Business and other income-producing expenses.
- Interest – if otherwise eligible under interest-tracing rules.
- Taxes – state and local income, as well as property taxes.
- Investment expenses.
- Percentage depletion – if the decedent used another method of depletion, that deduction is allowable only on the final Form 1040 and is not DRD.
- Foreign Tax Credit – the estate or beneficiary is entitled to claim the credit if foreign tax was required to be paid on an item of IRD.

DRD may be claimed on both Form 706 and the estate's or beneficiary's income tax return in the same manner as the decedent would have claimed the deduction. DRD is a deduction available only to the recipient of IRD who must also be liable for and have actually paid the DRD expenditure.

Income Tax Deduction for Estate Tax Paid

IRD is claimed both as income on the estate's Form 1041 or the beneficiary's Form 1040 and

as an asset on the decedent's Form 706. The estate tax attributable to the IRD inclusion on Form 706 is deductible as an expense on Form 1041 or Form 1040.[20]

The total Estate Tax Deduction (ETD) equals the estate tax paid on the net IRD (after DRD has been deducted). To compute ETD, begin by reducing the Adjusted Gross Estate (Form 706, Page 1, Line 5) by the net IRD and then re-computing the estate tax due. YES! Form 706 must be computed *twice*—once with inclusion of all IRD items and once without. The recomputed tax is then subtracted from the actual estate tax liability to determine the tax attributable to net IRD only.[21] This is the amount of ETD that may be allocated to the fiduciary of the estate (deductible on Form 1041), or the beneficiaries (deductible on Form 1040), or ratably between both.

The ETD based on the IRD that was taxed as ordinary income may be deducted on a special line on the estate's fiduciary income tax (Form 1041, Line 19) or as a Miscellaneous Itemized Deduction not subject to the 2% AGI limitation on the beneficiary's individual income tax return (Form 1040, Schedule A).[22] If any portion of the IRD was attributable to capital gains, qualified dividends, or gains on Sec. 1202 small business stock, that gain must be reduced—but not below zero—by the ETD allocable to the gain.[23]

The ETD attributable to the estate must be reduced on a pro-rata basis by any income distributed to a beneficiary who may then claim his own allocable share of ETD.[24] The proration is computed based on the values of gross IRD allocated to the estate and each beneficiary, regardless of how much IRD is actually collected. Since the proration is based on gross rather than net IRD values, individual beneficiaries who are not liable for any DRD are not disadvantaged relative to beneficiaries who are liable for DRD payments. If the IRD actually collected is less than the prorated value, the ETD must be recalculated and reduced.

The ETD must be claimed in the same year that the IRD is included in the estate's or beneficiary's income. If the estate or beneficiary is subject to AMT, ETD is neither a preference nor adjustment item and is not added back to taxable income when computing alternative minimum taxable income.

NOTE: There is no ETD if: 1) Form 706 is not required; 2) there is no Form 706 tax liability; 3) there is no IRD on Form 706; or 4) DRD exceeds IRD.

Conclusion

Courts have made sweeping interpretations of IRD, liberally encompassing many sources of income that should seemingly not be includible. Nevertheless, various generalizations about the nature of IRD can be made:

- IRD is not limited merely to income that would have been reportable had the decedent lived to collect it
- The extent or value of the right to receive IRD need not be determined or ascertainable on the decedent's date of death
- However, the value of the IRD must be, in some manner, attributable to the decedent's activities prior to death
- Realization or vesting of the right to the IRD must occur prior to death

It is often best to mitigate or avoid the tax consequences of IRD altogether by ensuring that income is fully recognized on the decedent's final return. In fact, it may be advisable to accelerate the recognition of income (if possible); particularly if the marginal tax rate of the decedent is lower than that of the estate or if the decedent is entitled to deductions that might otherwise go unused if there is no offsetting taxable income.

If the estate's fiduciary nevertheless remains burdened with IRD, he may wish to consider the use of a fiscal rather than a calendar year, thereby gaining the time needed to accumulate deductions to offset previously realized income. Or, in the alternative, he may be able to close the estate's tax year before ever receiving the income which would instead become taxable to the beneficiary at a potentially lower tax rate. **EA**

About the Author

***Monica Haven, E.A., J.D.**, is an alum and guest faculty member of the National Tax Practice Institute ™ (NPTI®), a recognized speaker on the professional circuit, and a welcomed lecturer on college campuses and at community organizations. Monica eagerly embraces every opportunity to share her experience and expertise even as she maintains her California-based tax practice which serves clients throughout the nation and abroad. For additional information, published articles and loads of useful tax information, please head to Monica's website at www.mhaven.net.*

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

ENDNOTES

1 Treas. Reg. 1.446-1(a)(2).
2 Treas. Reg. 1.451-2(a).
3 1934 Revenue Act, Sec. 42 and 43.
4 Internal Revenue Code of 1939, Sec. 126; codified later under the Internal Revenue Code of 1954, § 691.
5 Treas. Reg. 1.691(a)-3.
6 *O'Daniel's Estate v. Comm*, 173 F.2d 966 (1951).
7 *Estate of Edward Bausch v. Comm*, 186 F.2d 313 (1951).
8 *Bernard v. United States*, 215 F. Supp. 256 (1963).
9 IRC Sec. 421(c)(1).
10 IRC Sec. 422(a)(2).
11 IRC Sec. 83(b).
12 IRC Sec. 408A(d)(2)(B).
13 *Putnam's Estate v. Comm.*, 324 U.S. 393 (1945).
14 IRC Sec. 1272.
15 *Richardson v. US*, 177 F. Supp 394 (1959).
16 IRC Sec. 1367(b)(4).
17 IRC Sec. 691(b).
18 IRC Sec. 213(c).
19 Rev. Rul. 67-304.
20 IRC Sec. 691(c).
21 IRC Sec. 691(c)(2)(C).
22 IRC Sec. 67(b)(7).
23 IRC Sec. 691(c)(4).
24 IRC Sec. 691(c)(1)(A).

IRD Reference Chart

SOURCE OF INCOME	NOTES REGARDING IRD TREATMENT
ACCOUNTS RECEIVABLE	Uncollected sales proceeds from pre-death sales of crop or inventory
ACCRUED VACATION PAY	IRD
ALIMONY	IRD
ANNUITIES	If annuitant dies after policy owner began withdrawals, IRD equals taxable portion of all payments; if annuitant dies before start of pay-out, IRD equals all payments in excess of owner's investment in the contract
BONUSES	IRD even if the bonus amount is determined after death
BUY/SELL AGREEMENT	Insurance proceeds used to pay the beneficiary for decedent's work-in-progress are IRD
CAPITAL GAINS	Not IRD unless property was sold by decedent and all contingencies were resolved before death
COMMUNITY PROPERTY	Both halves receive basis step-up even though only half of property is includible in deceased spouse's estate (Form 706); both halves of property eligible for IRD treatment (Form 1040 or 1041)
CROP SHARES	IRD reported when crop shares are sold
CROPS & LIVESTOCK	Not IRD unless sold or pledged prior to death
DEFERRED COMPENSATION	IRD
DIVIDENDS	IRD if decedent was owner-of-record prior to death
EMPLOYEE STOCK OPTION PLANS	Income recognition is deferred until disposition of stock
EMPLOYER'S VOLUNTARY PAYMENT	IRD on Form 1041 but not includible on Form 706 unless payment is continuation of employee's compensation
HSA & MSA ACCOUNTS	The full value of the account less any medical expenses paid on decedent's behalf is IRD to the beneficiary [exception if named spouse]
INSTALLMENT SALES	If self-canceling obligation, IRD equals as-yet unrecognized income from original sale; if note is sold at a discount, IRD will equal remaining unrecognized gain less amount of discount
INSURANCE COMMISSIONS	Trailing sales commissions on decedent's sales made during life
INTEREST: MUNICIPAL BONDS	Tax-free interest is not IRD
INTEREST: OID	No IRD
INTEREST: SAVINGS ACCOUNTS	Early withdrawal penalties are waived for closure of account after death
INTEREST: T- BONDS	Accrued interest on a bond that is redeemable for the payment of estate tax is IRD
INTEREST: T-BILLS	Pre-death accrual of interest is IRD
INTEREST: US SAVINGS BONDS	If decedent previously elected to report accrued interest annually, IRD equals total of interest accrued before date of death
IRA: ROTH	Only pre-death earnings in the account are taxable
IRA: TRADITIONAL	Full balance of account if decedent made only tax-deductible contributions; if non-deductible contributions made, IRD equals account value at death less decedent's non-deductible contributions less any post-death earnings
ISOS	No income recognition upon exercise for regular tax but bargain element subject to AMT; estate/beneficiary do not have to satisfy holding requirements for capital gain treatment
LIFE INSURANCE	Not IRD unless policy sold to 3rd party prior to owner's death
MEDICAL REIMBURSEMENTS	IRD if medical expenses previously deducted on decedent's 1040
NON-COMPETE AGREEMENT	IRD
NON-QUALIFIED STOCK OPTIONS	Bargain element equals IRD but income recognition often postponed until exercise; no AMT consequences
OIL & GAS ROYALTIES	IRD, but watch for payments in arrears or "suspensed" payments

PARTNERSHIP	Decedent's K-1 income is not IRD; Guaranteed Payments issued post-mortem are IRD; if income stream transferred to 3rd party, payments attributable to unrealized receivables & goodwill are IRD if decedent was a general partner in a service partnership
QUALIFIED EMPLOYER PLAN	Income is recognized only when plan shares are distributed
RENTS	Advance rents are not IRD
ROYALTIES	If attributable to decedent's efforts as an author or inventor
SALES OF INVENTORY	IRD
S-CORPORATION	Not IRD since new K-1 will be issued to estate/beneficiary
SETTLEMENT PROCEEDS	IRD if related to decedent's services or right to receive income; not IRD is related to the sale of an asset or goodwill
SICK PAY	Not IRD if received from workmen's compensation plan
TRUST OR ESTATE INCOME	Post-death distributions from another's trust/estate are IRD
WAGES	Not subject to income tax withholding but subject to FICA taxes

KEEP YOUR BUSINESS PROTECTED

Comprehensive, Affordable Professional Liability Insurance for Enrolled Agents

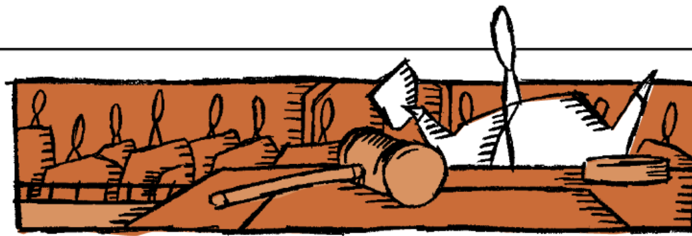
Take advantage of a professional liability insurance program created exclusively for NAEA members. **Enrollment is fast, easy and budget-friendly.**

Professional Services Covered, but not Limited to:
- Tax Advice
- Tax Preparation & Filing
- The Representation of Clients in Connection with Tax Collection or Audit Actions
- Bookkeeping Services
- Notary Public
- Endorsements Available for Life Agent and Registered Representative Coverage

Program Advantages:
- Competitive Rates
- Online Rate & Bind
- Immediate Certificate Delivery upon Approval
- Coverage for Individuals or Firms
- Multiple Payment Plan Options
- Limits Available to $2,000,000

To Learn More and Apply:
Visit www.calsurance.com/taxprep or Call 877-242-5998

CalSurance®
Program administered by CalSurance Associates, A division of Brown & Brown Program Insurance Services, Inc., Domiciled in CA, CA License #0B02587
*This coverage is not designed for CPAs, Attorneys or Property Casualty Agents



TAX COURT CORNER

Is a Postmark made by Stamps.com Evidence of a Timely Filed Petition with the U.S. Tax Court?

Robert H. Tilden, Petitioner
v.
Commissioner of Internal Revenue, Respondent

T.C. Memo. 2015-188

By Steven R. Diamond, CPA

The jurisdiction of the U.S. Tax Court to redetermine a deficiency in income tax depends upon the issuance of a valid notice of deficiency and a timely filed petition by the taxpayer. The taxpayer normally has ninety days (150 days if the notice is addressed to a person outside the United States) to file a petition with the Tax Court to contest the proposed deficiency. IRC Sec.7502 provides that a petition that is timely mailed may be deemed timely filed for purposes of the ninety day (or 150 day) rule.

FACTS

The IRS issued a notice of deficiency dated January 21, 2015. The ninetieth day after the notice was mailed was April 21, 2015 which was a Tuesday and not a legal holiday in the District of Columbia. The taxpayer's petition was received by the Tax Court on April 29, 2015. It was sent by way of the United States Postal Service (USPS) and the envelope containing the petition bore a mail label generated in the office of petitioner's counsel which included a postmark by Stamps.com dated April 21, 2015. The envelope also bore a certified mail sticker that was not postmarked by the USPS but had a handwritten date of 4/21/15 which was on the certified mail sticker portion of the receipt which would normally be postmarked by a USPS employee. A twenty-digit tracking number was also on the sticker.

The petitioner resided in the state of Wisconsin at the time his petition was filed. However, petitioner's counsel was located in Salt Lake City, Utah.

The USPS web site provides information regarding the flow of mail. When the twenty-digit tracking number was inputted into the USPS tracking tool, it reflected an arrival date of April 23, 2015 at a USPS facility in Salt Lake City, UT and another entry reflecting a delivery date of April 29, 2015 at the Tax Court's dedicated zip code in Washington, D.C.

The Commissioner filed a Motion to Dismiss for Lack of Jurisdiction arguing that the petition was not timely filed with the Tax Court. Petitioner objected against the granting of the motion and argued that the petition bore a postmark date within the time for timely filing. Petitioner relied on Reg. Sec. 301.7502-1(c)(1)(iii)(B) which in pertinent part states that a postmark although not made by the USPS still complies with the timely mailed/timely filed rules of IRC Sec.7502.

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.

OPINION

The Tax Court first pointed out that the jurisdictional issue to be decided was controlled by Reg. Sec.301-7502-1(c)(1)(iii)(B)(3) which provides as follows:

(3) U.S. and non-U.S. postmarks- If the envelope has a postmark made by the U.S. Postal Service in addition to a postmark not so made, the postmark that was not made by the U.S. Postal Service is disregarded, and whether the envelope was mailed in accordance with this paragraph (c)(1)(iii)(B) will be determined solely by applying the rule of paragraph (c)(1)(iii)(A) of this section.[1]

The rule of paragraph (c)(1)(iii)(A) of this section provides that the USPS postmark is conclusive in determining whether the document was timely mailed. "If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment, the document or payment is considered not to be timely filed or paid, regardless of when the document or payment is deposited in the mail."[2]

In this case, no USPS postmark appeared on the envelope that was mailed to the Tax Court. However, the tracking number reflected that the envelope entered the mail system on April 23, 2015. In Boultbee v. Comm.[3] the Tax Court determined that a USPS tracking number represents the official records of the U.S. Postal Service and therefore can serve as the functional equivalent to a USPS postmark.

The petitioner argued that the USPS Tracking data does not accurately reflect either where or when the envelope first entered the USPS mail stream. However the Court pointed out that the regulations under IRC Sec.7502 make clear that the sender who relies upon the applicability of Sec.7502 "assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period prescribed for filing the document."[4] That regulation also points out that the risk may be avoided by using registered or certified mail and having the sender's receipt postmarked by the postal employee to who the document is presented. Alternatively a designated delivery service could also have been used.

In this case the sender's receipt was not postmarked by a USPS employee but was handwritten by someone in the office of petitioner's counsel. Therefore the certified receipt offered no guarantee of a timely postmark and the petitioner assumed the risk of whether or not the postmark would bear a date before the expiration of the ninety-day period for filing the petition. The Stamps.com postmark is superseded by the USPS tracking date which then served as the postmark date, which in this case clearly demonstrated that the petition was not timely mailed. The Commissioner's motion to dismiss was granted, but the Court informed petitioner that he could file a claim for refund, and if disallowed, he could sue for refund in Federal District Court or the U.S. Court of Federal Claims. EA

ENDNOTES

1 Reg. Sec 301-7502-1(c)(1)(iii)(B)(3)
2 Sec. 301-7502-1(c)(1)(iii)(A)
3 T.C. Memo 2011-11
4 Reg. Sec 301.7502-1(c)(1)(iii)(A)

IRS Driving You Crazy?

Let us help. Get IRS Transcripts Instantly.

Trouble with IRS E-Services or just need help signing up?

Check out our E-Service Help Page.

TaxHelpSoftware.com
14 Day Free Trial Code: NAEATRIAL

TAKE THE TEST ONLINE!

APPROVED CONTINUING EDUCATION PROVIDER

Two-Hour Online Home CE Test

January/February 2016
IRS Program Number: X9QQU-T-00351-15-S
2 CE

The following test will provide two hours of CE credits. The test questions are drawn from the articles in this issue. The CE test must be taken online.

INSTRUCTIONS

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. To qualify for CE credit, you must complete the test within one year of the publication date. Members $35, nonmembers $45 for twenty questions.

2016 HEALTHCARE UPDATE

1. There are fourteen hardship conditions requiring an exemption certificate number that can exempt a taxpayer from the health insurance requirement.
A. True
B. False

2. In order to apply for an exemption certificate number, you must print out the forms from the healthcare.gov site, complete them, and mail them in.
A. True
B. False

3. Employers and health insurance providers are required to send out Form 1095-B/C for tax year 2015.
A. True
B. False

4. A taxpayer without health insurance in 2015 will only be assessed a penalty of $325, regardless of their income level.
A. True
B. False

5. Form 1094-B/C are used as transmittal forms to summarize the 1095 forms sent to taxpayers.
A. True
B. False

6. Form 8965 is for taxpayers that do not have health insurance coverage and are exempt from paying a shared responsibility payment.
A. True
B. False

IRM

7. The Internal Revenue Manual is a document which is written for a primary audience of:
A. Taxpayers
B. IRS personnel
C. Congress
D. The Courts

8. As per IRS policy, the period of enforcement for non-filers is generally:
A. three years
B. six years
C. ten years
D. There is no limitation

9. The contents of the IRM are viewed by the Courts as the equivalent of:
A.Internal Revenue Code
B. Supreme Court decisions
C. Income Tax Regulations
D. None of the above

10. The decision to apply an overpayment to the succeeding tax year's estimated tax is generally irrevocable. That decision may be overturned and the overpayment refunded only if:
A. The taxpayer can establish that a tax preparer erred in submitting the return.
B. The taxpayer can demonstrate that applying the overpayment to the next year was not their intention.
C. The taxpayer can show that the election, if not reversed, will cause undue financial harm.
D. All of the above.

11. The full content of the IRM is available to enrolled agents and other tax practitioners.
A.True
B. False

GST

12. The GST tax is assessed at:
A.The maximum income tax rate in effect at the time of the transfer.
B. The maximum gift and estate tax rate in effect at the time of the transfer.
C. Graduated rates.
D. A flat rate set annually by Congress.

13. The inclusion ratio:
A.Is multiplied with the applicable tax rate to determine the tax due on GST-subject property.
B. Can be used to shelter the growth of currently transferred assets from future GST taxation.
C. Can range in value from zero to one.
D. Will always be zero for direct skip transfers that are less than the applicable exemption amount.
E. All of the above.
F. None of the above.

14. The GST exemption:
A. Is currently set to $5 million.
B. May not be allocated to a particular transfer.
C. Can be applied against a transfer to a trust if that trust has only one beneficiary and its assets will be includable in that beneficiary's gross estate if he dies before the trust terminates.
D. Is portable between spouses if not used in its entirety by the first spouse to die.

15. All of the following statements are true about taxable terminations and taxable distributions for GST purposes except:
A.Terminations occur when the corpus of a trust established by a transferor passes to a skip beneficiary as provided by the terms of the trust.
B. Distributions occur when the income or corpus of a transferor's pass to a skip person while the trust remains in existence.
C. Terminations and distributions may be made to non-skip persons.
D. Terminations may occur by death, lapse of time or release of power.

IRD

16. The following statements about Income-in-Respect-of-Decedent (IRD) are true except:
A.IRD is defined in the Internal Revenue Code.
B. IRD includes income that would have been reportable had the decedent lived to collect it.
C. IRD must be attributable to the decedent's activities prior to death.
D. The decedent's right to the IRD must be vested prior to death.

17. There can be no Estate Tax Deduction (ETD) unless:
A.The decedent was entitled to tax deductions he could not claim prior to death.
B. Deductions-in-Respect-of-Decedent (DRD) exceed IRD.
C. There is an income tax liability on Form 1041.
D. There is an estate tax liability on Form 706.

18. IRD may be reported, where applicable, on all of the following forms except:
A.The decedent's Form 706.
B. The decedent's Form 1040.
C. The fiduciary's Form 1041.
D. The beneficiary's Form 1040.

TAX COURT CORNER

19. In the Tilden case, the petitioner was not deemed to have filed his petition within the ninety-day period because
A. The postmark date made by Stamps.com was superseded by the tracking number of the USPS.
B. The petitioner should have filed his case in U.S. District Court and used the rules of that Court.
C. The Tax Court disapproved of using a dot com entity because not everyone in the U.S. has access to a computer.
D. None of the above.

20. The Tax Court ruled in favor of the Commissioner because
A.Petitioner lived in Wisconsin but used counsel located in Salt Lake City, Utah.
B. The petition was filed after the last day for filing had passed.
C. The petitioner should have filed his case in U.S. District Court and used the rules of that Court.
D. USPS Tracking data supersedes a USPS postmark.

YOUR LAST DECISION IS THE BIGGEST.

When it is time to transition out of your practice you want to do it right. We are the largest facilitator in North America for selling accounting and tax practices. We provide a free estimate of your firm's value, market extensively, assist in negotiations and find you the right situation.

Contact us today so your last decision will be your best.

1-888-847-1040
www.AccountingPracticeSales.com

Classifieds

BUYING/SELLING A PRACTICE

Buying or selling a practice?
Look at your options! Experience you can count on. We do the work. Confidential. Call 800-397-0249. Accounting Practice Sales. America's leader in practice sales.

OFFICE SHARING

Potential Partnership
Centennial, CO
Email Linda@lward.biz

2015 & 2016 Key Numbers

Compiled by David Mellem, EA

TAX RATES	2015	2016
Single		
10% bracket tops at	9,225	9,275
15% bracket tops at	37,450	37,650
25% bracket tops at	90,750	91,150
28% bracket tops at	189,300	190,150
33% bracket tops at	411,500	413,350
35% bracket tops at	413,200	415,050
39.6% after	413,200	415,050
Married Filing Joint/Qualified Widow(er)		
10% bracket tops at	18,450	18,550
15% bracket tops at	74,900	75,300
25% bracket tops at	151,200	151,900
28% bracket tops at	230,450	231,450
33% bracket tops at	411,500	413,350
35% bracket tops at	464,850	466,950
39.6% after	464,850	466,950
Head of Household		
10% bracket tops at	13,150	13,250
15% bracket tops at	50,200	50,400
25% bracket tops at	129,600	130,150
28% bracket tops at	209,850	210,800
33% bracket tops at	411,500	413,350
35% bracket tops at	439,000	441,000
39.6% after	439,000	441,000

TAX RATES	2015	2016
Married Filing Separate		
10% bracket tops at	9,225	9,275
15% bracket tops at	37,450	37,650
25% bracket tops at	75,600	75,950
28% bracket tops at	115,225	115,725
33% bracket tops at	205,750	206,675
35% bracket tops at	232,425	233,475
39.6% after	232,425	233,475
Estates & Trusts		
15% bracket tops at	2,500	2,550
25% bracket tops at	5,900	5,950
28% bracket tops at	9,050	9,050
33% bracket tops at	12,300	12,400
39.6% after	12,300	12,400
Standard Deduction		
Single	6,300	6,300
Married Filing Joint/ Qualified Widow(er)	12,600	12,600
Head of Household	9,250	9,300
Married Filing Separate	6,300	6,300
Dependents	1,050 (or 350 plus earned income)	1,050 (or 350 plus earned income)
Extra for Age or Blindness		
Single	1,550	1,550
Married	1,250	1,250

Many numbers we use in our profession are indexed for inflation. The effective date for many of these inflation calculations is August 31. This chart contains the amounts for 2015 and 2016 for many items we deal with on a regular basis. These amounts are the official IRS amounts. Any amounts that have not yet been released by IRS as of this article's deadline are indicated with an asterisk.

	2015	2016
Exemption	**4,000**	**4,050**
Phaseout ceilings for exemptions and itemized deductions begin at:		
Single	258,250	259,400
Married Filing Joint/Qualified Widow(er)	309,900	311,300
Head of Household	284,050	285,350
Married Filing Separate	154,950	155,650
Alternative Minimum Tax Exemptions		
Single	154,950	155,650
Married Filing Joint/Qualified Widow(er)	83,400	83,800
Head of Household	53,600	53,900
Married Filing Separate	41,700	41,900
Estates and Trusts	23,800	23,900
Child Subject to Kiddie Tax	7,400	7,400
Nanny Tax Threshold	**1,900**	**2,000**
Adoption Credit & Exclusion	**13,400**	**13,460**
Phaseout range	201,010-241,010	201,920-241,920

About the Author:

David Mellem is an enrolled agent who has been in the tax profession for more than twenty years. He and his wife Mary own Ashwaubenon Tax Professionals in Green Bay, Wisconsin. They serve approximately 1,000 tax and accounting clients. David also consults and teaches for tax professionals across the country.

2015 & 2016 Key Numbers

	2015	2016
Saver's Credit Phaseout Ceilings		
50% Credit ceiling	MFJ 36,500, HH 27,375, S & MFS 18,250	MFJ 37,000, HH 27,750, S & MFS 18,500
20% Credit ceiling	MFJ 39,500, HH 29,625, S & MFS 19,750	MFJ 40,000, HH 30,000, S & MFS 20,000
10% Credit ceiling	MFJ 61,000, HH 45,750, S & MFS 30,500	MFJ 61,500, HH 46,125, S & MFS 30,750
Child Tax Credit income base for refundable portion	**3,000**	**3,000**
Earned Income Credit		
Maximum Credit:		
No children	503 (@ 6,580 of income)	(@ 6,610 of income)
One child	3,359 (@ 9,880 of income)	(@ 9,920 of income)
Two children	5,548 (@ 13,870 of income)	(@ 13,930 of income)
Three or more children	6,242 (@ 13,870 of income)	(@ 13,930 of income)
Maximum AGI		
No children	14,820 (20,330 for MFJ)	14,880 (20,430 for MFJ)
One child	39,131 (44,651 for MFJ)	39,296 (44,846 for MFJ)
Two children	44,454 (49,974 for MFJ)	44,648 (50,198 for MFJ)
Three or more children	47,747 (53,267 for MFJ)	47,955 (53,505 for MFJ)
Investment Income (max)	**3,400**	**3,400**
Education Credits		
American Opportunity Credit	100% of first 2,000 + 25% of second 2,000	100% of first 2,000 + 25% of second 2,000
Phaseout Level for:		
American Opportunity Credit	Begins at 80,000 (160,000 MFJ)	Begins at 80,000 (160,000 MFJ)
Lifetime Learning Credit	Begins at 55,000 (110,000 MFJ)	Begins at 55,000 (110,000 MFJ)
Savings bonds used for education	77,200-92,200 (115,750-145,750 MFJ)	77,550-92,550 (116,300-146,300 MFJ)
Student Loan Interest	**65,000-80,000 (130,000-160,000 for MFJ)**	**65,000-80,000 (130,000-160,000 for MFJ)**
Transportation Fringes		
Parking	250	255
Transit passes or commuter highway	130	130
Sec. 179 Expensing	**25,000 maximum w/phaseout beginning at 200,000 of qualified purchases**	**25,000 w/phaseout beginning at 200,000 of qualified purchases**
Foreign Earned Income Exclusion	**100,800**	**101,300**
Maximum housing deduction	30,240	30,390

	2015	2016
Long-Term Care		
Premiums – max deductible		
Not over age 40	380	390
> 40, but not > 50	710	730
> 50, but not > 60	1,430	1,460
> 60, but not > 70	3,800	3,900
> 70	4,750	4,870
Benefits – max excludible	330/day	340/day
Gift Tax Exclusion (annual)	**14,000**	**14,000**
Estate & Gift Tax Exclusion (lifetime)	5,340,000	5,430,000
Medical Savings Account (MSA)		
Self-only coverage	2,200-3,300 deductible 4,450 out of pocket max	2,250-3,350 deductible 4,450 out of pocket max
Family coverage	4,450-6,650 deductible 8,150 out of pocket max	4,450-6,700 deductible 8,150 out of pocket max
Health Savings Account (HSA)		
Self-only plan	At least 1,300 minimum deductible and out of pocket max of 6,450 Contribution maximum of 3,350	At least 1,300 minimum deductible and out of pocket max of 6,550 Contribution maximum of 3,350
Family plan	At least 2,600 minimum deductible and out of pocket max of 12,900 Contribution maximum of 6,650	At least 2,600 minimum deductible and out of pocket max of 13,100 Contribution maximum of 6,750
Flexible Spending Account (FSA)	**2,550**	**2,550**
Social Security Items		
Increase in benefits	1.7%	0%
Maximum earnings subject to Social Security tax	118,500	118,500
Amount needed for a quarter of coverage	1,220	1,260
Annual limit on earnings:		
• Taxpayers under full retirement age before having to repay benefits	15,720	15,720
• Taxpayers who reach full retirement age during the year (applies to months before the month of full retirement)	3,490/month	3,490/month
Medicare premiums	base = 104.90/month	*

2015 & 2016 Key Numbers

	2015	2016
Pension Amounts		
Defined contribution maximum	53,000	53,000
Defined benefit maximum	210,000	210,000
Annual compensation for calculations	265,000	265.000
SEP earnings for a year	600	600
Deferrals		
SIMPLE	12,500 (+3,000 catch up)	12,500 (+3,000 catch up)
Other elective deferrals (401(k), 403(b), SARSEP, 457)	18,000 (+6,000 catch up)	18,000 (+6,000 catch up)
IRA	5,500 (+1,000 catch up)	5,500 (+1,000 catch up)
Phaseout level for:		
IRA contributions when "covered"	61,000-71,000 98,000-118,000 for MFJ 0-10,000 for MFS	61,000-71,000 98,000-118,000 for MF 0-10,000 for MFS
Roth IRA contributions	116,000-131,000 183,000-193,000 for MFJ 0-10,000 for MFS	117,000-132,000 184,000-194,000 for MFJ 0-10,000 for MFS
PER DIEMS		
Meals	46-71/day	51-74/day effective 10/1/15
Mileage	.575 mile (.23 = depreciation) .14 for charity .23 for medical & moving	* * 0.14 for charity *

Tax Professionals

Professional Liability Coverage
Errors & Omissions

AVAILABLE COVERAGES AND FEATURES INCLUDE BUT NOT LIMITED TO:*

- Tax Services
- Tax Audit Representation
- Bookkeeping
- Accounting Services
- Payroll Services
- Notary Services
- Circular 230
- Tail Options
- Cyber Liability
- Defense Costs Outside of Limits
- Prior Consent to Settle
- Crisis Event Expense Reimbursement
- Trustee Coverage
- Investment Advisor Coverage
- Pre Claim Coverage
- Free Legal Risk Management
- Network and Information Security Offense Coverage

*The intent is to give an indication of the coverage afforded. It is not a complete description. The policies are available for your review and are the final interpretation of coverage.

Dineen Fraser – *Insurance Administrator*
(toll-free) **877-877-0770** · **www.taxproeando.com**

PLACER INSURANCE AGENCY
5 Sierra Gate Plaza, Second Floor
Roseville, CA 95678 · fax 916-784-8116
Premier Agency Inc. DBA Placer Insurance Agency.

Underwritten by AMCO Insurance Company, Allied Property & Casualty Insurance Company, Depositors Insurance Company, Nationwide Insurance Company of America, 1100 Locust Street, Des Moines, Iowa 50391-2000. Customers will be placed with one of the above companies based on your location and product requested. Products and discounts not available to all persons in all states and products are subject to deductibles, exclusions, and conditions. Nationwide, the Nationwide framemark, and On Your Side are federally registered service marks of Nationwide Mutual Insurance Company.© 2013 Nationwide Mutual Insurance Company. All rights reserved. CA #0C66701

"IT MIGHT BE AT A BEACH…IN ORLANDO"

COME AS YOU WISH AND DON'T FORGET TO PACK YOUR BEACHWEAR!!!

JUNE 16-18, 2016 at the Westin Hotel

Early Registration begins January 7 – February 19, 2016

SAVE $50.00 off regular rates

(After 2/19 regular rates apply $424.00/$499.00)

NAEA Members $ 374.00 Non- Members $449.00

Hotel room rate just $101.00, remember to book early!

$$$ SAVE BIG WITH THE FSEA LOYALTY PROGRAM $$$

If you attended Convention 2015 a $50.00 discount is available.
If you attended *both days* of the January Workshop that's another $25.00…
And that adds up to big savings!!

For additional information and registration visit www.fseaonline.org

16 Circ. 230 CE and an Optional 2 CE Available

Alan Pinck, EA, NTPI Fellow
Real Estate Professionals, Do They Really Exist?
Representing Real Estate Audits
ABCs of a Schedule C
You Just Prepared a Return that is Ripe for Audit

Don Rosenberg, EA, NTPI Fellow
Collections
Ethics

Steven Klitzner, Attorney
Installment Agreements and Offer in Compromise

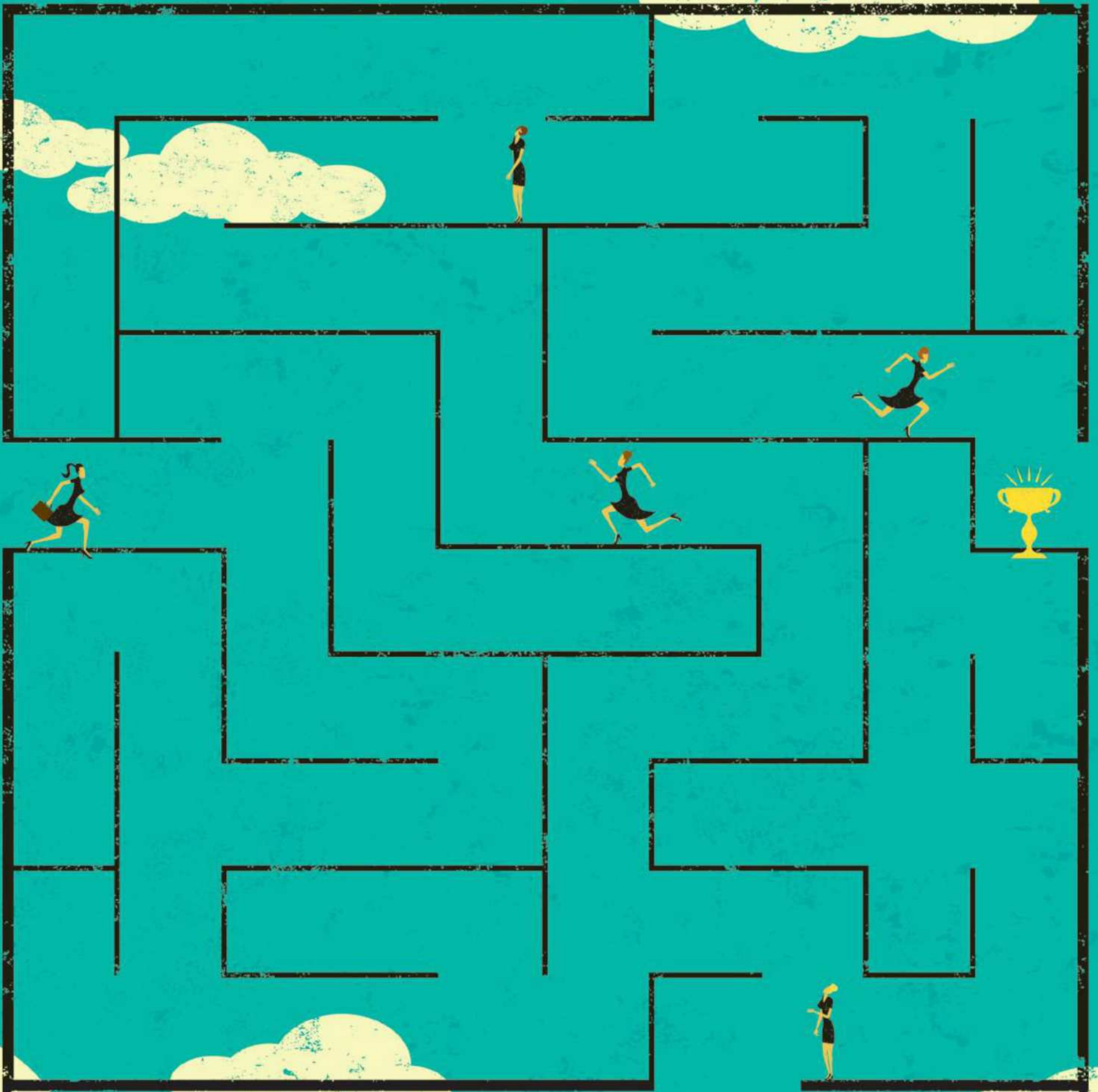
Bob Kerr, Sr. Director, Government Relations
The View from DC
Tax Reform 101

OPTIONAL COMPLIMENTARY 2 CE PRESENTATION FOR EARLY REGISTRANTS (After 2/19, just $25.00)
Presented by Lance Kolbert, RHU, LUTCF
Building the 7 Headed Hydra

ATTENTION NEW MEMBERS!!!! Come and Meet Your Fellow Enrolled Agents

There is a New and Very Special 6 CE Session, **"FSEA Newbies 101"** for members that have joined (or will join between) 01/01/2015-06/01/2016
Friday, June 17 for just $99.00, including lunch!!

8 Mistakes Tax Practitioners Make That Get Their Clients in Hot Water With the IRS - 2 CE
Join your fellow EAs for Ethics - 2 CE
The View from DC - 1 and Tax Reform 101 - 1 CE



READ BETWEEN THE LINES

AN INTERACTIVE ORIENTATION AND PROJECT OF THE SCHULDINER/SMOLLAN LEADERSHIP ACADEMY

By Raven Deerwater, EA, Ph.D

The Schuldiner/Smollan Leadership Academy (SSLA) was designed to train volunteers for success as leaders of NAEA at the local chapter, state affiliate, or national level. At each training, participants are asked to create a project for themselves to take back and develop at the affiliate level.

Each graduate of the SSLA brings the project back to his or her affiliate. Using my background as a trainer of mathematics teachers and as Past President of CSEA, I was given the opportunity to revamp the orientation for CSEA Board Directors and CSEA Chapter Presidents.

Orientation Activity

In an orientation with Chapter Presidents and Board Directors this past summer at the California Society of Enrolled Agents (CSEA), I used the mock email below for training. When I asked if anyone had received an email like this before (or been spoken to in such a way), everyone in the room raised their hands.

Central Bay Chapter President Katerina Kaper, EA, comes into her office and receives the following email from Ann Owing, EA, a member of her Chapter.

Dear Katerina:
I just got my renewal notice from CSEA, and they raised the dues again. This is BS. I don't know why I have to pay dues to CSEA when I get absolutely NOTHING from them. It is not as though more people know what an enrolled agent is – I always get confused stares when I tell someone that.

I don't mind paying dues for the chapter – I get good education from them and talk to my colleagues. But it is ridiculous that I have to pay all this hard earned money (and it is truly hard earned) to the state.

You need to go up there and tell them to do something to make people realize what enrolled agents are or tell them to stop charging so #@%#@ much for dues.
Ann

Learning by Participating

Participants in the CSEA Leadership Orientation were posed four questions from the above email and to provide written responses to them. As you are reading this article, please feel free to put yourself in the shoes of the orientation participants and write down your answers to these questions. I think you will gain something from the exercise.

Questions 1 and 2: *How do you think Katerina feels after reading this? What parts of the email do you think she would find especially irksome?*

Sometimes in leadership, you may feel that no good deed goes unpunished. On the other hand, you may feel passion and pride in your colleagues. How do we engender more of the latter feeling and less of the former?

When I first attended the CSEA Chapter President Orientation in 2009, as President of the North Bay Chapter of CSEA, it was a six-hour training from 8a.m. until 2p.m. led by the officers, committee chairs, and the EVP. The bulk of the time was spent delivering and imposing information rather than seeking information or generating dialogue. My background in education allowed me an opportunity to observe, participate in and evaluate the design of this Workshop. Other than me, I'm not sure that anyone focused on how the day was constructed.

In graduate school, I was exposed to a learning theory commonly described as filling up "empty vessels." Students are viewed as empty vessels, and the teacher's job is to fill those vessels with new and correct knowledge. The most popular instructional format to fill empty vessels was lecture.

Then, new research emerged. It showed that only approximately one-third of the students learned mathematics successfully via lecture. That meant that two-thirds were not learning. Why? The main reason why this empty vessel learning theory fails is that the majority of students are not empty vessels. Nor are adults. Research now tells us that even newborns are not empty vessels! We all come into new situations with prior knowledge and experience. We are not "empty." Rather, we are "full vessels," each filled with experiences and a wide range of potential.

Leaders and members alike are often asked to absorb too much material at too fast a rate without recognizing that we all learn at different rates and absorb information differently. This is pivotal when thinking about leadership development in an association, both at NAEA and its affiliates. Rather than approaching this critical function with the idea that Members are empty vessels, consider what can be accomplished with the notion that Members possess a great deal of knowledge.

The idea of the first two questions was to determine how the individuals at the orientation react to a good deed being punished. Because the participants at CSEA's leadership orientation were going to be working together (as well as on their own), it was of great service simply to learn more about each other. This included learning about each other's skills and talents as well as learning about how each of us reacts in slightly more stressful circumstances.

Leading by Focusing on Others

Question 3: *What (if anything) do you think Ann is really trying to say?*

We are not always at our best. We are not always the courteous and thoughtful creatures that we like to think we are. And, as we all know, many emails are written by folks who are not operating at their highest self.

As leaders, it is wonderful to be generous and give people the benefit of the doubt. In doing so, you still need to remain a leader and keep your boundaries intact. The email that Ann sent Katerina was clearly not written with tact and grace, yet this question was designed for the orientation participants to tap into their own generosity and try to figure out the real meaning of the email. Clearly, Ann had to have some motivating factor to write it.

Leadership at the affiliate level requires learning about your colleagues, to discover the prior knowledge and experience of our fellow

tax experts. Everyone in this community possesses skills, talents, and experiences waiting to be tapped in to and further cultivated.

The idea of this question was to give participants the opportunity to detach from the tone of the email and to determine its content. Leaders must be aware of what members are feeling and what is important to them. By taking an active role in learning about members, leaders will make better decisions about the entire affiliate community. Each Affiliate/Chapter of NAEA is a community of tax experts, each member also bringing in unique talents and abilities that are often unnoticed and perhaps underutilized.

Using Teamwork as Leaders

Question 4: *In the space below, compose (with your partner) an email response that Katerina can send to Ann.*

Often, affiliate leaders can feel isolated and, perhaps, too responsible for everything that happens on their watch. It is important to remember that each leader is part of a whole (either a Board, Committee, or both), and it is not the leader's individual decision that is important. Rather, it is the group coming to a consensus that is important.

Affiliate leadership is about learning to make communal decisions where everyone is allowed input and no single individual is tied to the result. Individuals need to offer their expertise and encourage reasonable resources and solutions to be brought forward. After that, it is important for leaders to listen to each other and to the members to come to a decision that is appropriate for the Affiliate.

In this scenario, it was important for Katerina to feel that she had the support of her colleagues and not to feel as though she were being personally attacked. In our orientation, working in pairs not only brought more resources to the crafting of a response, but sent the message to the participating leaders that they do not have to face uncomfortable situations alone; there is always support from those around them.

I don't offer a model answer for these questions because leadership is not "one size fits all". Most of us recognize all that our state and national organizations for our profession, but it is not clear that listing these services is the appropriate response. Comments that came out while doing this exercise noted that it was very important that both Katerina and Ann be "seen." Katerina needs to be seen as a competent leader, and Ann needs to be seen as a valued member and not as a wallet. Ann's email was unprofessional, but the motivation behind it touched on real issues.

Participants also noted that the answers to these questions became better and more nuanced after hearing from their peers who were holding similar leadership positions. The many perspectives offered gave each participant food for thought and helped their development as more effective leaders.

Just as enrolled agents need continuing education to become more effective tax experts, affiliate leaders need continuing discussion with others to be more effective leaders. In doing so, affiliate leaders will get to not only witness their own development, but the development of their peers. By sharing and participating together, we help each other grow, and we each feel the satisfaction of being a participant in the success of our colleagues and our profession. EA

About the Author

__Raven Deerwater EA, PhD__ is an instructor with the Schuldiner/Smollan Leadership Academy. He is a Past President of the California Society of Enrolled Agents (2012-2013) and the North Bay Chapter of CSEA (2009-2010). As a research fellow in Leadership Development and Continuity with the Melos Institute, Raven has been studying the effects of formal and informal leadership training on volunteer leaders. Raven holds an AB in Economics from Harvard University, an MAT in mathematics from the University of Chicago, and a PhD in Education (curriculum and instruction), also from the University of Chicago. He has been an enrolled agent since 1999 and has a practice specializing in individuals and families (especially sole proprietors) in Mendocino, California.

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

100% Online

Master of Science in Taxation

- Distance learning ~ No residency requirement
- No study required during the tax filing season
- Earn CPE credit
- Nationally accredited program
- Lowest tuition and fees, Maximum flexibility

The M.S.T.Program provides the conceptual understanding and technical competence advantageous for advancement in the tax consulting profession, corporate finance departments, and government tax agencies.

www.taft.edu/mst.htm

Or Call: 877-894-TAFT (8238)

William Howard Taft University
600 South Cherry Street, Office 525
Denver, Colorado 80246

William Howard Taft
University

Powering Your Tax Career

The Super Seminar Experience:

Your source for quality tax education!

- Customize your schedule
- Learn from industry experts
- 34 years of exceptional tax education
- Up to 24 hours of quality CPE in 3 days
- 96% attendee satisfaction

May 17-19, 2016 • Las Vegas, NV

June 1-3, 2016 • Reno, NV

Register online by January 8, 2016 to receive $25 off!

Promo Code: NAEA25

www.superseminar.org

Presented by California Society of Enrolled Agents

2015 AWARD WINNERS

It is without question that NAEA owes a great deal of thanks to its volunteers. Dedicated to the association and the enrolled agent profession, these outstanding individuals donate time and energy without expectation of reward. This year, NAEA recognized volunteers with the following awards:

- The Founders Award
- The Outstanding Leadership Award
- The Excellence in Education Award
- The Excellence in Public Awareness Award
- The Outstanding Supporter of Enrolled Agents Award
- The Outstanding Volunteer Award
- The Emerging Leader Award
- The Bill Payne Advocacy Award
- The "Big Idea" Award

Choosing the recipients of these awards is a daunting task given the pool of deserving candidates. The NAEA Awards Committee fully considers each nominee in an effort to choose the most deserving from an exemplary roster of devoted members. This year's awards committee was chaired by Rose Fulton, EA. Aaron Blau, EA, CPA; Kay Cassidy, EA; Lisa Eyrolles, EA; and Ray LaLuna, EA, served as committee members. Nominations were redacted by the NAEA staff liaison to ensure the most unbiased selections possible.

1. THE NAEA FOUNDER'S AWARD

The NAEA Founder's Award is the highest recognition bestowed upon a member whose outstanding leadership and contributions have immediate or long-term impacts on the growth and progress of NAEA. This year's award was presented posthumously to **William D. "Bill" Payne, EA**.

2. THE OUTSTANDING LEADERSHIP AWARD

Geri Bowman, EA, CPA, USTCP, is this year's recipient of the Outstanding Leadership Award. Bowman has worked tirelessly as the Chair of the NTPI Planning Committee. She has been instrumental in the success of NTPI, ensuring that it remains the nation's leading course in representation of taxpayers before the IRS for audits, collections and appeals. With more than twenty years of industry experience, Bowman now runs her own business where she specializes in small business and individual income tax preparation, bookkeeping, QuickBooks consulting and taxpayer representation. In May of 2015, NAEA Past President Lonnie Gary, EA, presented her with the President's Award, in recognition of and appreciation for her commitment and dedication to the board of directors and service in bringing quality education to NAEA members.

3. THE EXCELLENCE IN EDUCATION AWARD

Recognized for his significant leadership ability and contributions to NAEA's education programs, the Excellence in Education Award was awarded to **Alan Pinck, EA**. Pinck has owned A. Pinck and Associates for over twenty-five years and has offices in San Jose and San Ramon, Calif., specializing in small business and individual income tax consulting and audit representation. He is the chair of the NAEA Education Committee and the past president of the Mission Society of Enrolled Agents.

4. THE EXCELLENCE IN PUBLIC AWARENESS AWARD

Rather than presenting this award to an individual, the **Arizona Society of Enrolled Agents (AzSEA)** was recognized for its outstanding contributions to making enrolled agents more recognizable as America's tax experts. AzSEA organized a "fly-over" of the 2015 Super Bowl and a concurrent PGA event, directing thousands to eatax.org. The award was accepted by Kerry Freeman, EA.

5. THE OUTSTANDING SUPPORTER OF ENROLLED AGENTS AWARD

Frank Agostino, Esq., was selected by his peers to receive this award in recognition of his contributions to EA education, inclusion and promotion of the tax controversy community, support of the NAEA goals of Educate America and his personal efforts to assist individual EA practitioners. In addition to his contributions to the enrolled agent community, Agostino volunteers with the New York County Lawyers' Association and serves as president of the Taxpayer Assistance Corporation, the public service division of Agostino & Associates.

6. THE OUTSTANDING VOLUNTEER AWARD

In recognition of her volunteer service to NAEA, state affiliates, and local chapters,

Hart Fetsko, EA, received the Outstanding Volunteer Award. Fetsko has served a variety of roles, most recently serving as the Columbus Chapter of the Ohio Society of Enrolled Agents. She has dedicated countless hours to recruiting new members.

7. THE EMERGING LEADER AWARD

Aaron Blau, EA, CPA, was honored with the inaugural Emerging Leader Award for his skilled and enthusiastic contributions on both the affiliate and national level in governance and public relations. Blau, who serves as vice president at the Blau Company, is one of the youngest applicants to pass the Special Enrollment Exam administered by the U.S. Treasury Department, and is a Fellow of the National Tax Practice Institute™. He has dedicated his career to helping small business owners better understand their financial and tax picture.

8. THE BILL PAYNE ADVOCACY AWARD

Phyllis Jo Kubey, EA, of New York City was awarded the 2015 Bill Payne Advocacy Award for her strong commitment to advocacy on behalf of enrolled agents on both the state and national level. Kubey, a director of the New York Society of Enrolled Agents (NYSSEA) and a Fellow of the National Tax Practice Institute™, has been preparing tax returns and offering tax planning and consultation for nearly three decades. She has operated her own business for more than twenty years.

9. THE "BIG IDEA" AWARD

Bryan Gates, EA, of San Marcos, CA, was honored with The "Big Idea" Award in recognition of his vision and guidance in implementing the plan for the National Tax Practice Institute, which has become the nation's premier education program on representation of clients before the IRS. Previously, the NAEA Board of Directors resolved to bestow on Gates the honorary title of "Father of NTPI" for his contributions. Gates worked at the local and national level of the Internal Revenue Service beginning in 1963. He was selected in 1968 for IRS national office staff and assigned to the Assistant Commissioner Compliance as an analyst where his duties included IRS operations analysis and editing portions of the Internal Revenue Manual. After ten years, he left the IRS to work on the taxpayer's side as a taxpayer's representative. Bryan is now the editor and annotator of West's Internal Revenue Manual, Abridged & Annotated. Gates is a member of NAEA and along with Jean Gates, EA, was honored with the NAEA Excellence in Education Award in 2007. EA

NAEA is an organization that is built on the hard work of dedicated volunteers. We are proud to honor this year's award winners, but we are also aware that there are many deserving volunteers who have not yet been recognized. Please consider nominating someone you know next year for a 2016 NAEA Annual Award.

Happy New Year

from

What a year!

NAEA saw a number of exciting changes in 2015 and we're excited to see what the future holds. Sticking to our strategic plan, we will work hard to serve you and provide the resources and services you need to thrive as an enrolled agent.

We are thankful for the support of our members and wish you a successful 2016.

NOVEMBER MEETING SUMMARY

Closing out the 30th year of the National Tax Practice Institute™, NAEA members gathered at the beautiful Rosen Centre in Orlando, Florida November 4-6, 2015. Attendees participated in NTPI® Levels 1, 2, 3, or the Graduate Level and each day was full of hard-hitting, challenging representation education. NAEA is pleased to announce that eighty-six individuals completed Level Three and now hold the prestigious designation of NTPI Fellow®. Following the graduation, attendees enjoyed a moonlit reception on the hotel's pool deck. Enjoying hors d'oeuvres, drinks, and laughs, it was an excellent way to relax after an intense few days of captivating course material. Thank you to all attendees and instructors for making NTPI Orlando 2015 a successful event.

SPONSORS:

Canopy
Gleim
Intuit

EXHIBITORS:

Canopy
CFS Tax Software
GetNetSet
Gleim
Intuit
Pascal Workflow
PittBullTax Software
Tax Materials, Inc. – Publishers of TheTax-Book™
Tax Help Software

CONGRATULATIONS TO THE 2015 NOVEMBER NTPI GRADUATES!

Wray Abercrombie, EA
Nancy Anderson, EA
John Andrews, III, EA
Leila Annunziata, EA
Kenneth Bailey, EA
Laura Bennett, EA
Carrie Lynn Braswell, EA
Beth Ann Brock Leake, EA
Philip Brown, EA
Linnea Carroll, EA
Samuel Carter, EA
Michael Chambers, CPA
David Changaz, EA
Ann Fleming, CPA, USTCP
Alexis Gallati, EA
Lynda Ghaedi, EA
Laura Golar, EA
John Gonzalez, EA
Denise Han, EA
Alaudin Hasham, EA
James Hintzke, CPA
Mariela Andrea Hollingsworth, EA
Diana Holmes, EA
Benjamin Howard, EA
Thomas Jeffers, II EA
Adriana Jensen, EA
Jeff Johnston, EA
Kimberley Joseph, EA
Beverly Kauffman, EA
Raymond Kidwell, EA
Mark King, EA
Gloria Kulik, EA
Barbara Land, EA
Sue-Ann Lengyel, EA
Vick Limbani, EA
Deborah Helen Lofquist, EA
Mary Beth Lougen, EA, USTCP
Stuart Lyle, EA
George Mathew, EA
Ronald E. McGee, EA
Kathryn A. McPherson, EA
Kimberly Mellinger-Cheng, EA
Michelle Moglia, EA
Arlene Moore EA
Eric W. Moore, EA
Jeannie M. Moore, EA
Nancy Navarro-Walker, EA
Roger Nemeth, EA
Ken Newhouse, Jr., CPA, USTCP
Trung Ngo, EA
Stephen Odem, EA

Photographs courtesy of Christie's Photographic Solutions

Yusuff Osinaike, EA
Enrique Otarola, EA
Harry Patel, EA
Richard Pew, EA
Geoff Plourde, EA, CPA
Bill Price, EA
James Racaniello, EA
Martin Reffsin EA
James Rickey, EA
Paul Rubin, EA
Donald Rowland, CPA
Barbara Rybicka-Butkiewicz, EA
Terri Ryman, EA
Rick Saldin, CPA
George Sankoh, EA
Ken Santorello, EA
Renee Schweke, EA
Mark Seid, EA, CPA, USTCP
Anita Snyder, EA
Wini Stowe, EA
Crystal Stranger, EA
Hemendra Thakkar, EA
Sheri Thomas, EA
J Wayne Vanderford, CPA
John Vellutato, EA
Portia Vogt, EA
Jo-Ann Weiner, EA
William Wilke, EA
Ronnie Williamson, Esq.
Ron Winkler, EA
Karen Winters, EA
Karen Wiseman, EA
Shawn Wright, Esq.
Mason Wristen, EA
Gloria Stootman Wristen, CPA, USTCP

THANK YOU TO OUR SPONSORS AND EXHIBITORS!

2016 NAEA Election Results

The Votes Are In!

Congratulations to the officers and directors elected to serve on the NAEA Board for the 2016–2017 governance year. An installation ceremony will be held on May 8, 2016 in Crystal City, Virginia.

PRESIDENT.......... Richard Reedman, EA, USTCP
SECRETARY/TREASURER.......... Tim Dilworth, EA, CPA
PRESIDENT-ELECT.......... James (Jim) Adelman, EA
IMMEDIATE PAST PRESIDENT.......... Terry Durkin, EA

NEWLY ELECTED DIRECTORS

Michael Fioritto, EA, CPA
Jerry Gaddis, EA
Patricia Kappen, EA
Melissa Longmuir, EA
Jean Nelsen, EA
Jeffrey Schneider, EA

BYLAWS VOTE RESULT

Amend Bylaws Article VIII, and associated changes in Articles VI, VII, IX, XI and XV: PASSED

Amend Bylaws Article XVI: PASSED

- Reliability
- Value
- Support
- Integration
- Efficiency

Now that's something to hang your hat on.

THE PROFESSIONAL TAX SOLUTION

Toll-Free **866.670.8472** | Free Demo **DrakeSoftware.com**

GLEIM®. EA Review Redefined™

Redefining the way you study™

Largest Test Bank

Expertly Authored Materials

Access Until You Pass®

800.874.5346
gleim.com/NAEA15

GLEIM®
NAEA Preferred
EA Review Provider