Annual Ethics Issue

Reading the Internal Revenue Code • An Excess Depreciation Dilemma

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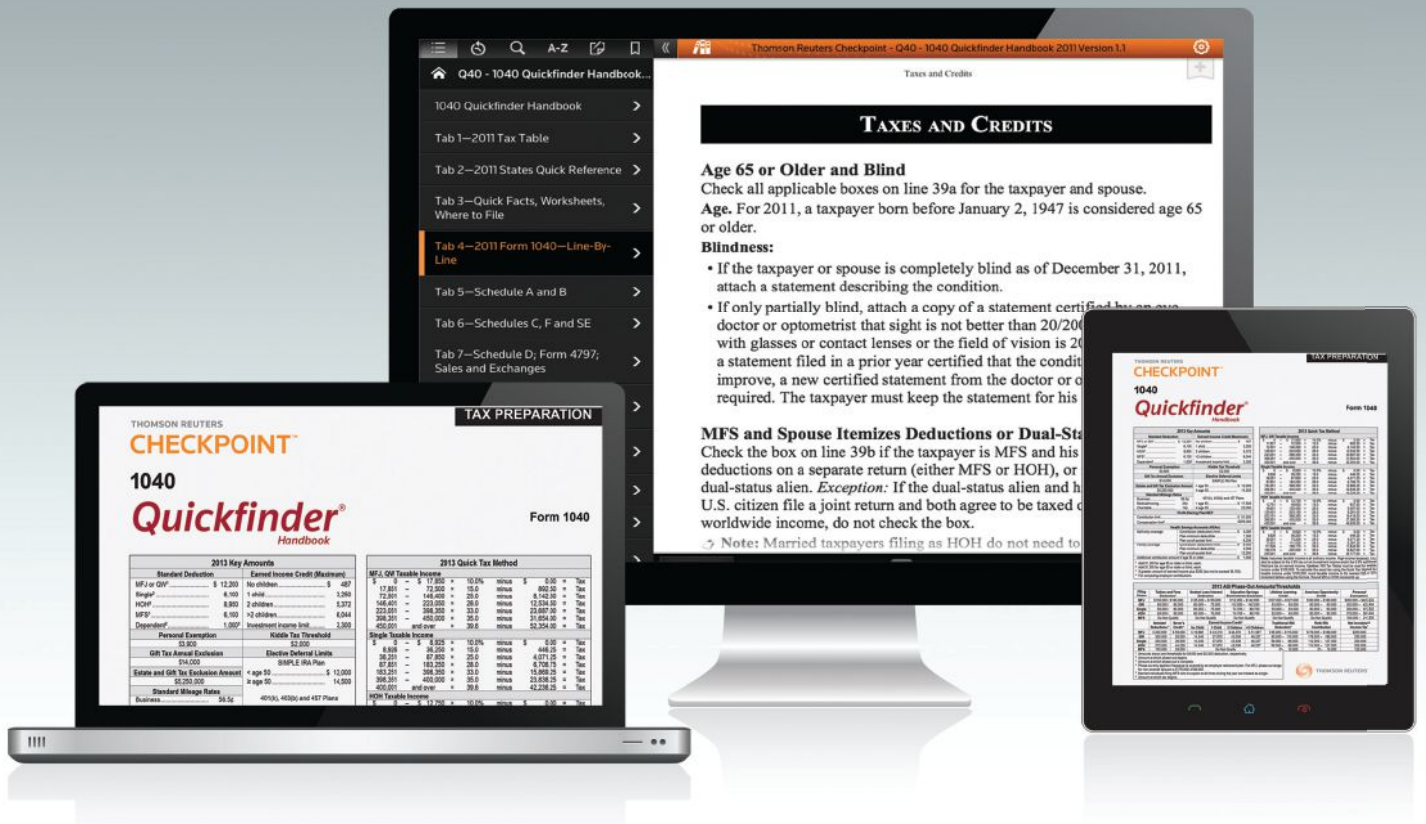

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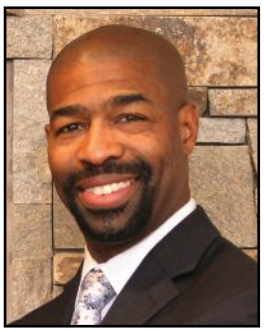

A. Cedric Calhoun, CAE, FASAE

Greetings! I hope that you are enjoying the warmer weather and a slightly slower pace after the sprint of the 2017 tax filing season. Congratulations on what was hopefully a productive and prosperous season.

Greek philosopher Heraclitus of Ephesus is said to have remarked, "the only thing that is constant is change." We see change in seasons, individuals, and nations. Organizations are no different. The National Association of Enrolled Agents has faced its share of changes this past year. While not all were foreseeable, the changes that have taken place within NAEA afford us opportunities that were not present before. These opportunities are helping chart our path forward.

One amazing opportunity that has presented itself is the ability to grow talent from within NAEA. I believe strongly in promoting from within; current staff know the organizational culture, they understand the organization's motivations, and they are familiar with its members – a key asset in any organization. Rising stars in government relations and finance were ready to step into roles similar to their predecessors, which they are undertaking with fresh enthusiasm and ideas. NAEA has done a great job of training its staff members, and this will continue as the organization continues to grow and innovate.

We also are looking to hire new staff members to fill gaps and help us continue to apply best practices. NAEA changed the way it offered education with the introduction of the National Tax Practice Institute over 7 years ago, and this program is still going strong. At the time, it was an innovative approach to generate interest in the practice of representation, and it ended up changing the landscape of tax education. NAEA leadership made an informed decision to introduce something new to the marketplace. The NAEA of today is focused on making the same types of innovative decisions to help the organization, its members, and the tax practitioner community grow. Many leaders in the organization's rich history had a vision which, at times, required changes to structure, operations, or strategy. The NAEA of today is no different. Then, and now, change is necessary to remain competitive and relevant.

Right now, I envision NAEA as a tree with a deep and wide root system. With a strong foundation, this tree can withstand storms and changes in temperature and precipitation. NAEA is resilient and has weathered many storms in its past. With its firm foundation of leaders, volunteers, and staff, it will continue to do so.

As NAEA grows and changes, our changes need to be guided by opportunities, innovation, and an eye towards growth firmly rooted in our mission – to advance the recognition of enrolled agents and to enhance the professional growth of its members through promotion, member support, advocacy, and education. This mission will continue to guide the decisions of your organization. EA

CAPITOL CORNER

NAEA Joins Forces with the CPAs and Lawyers to Outline Reforms for the IRS

By Jeffery S. Trinca, JD

It is not often that there is consensus among the associations representing tax practitioners regulated under Circular 230. In fact, it might be unprecedented. The National Association of Enrolled Agents (NAEA) has joined forces with the American Institute of CPAs (AICPA) with support from the Tax Section of the American Bar Association (ABA), along with groups representing both Circular 230 practitioners and the unenrolled. The product of many weeks of drafting and debate is a white paper entitled "Ensuring a Modern-functioning IRS for the 21st Century."

Over the last few years it has become clear to the various signatories that the degradation of IRS taxpayer services has reached the tipping point and is unacceptable by all measures. The percentage of calls from taxpayers the IRS answered between 2004 and 2016 has dropped from 87 percent to 53 percent. Comparing 2004 to 2016, the number of calls the IRS received from taxpayers increased from 71 million to 104 million, yet the number of calls answered by telephone assistors declined from 36 million to 26 million.

Together these groups advise millions of taxpayers on tax matters, assist them with compliance responsibilities, and represent them before the IRS. Enrolled Agents, CPAs, and tax lawyers understand what is working at the IRS and what is not. Together these tax professionals have come together with concrete recommendations.

As a vision for the future, these groups recommend that policymakers reaffirm the vison of the bipartisan Report of the National Commission on Restructuring the Internal Revenue Service on the 20th anniversary of its publication:

> *...This Vision embraces an efficient, service-oriented institution dedicated to collecting the proper amount of tax through the use of taxpayer education, modern customer service practices, and effective law enforcement techniques. The motivated, skilled employees of this new IRS would receive the proper training, incentives, authority, tools, and management oversight to get the job done. This new IRS would be able to help people comply with a simplified tax code, while managing its data collection and taxpayer accounts according to methods and standards employed in the best private and public sector organizations. Finally, taxpayers would have adequate*

About the Author

Jeffery S. Trinca, JD, is NAEA's legislative counsel and is one of the founding vice presidents of Van Scoyoc Associates, a Washington lobbying firm, where he has served as one of DC's leading experts in tax administration for more than 20 years. Jeffrey's expertise and counsel has served NAEA well, as he helped shape the organization's efforts when working to codify the enrolled agent credential through the passage of the Enrolled Agents Credential Act, which was signed into law by former President Obama on December 18, 2015. Jeffrey holds a juris doctorate from The George Washington University National Law Center and is a member of the District of Columbia Bar.

protections when the agency exercised its powers in an improper fashion...

To help the IRS reach this vision, the drafters of the white paper make a number of specific recommendations to Congress:

Re-establish the annual joint hearing review
In order to focus oversight and help create a strategic consensus among policymakers in Congress, the white paper recommends that Congress do an annual joint hearing with the authorizing and appropriating committees.

Require the Joint Committee on Taxation to provide a bi-annual report
The Joint Committee on Taxation would provide a bi-annual report on the overall state of the federal tax system.

Require a Government Accountability Office (GAO) review of the private sector board
Most of the groups, including representatives from NAEA, felt that the IRS Oversight Board provided experience, independence, and stability to assist the IRS in moving forward in a focused direction. A few of the signatories, however, believed that the Board was often ineffective and missing in action. As a compromise, the groups agreed that Congress should require the GAO to review the history and effectiveness of the Board and make recommendations to them.

Enable the hiring of qualified and experienced professionals at the IRS
Whether Congress reinstates Critical Hiring Authority or the IRS uses existing statutory authority, the agency needs the flexibility to bring on top level executives in critical areas like technology and pay them closer to prevailing salaries in the private sector.

Determine the appropriate level of service and compliance the IRS is accountable to and dedicate appropriate resources for the agency to meet those goals

To instill trust in the tax administration system, the groups recommend taxpayer service goals based on the following two guiding principles: The IRS should only initiate contact with a taxpayer if the IRS is prepared to devote the resources necessary for a proper and timely resolution of the matter, and customer satisfaction must be a goal in every interaction the IRS has with taxpayers, including enforcement actions. Taxpayers expect quality service in all interactions with the IRS, including taxpayer assistance, filing tax returns, paying taxes, and examination and collection actions. In sum, the legislative and executive branches should determine the appropriate level of service and compliance they want the IRS accountable to provide and then dedicate appropriate resources for the agency to meet those goals. Taxpayers should be surveyed to ensure continuous improvement toward these goals.

Provide a practitioner online account

The IRS should provide tax practitioners with a tax professional account as part of the IRS's online portal with account access to all of their clients' information (both individual and business accounts) where the practitioner has a valid power of attorney (POA) on file. Additionally, the secure tax professional account should allow the IRS to communicate directly to practitioners the information necessary to improve taxpayer awareness and allow practitioner correspondence with timely acknowledgement of receipt.

To continue to improve efficiency, we also recommend that the IRS focus its attention on replacing the Centralized Authorization File (CAF) with a consolidated online solution utilizing electronic signatures and an algorithmic-driven approval process that is as close to real time as possible.

Establish a dedicated "executive-level" practitioner services unit that provides for centralizing and modernizing its approach to tax practitioners

A dedicated practitioner services unit would allow the IRS to rationalize, enhance, and place under common management the many current, disparate practitioner-impacting programs, processes, and tools. Moreover, by centralizing these programs, IRS employees would have a consolidated approach to timely resolving issues. This coordination and improved access of information would prevent unnecessary delays and inefficiencies (such as, requiring practitioners to submit the same information multiple times to multiple IRS employees).

None of these recommendations alone will make a difference. Together, however, the signers of the white paper believe that IRS can and will make measureable improvements in customer service and compliance. **EA**

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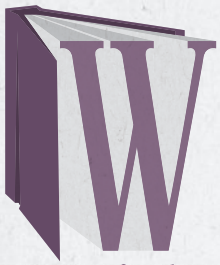
Reading the Internal Revenue Code

BY CAROLYN RICHARDSON, EA



Why would anyone subject themselves to reading the Internal Revenue Code? It's not exactly a spellbinding novel, or even an interesting nonfiction work on your favorite topic, unless your favorite topic is tax law.

When most people think of the Code, they think of it as being an impenetrable morass of legalese gobbledygook, more useful as a cure for insomnia than a practical resource for the tax professional. But being able to effectively read—and understand—the Code is an important skill for the tax professional.

The Substantial Authority

For taxpayers and practitioners to avoid penalties on a particular tax treatment, they must show that the treatment is or was supported by "substantial authority." The Code is not only "substantial authority," it is the substantial authority, and in the hierarchy of authorities on which you can rely on, it has the highest ranking of all other sources. Being able to use it effectively can result in better outcomes for your clients when it comes to both tax preparation and examinations.

At one time, the Internal Revenue Service's (IRS) in-service training for employees included extensive lessons on reading and understanding the Code. With continual budget cuts over the years, however, and a deemphasis by the Service on face-to-face training, many IRS employees no longer receive effective instruction on reading the Code. The lower in the examination "totem pole" that an examiner is, such as service center examination personnel, the less likely they are to understand the tax laws that govern their audit determinations.

As a result, it is not uncommon for examiners to rely on some of the Service's own materials, such as publications and internal memos. Neither of these carry the weight of law, however, and as the Tax Court has famously said regarding taxpayers' reliance on IRS publications, they do so at their own peril. If you, as a practitioner, can show them where and how their interpretations are incorrect, examiners will frequently back down from proposed adjustments.

Reading the Internal Revenue Code

Where to Begin?

Even with the Code, it helps to start at the beginning; in this case, the table of contents. Despite the seeming mishmash of code sections that we are all familiar with, there is logic behind how the Code is organized.

The Internal Revenue Code is Title 26 of the U.S. Code. The entire code is divided into alphabetical subtitles, A through K. When Congress enacts new code sections, they are numbered according to their appropriate subtitle. For example, Subtitle A is Income Taxes and covers Sections 1–1563; Subtitle F is Procedure and Administration, and covers familiar code sections such as penalties (Sections 6001–7874). Some of the subtitles are curiously specific, such as Subtitle J, Coal Industry Health Benefits. Since most of us deal more frequently with income taxes, this article will deal with Subtitle A, Income Taxes.

Subtitle A is further divided into six chapters:

- Chapter 1: Normal Taxes and Surtaxes [Sec. 1–400U-3]
- Chapter 2: Tax on Self-Employment Income [Sec. 1401–1403]
- Chapter 2A) Unearned Income Medicare Contributions [Sec. 1411]
- Chapter 3: Withholding of Tax on Non-resident Aliens and Foreign Corporations [Sec. 1441–1464]
- Chapter 4: Taxes to Enforce Reporting on Certain Foreign Accounts [Sec. 1471–1474]
- Chapter 4 (Repealed): Rules Applicable to Recovery of Excessive Profits on Government Contracts [Sec. 1471–1482]
- Chapter 5 (Repealed): Tax on Transfers to Avoid Income Tax [Sec. 1491–1494]
- Chapter 6: Consolidated Returns [Sec. 1501–1563].

If you are trying to research a particular area of the Code, it is sometimes helpful to just browse the chapter, although Chapter 1 is extremely broad. This is where it can be more useful to check the further divisions, starting with subchapters and then parts.

For this article, we will look only at Chapter 1, Normal Taxes and Surtaxes. These code sections, 1–1400U, contain the most common examination adjustments. In fact, most individual audit adjustments concentrate in Chapter 1, Subchapters A and B. These subchapters cover sections 1–291, and thus run the gamut from what items go into taxable income, tax rates, specific exclusions from income, what deductions can be used to reduce that income, and which items are specifically not deductible.

Keywords, Terms, And Pitfalls

Before we review a few specific code sections, we need to know what to watch out for when reading the code sections, as this will help to understand them. Because the Code is law, it can be difficult to decipher its meaning, but in all situations, it should be taken quite literally. Because it is rare for a code section to be only a sentence or two, it is helpful to break down the sentences into multiple pieces to determine their meaning. The Tax Court will usually parse the meaning of code sections when they are interpreting them in their decisions, and reading court decisions frequently can give you a greater understanding of the Code and how to read it.

There are several things to watch for when reading a code section, including the terminology used, amendments, and effective dates. Code sections are generally organized in a certain manner, with the first subsection—usually labeled as (a)—being the "general rule." However, subsections that follow this general rule can either lay out additional rules, provide exceptions to the general rule, or impose limitations on the general rule. It is important to review the code section in its entirety to fully understand it.

While reading the subsections, there are certain terms that can be traps to watch out for. Also, code sections frequently refer to other code sections for additional information, so you may need to understand more than one section to get a full picture of your research. Some terms or keywords to watch for include:

- **All:** The Code is quite literal in its terminology. Therefore, if it uses the word "all," it really does mean it.
- **Except:** This may be Congress's favorite word ever. The use of the word "except" alerts you to the fact that there is an exception to the rule you are currently reading, and generally those exceptions are enumerated right after this word is used. However, sometimes the exception will reference another code section.
- **Defined:** Frequently, terms used within a code section may not be clear or may not be "common use" definitions. When Congress wishes to clarify exactly what they mean, they will define the use of the terms. Some code sections have specific subsections labeled as "Definitions." It is always important to check the entire code section to see if there are definitions contained within it. In many cases, the definitions will rely on other code sections. For example, Sec. 1 sets the tax rates for the varying filing status, but the filing statuses themselves are not defined within Sec. 1. So, the subsections for each filing status will include cross-references "as defined in section XX." Head of Household, for example, is defined in Sec. 2(b) but has further cross-references to Sec. 152(c), (d), and (e) to define who is a dependent for purposes of this filing status.
- **No/None:** Like a balky two-year-old, the Code's favorite word seems to be "no." And it means exactly that. If a code section uses "no," then there are generally no exceptions unless they are defined.

- **This section/This subtitle/This subchapter:** Again, it is important to take these phrases literally, and this is where knowing the construction of the Code and its various chapters, subchapters, and parts is important. If a sentence reads "For purposes of this subchapter," then that is exactly what it means. If you are reading this in Subchapter B, it will not apply to something in Subchapter C. Likewise, some code sections will state "For purposes of Section XX." If that is the way it reads, then the code section you are reading will apply only to that particular section.
- **Effective dates:** Many code provisions are only temporary, and while many provisions are considered to be "permanent," we all know that really means "until they change them again." There are frequently distinctions in how dates are phrased, usually starting with the beginning of the next tax year. For example, "effective for tax years beginning after December 31, 2016," means starting on January 1, 2017. Others have both beginning and ending dates. For example, one amendment to Section 61 was for mileage reimbursements paid to charitable volunteers for providing relief relating to Hurricane Katrina. This exclusion was in effect for tax years ending on or after August 25, 2005, and ending December 31, 2006.

Subchapters And Parts

Once you get into a subchapter, there is one more breakdown in the Code before you hit the specific code sections. Subchapters are divided into parts (with Roman numeral designations). It can be important to know under which part the particular code section you are reading falls, as it can help you understand the actual code section. Additionally, the first section of a part may define the remaining parts. For example, Subchapter B, Part I is "Definition of Gross Income, Adjusted Gross Income, Taxable Income, Etc."

Most practitioners have a rudimentary knowledge of this section of the Code because it is where Section 61, Gross Income Defined, is located. Section 61 is the first section in Part I. Section 61(a)'s first sentence says, "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: …" It then lists 15 specific items of included income such as wages, interest and dividends, and gross income from businesses. Simple enough, yes? But it is surprising how many misconceptions there are regarding what the wording of this section means.

Section 61 is frequently referred to as the "shotgun clause" of the Code. In other words, it casts a wide net of destruction with very little aim. This should not be confused with the term "shotgun clause" used in investing.[1] Once we take a closer look at the wording of Section 61, it becomes clear why this section is referred to this way:

> "Like a balky two-year-old, the Code's favorite word seems to be 'no.' And it means exactly that."

"Except as otherwise provided in this subtitle…"
The subtitle being referred to in this case goes back to our first division of the code, where the sections are called subtitles. In this case, "this subtitle" is referring to Subtitle A, Income Taxes. Subtitle A includes Sections 1 through 1563. So, to exclude something from income, the practitioner must be able to point to a specific exclusion from income somewhere in Subtitle A's code sections.

"…gross income means all income…"
It really doesn't get much simpler than this. Gross income is all income—unless, as stated just prior to this, another section of Subtitle A provides an exception.

"…from whatever source derived…"
"Whatever source derived" may seem redundant once you understand that gross income is all income, but these four words add clarity to the previous statement. Or at least one hopes. Given the various tax protest arguments that have arisen over the years that specifically tried to argue that some sort of income was not "income" for purposes of this code section, it may not be clear at all.

"…including (but not limited to) …"
Finally, a list of specific items that are considered to be gross income.

Reading the Internal Revenue Code

But the caveat here is that just because the item is not listed in one of the 15 income types specified in Sec. 61(a)(1)-(15), that does not mean it is not income. "Gross income means all income" is that catch-all, shotgun provision.

Another thing to note is that nowhere in Sec. 61 does it say anything to the effect that the taxpayer must receive a reporting document for it to be income, such as a Form W-2 or Form 1099. How many times have you had a client come into your office with an IRS notice in hand, questioning a missing income item, only to have the taxpayer say, "Well, I didn't get the form so I didn't think it was taxable"?

One more thing to note, particularly if you are fortunate enough to have a printed version of the IRC, is that this seemingly simple, straightforward section of the Code has roughly two and a half pages (in smaller print) of amendments. In general, amendments contain items that were temporarily in effect, provisions that have either expired automatically or were repealed later, and changes to the wording of the section to make it clearer or otherwise change it. Because code sections are frequently amended, having access to the history of the code section is important, as what you are looking for may have only been applicable to the year under examination and have since expired. Also, even subtle changes to the wording of a section can have a dramatic impact on the meaning of the code section.

Part II of Subchapter B [Sec. 71–90] lists more items that are specifically included in gross income, with their own rules and exclusions.[2] Part III [Sec. 101–140] lists items that are specifically excluded from gross income.

Now, get this. If Congress runs out of room within a part for a code section, the new code section will receive a letter designation as part of its section designation. For example, in Part III not only is there a Section 139, but also a Section 139A, 139B, and on to Section 139F. Section 140 is simply a section that acts as a cross reference to other acts, and Part IV starts with Section 141. As Congress added specific exclusions to income, they ran out of space, and rather than renumber the entire Code they added letter designations. For the true Code geek, you can browse the table of contents to see which areas of the Code get the most changes by looking for letter designations.[3]

Part IX, aka "I Thought It Was Deductible"

Perhaps no part of the Code generates more audit adjustments than Subchapter B, Part IX. Why? Primarily because this part of the Code houses some of the IRS's favorite audit targets, such as travel, entertainment, and meals. Part IX includes Sections 261 through 280H.

One of the clues that this part is going to be an issue is its very title, "Items Not Deductible." What Part IX's title is telling you is that the specific deductions that are included in this section *are not deductible* unless there is some sort of exception iterated in the Code. This becomes clear when you read the very first section, Section 261, which reads "GENERAL RULE FOR DISALLOWANCE OF DEDUCTIONS. In

"How many times have you had a client come into your office with an IRS notice in hand, questioning a missing income item, only to have the taxpayer say, 'Well, I didn't get the form so I didn't think it was taxable'?"

computing taxable income *no deduction* shall in any case be allowed in respect of the *items specified in this part*" [emphasis added]. That's it. There are no amendments to this section. So, what this is really telling you is that the "items specified in this part" of the Code (i.e., Part IX) are not deductible, period.

Except, of course, within certain other parameters. "This part" includes such items as personal, living, and family expenses [Sec. 262], capital expenditures [Sec. 263], losses between related taxpayers [Sec. 267], and the practitioner's favorite code section when it comes to examinations, entertainment and travel expenses [Sec. 274] and the business use of a home [Sec. 280A]. Many of our clients know that they cannot deduct their personal living expenses, but most of them think that they can deduct their entertainment expenses as long as they are business related.

What they don't understand—and what many practitioners are also not clear on—is that *travel and entertainment expenses are specifically not deductible* by their very placement within the code sections. If Congress had intended entertainment expenses to always be deductible except in certain cases, they would have placed this deduction under Part VI, Itemized Deductions for Individuals and Corporations, which encompasses Sections 161 through 199.

However, Section 274 reads in an entirely differently manner. The title of the code section alone tells you that you may be in trouble: "Disallowance of Certain Entertainment, etc., Expenses." Note that the title of the code section says "disallowance," not "allowance."

It gets worse. Let's break this down a little to clarify what the code section is saying. Section 274(a) states, in part:

"Entertainment, Amusement, or Recreation. (1) In General – No deduction…"

There's that word "no" again. So even though this section is already in a part of the Code that prohibits deductions, they are reemphasizing this by using the term "no deduction." And in the Code, two negatives do not make a positive.

"…otherwise allowable under this chapter…"

The chapter referred to here is Chapter 1, Normal Taxes and Surtaxes, which encompasses Sections 1 through 1400U. A breathtakingly large swath of the Code.

"…shall be allowed for any item – …"

Because you may not be concerned about any other chapter, to put it more clearly: "No deduction shall be allowed for any item…"

"…With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation…"

Here the section starts getting specific regarding which type of expense or activity is being disallowed.

"…unless the taxpayer establishes…"

This section of the sentence sets the burden of proof on the taxpayer. If the taxpayer wishes to claim the deduction, they need to prove it is deductible within the parameters of the code section. The IRS does not need to prove anything—the items specified have already been defined by the Code as not deductible.

"…that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that such item was associated with, the active conduct to the taxpayer's trade or business…"

And here is where the actual deduction is carved out of the general rule of not being deductible. If the entertainment, amusement, or recreation is directly related to business, or associated with a bona fide business discussion, it can be deductible. But again, the taxpayer must establish this. And what do they mean by a "trade or business?" Does that mean only a Sec. 162 activity, or can it include Sec. 212 activities or other activities? Further research may be needed.

Conclusion

A more thorough explanation of how to read the Internal Revenue Code could occupy a multiday workshop. However, I hope this article has provided at least a rudimentary knowledge on how to start reading the Code, and that future research of a code section will be less intimidating. As with many things, practice makes perfect, and shying away from reading the Code makes a practitioner reliant on other, possibly unreliable, sources that do not carry the weight of law. Even a moderate ability to read and effectively understand the Code can put you at a serious advantage in tax controversies. **EA**

About the Author

Carolyn Richardson, EA, has a BBA in accounting from the University of Hawaii-Manoa and an MBA in finance from Capella University. She has been in the tax field since 1984, starting at the IRS as a revenue agent. In 1990, she became a tax software developer for CCH, Inc. for both the service bureau and Prosystem *fx*, products. After leaving CCH in 2007, she worked for several Los Angeles CPA firms as a senior staff accountant, before joining TaxAudit.com as an audit representative in 2009. In 2011, she became the manager for the Education and Research Department, overseeing the development of continuing education programs and research of topics needed by the company's team members. She has a small tax practice doing individual returns and audit representation.

ENDNOTES

1. In investments, a "shotgun clause" usually refers to a buy-sell agreement whereby one shareholder or partner can offer to sell his shares to the other partners for a specific price, typically for some period of time such as 60 days. If the other shareholders do not purchase his shares, he then has the right to purchase their shares at the same price.
2. Alimony is listed in Sec. 61(a)(8) but is actually defined in Sec. 71.
3. And the winner is Subpart D, Business Related Credits, where Section 45 has additional letter designated sections up to Section 45R as new business credits are added.

Ethics Rules, Penalties, and the

Tax Preparer's Engagement Letter

Perhaps one of the most important, but also one of the most overlooked, parts of the 1040 U.S. Individual Income Tax Return is the section near the bottom of the second page that states:

"Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and accurately list all amounts and sources of income I received during the tax year. Declaration of the preparer (other than taxpayer) is based on all information of which preparer has any knowledge."

When the taxpayer and tax preparer sign the income tax return, they are both subject to potential penalties from the Internal Revenue Service (IRS). This article will highlight some of the ethics rules in the Internal Revenue Code (IRC), potential tax preparer penalties, and how an engagement letter can strengthen the ethical behavior of both the taxpayer and tax preparer.

By Anthony Santullo, EA

Ethics Rules, Penalties, and the Tax Preparer's Engagement Letter

IRC 6694 - Preparer penalty for the understatement of a taxpayer's liability

This penalty can only be assessed if the return understates the tax liability. One of two penalties can be charged depending on the behavior of the tax preparer (e.g., if the tax preparer takes an unreasonable position or engages in willful or reckless conduct):

1. The IRC 6694(a) penalty is the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to each return, amended return, or claim for refund prepared if there is an understatement on the return or claim due to an unreasonable position taken on the return or claim that the preparer knew or reasonably should have known about. A position is unreasonable if:
   - There was not substantial authority for the position and the position was not disclosed.
   - The position was disclosed but there was not reasonable basis for the position.
   - The position is with respect to a tax shelter or reportable transaction under IRC 6662A and it is not reasonable to believe the position will be more likely than not sustained on the merits.
2. The IRC 6694(b) penalty is the greater of $5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to returns, amended returns, and claims for refund prepared. The penalty may be imposed against a tax preparer if:
   - There is an understatement of liability, on a return or claim for refund prepared by the preparer, which is due to a willful attempt in any manner to understate the tax liability by the preparer.
   - The preparer has recklessly or intentionally disregarded rules or regulations.

The IRC 6694(b) penalty is reduced by the amount of the IRC 6694(a) penalty if both the IRC 6694(a) and (b) penalties are asserted against the preparer on the same return or claim.

An engagement letter can be a very effective document for strengthening the ethical behavior of both the taxpayer and tax preparer.

Because the IRC 6694(b) penalty involves willfulness, there is no statutory period for assessment of this penalty. On tax return preparer penalties asserted under section 6694(a), the three-year statute of limitations for assessment begins to run on the statutory due date of the return or, if filed late, the filing date of the return. The statute of limitations on assessment for the section 6694(a) penalty may be extended.[1]

IRC 6695 - Preparer penalty for other actions in respect to the preparation of tax returns

A tax return preparer may face a penalty of $50 for each occurrence (up to a maximum of $25,000 in a calendar year) of the following actions:

1. Failure to furnish a copy of the return to taxpayer no later than the time it is presented for the taxpayer's signature
2. Failure to sign the return
3. Failure to furnish a PTIN as an identifying number
4. Failure to retain a copy of the return or the taxpayer's name and identification number
5. Failure to file correct information returns with the name, taxpayer identification number and principal place of work of each tax return preparer employed by tax preparer's company.

The IRS may assess a penalty of $500 on the tax return preparer for each occurrence of the following actions:

1. Negotiation of a check issued to the taxpayer
2. Failure to be diligent in determining eligibility for Child Tax Credit, American Opportunity Tax Credit, and the Earned Income Credit.[2]

IRC 6713 - Preparer confidentiality civil penalty for disclosure or use of information

The IRS can assess a penalty of $250 on a tax return preparer for each occurrence (a maximum of $10,000 in a calendar year) of the following actions (if the action is neither knowing nor reckless):

1. Disclosure of any information furnished to a preparer for, or in connection with, the preparation of the return
2. Use of any information furnished to a preparer for any purpose other than to prepare, or assist in the preparation of the return.[3]

IRC 7216 - Preparer confidentiality criminal penalty for disclosure or use of information

A tax return preparer can be found guilty of a misdemeanor crime and assessed a penalty of not more than $1,000, or imprisoned not more than one year, or both, together with the costs of prosecution for knowingly or

recklessly performing one of the following actions:

1. Disclosure of any information furnished to a preparer for, or in connection with, the preparation of the return
2. Use of any information furnished to a preparer for any purpose other than to prepare, or assist in the preparation of the return.[4]

IRC 6700 - Preparer penalty for promoting abusive tax shelters

A penalty can be imposed on any person, including promoters, salesmen, and their assistants, for organizing and selling abusive tax shelters. The penalty is $1,000 per activity, or (if less) 100% of the gross income from each activity.[5]

IRC 6701 - Preparer penalty for aiding and abetting an understatement of tax liability

A penalty can be imposed on any person who:

- Aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other documents
- Knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws
- Knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

The penalty is $1,000 for every return that the tax preparer knew was claiming a false understatement of tax, but the penalty is limited to one imposition for each year involving a particular taxpayer.[6]

IRC 7206 – Preparer penalty for fraud and false statements

A penalty and criminal charges can be assessed for fraud and making false statements. A tax return preparer can be found guilty of a felony and fined not more than $100,000 ($500,000 in the case of a corporation), imprisonment of not more than three years, or both, together with the costs of prosecution.[7]

IRC 7207 – Preparer penalty for fraudulent returns, statements, or other documents

A penalty and criminal charges can be assessed for fraudulent returns, statements, or other documents. A tax return preparer can be found guilty of a misdemeanor and upon conviction face a fine of not more than $10,000 ($50,000 in the case of a corporation), imprisonment of not more than one year, or both.[8]

IRC 7525 - Preparer confidentiality privileges for taxpayer communications

The confidentiality protection of certain communications between a taxpayer and an attorney applies to similar communications between a taxpayer and any federally authorized tax preparer. The confidentiality protection applies to communications that would be considered privileged if they were between the taxpayer and an attorney and that relate to non-criminal:

- Tax matters before the IRS
- Tax proceedings brought in federal court by or against the United States.[9]

Engagement letters

An engagement letter can be a very effective document for strengthening the ethical behavior of both the taxpayer and tax preparer. An engagement letter will generally contain the following topics:

1. Year of tax return
2. Which returns - federal and state(s)
3. Client(s) – individual, joint, dependents
4. Preparation fee
5. Payment due date (on completion of preparation or payment terms)
6. Additional charges for services beyond the initial scope of the work
7. Provision for a retainer if applicable
8. Review of prior year return for a new client to understand what position(s) may have been taken in the previous year that may differ from the position(s) taken on the current year return.

Adding the following action items to the engagement letter will address the IRC items noted earlier:

1. All sources of income need to be disclosed with necessary documentation.
2. All deductions require proper validation.
3. All IRC 6695 requirements are satisfied.
4. All information provided to the tax preparer will not be disclosed to anyone or used for any other purpose.
5. There are no abusive tax shelters.
6. There are no practices of understating tax liability.
7. There are no fraudulent actions.
8. Taxpayer communications are confidential, as noted in IRC 7525.

If you don't already, consider using an engagement letter with your clients. When written properly, it can be a helpful tool and serve as a checklist to ensure that all the necessary questions were asked and documented when preparing the tax return. **EA**

About the Author

Anthony Santullo, EA, is the principal of Santullo Tax and Financial Planning Services in Berkeley Heights, New Jersey. He earned a bachelor's degree in economics from Princeton University and an MBA in finance from Seton Hall University. He is also a licensed life and health insurance professional in New Jersey. In addition to tax preparation experience, Anthony has over 30 years of experience in corporate financial planning, reporting, and analysis. He can be reached at santullot@aol.com.

ENDNOTES

1. IRC 6694
2. IRC 6695
3. IRC 6713
4. IRC 7216
5. IRC 6700
6. IRC 6701
7. IRC 7206
8. IRC 7207
9. IRC 7525

EXCESS DEPRECIATION CLAIMED:

AN ETHICAL DILEMMA

By John R. Dundon II, EA

I MET JUSTIN FUNDALINSKI of Jim Saulnier & Associates while volunteering time for the betterment of the Financial Planning Association. He asked a question that gave me pause. Tax questions that cause me to pause are the spice of life. His question was about a fascinating situation he encountered regarding depreciation and disposition of residential rental real estate.

So down the rabbit hole I went, thoroughly reviewing the Internal Revenue Code, the Internal Revenue Manual, and IRS Publication 527. Uncertain of my conviction, I also asked questions of other National Tax Practice Institute Fellows, even going so far as to obtain a covered opinion. In the end, the range of options worthy of consideration was astonishing.

If you are still with me, this is a synopsis of the fact pattern.

The Depreciation Dilemma

In 1976, a U.S. taxpayer, who we'll call Ms. Independent-Widow, bought a home in the elite Washington Park neighborhood of Denver, Colorado. In 1977, Mr. Middle-Aged-Man swooped onto the scene and swept Independent-Widow off her feet. Before long, he whisked her off to the mountains to share common quarters, never marrying.

Ms. Independent-Widow rented out her house in Washington Park starting in 1977. She always prepared, signed, and filed her own income tax forms. Even though she claimed depreciation expenses on the residential rental real estate every year since acquisition, she failed to keep a adequate record of her basis in the property. In addition:

- At a certain point, when Independent-Widow started using TurboTax, her depreciation method switched from ACRS to MACRS.
- As a result, her depreciation claims were wildly inaccurate year over year.
- The property should have been fully depreciated by 2005, as life expectancy for depreciation purposes of residential rental real estate is 27.5 years.

How this happened, only tried and true DIY-ers can really answer.

"Uncertain, I polled other Fellows of the National Tax Practice Institute in the hopes of arriving at a consensus opinion. Instead, I got a range of opinions deemed #buzzworthy."

TurboTax—in my humble opinion—is woefully inadequate for taxpayers who own real estate for investment purposes.

Moving on … in 2015, the taxpayer sold the property on an installment sale and hired Justin to prepare her tax returns. In an effort to report the installment sale in accordance with U.S. Treasury Circular 230, where the gross profit ratio should factor in the amount of depreciation that Independent-Widow should have claimed, Justin suspected the claimed depreciation expenses year over year were in violation of 26 U.S. Code Sec. 167 for tax years 2006–2014.

After questioning Independent-Widow, it became clear that she had claimed far too many depreciation expenses over the depreciable life of the investment (27.5 years). Now it appears Independent-Widow has a negative basis in her Washington Park real estate investment. The exact accumulated depreciation is both unknown and indeterminable due to the expunging of records.

Now, on to Justin's questions:

1. What does someone do when they mistakenly claimed too much depreciation on a rental property after the property has been sold?
2. How is an installment sale disposition transaction reported for income tax purposes in tax year 2015?

There appears to be little precedent for this fact pattern, so my initial guess was that IRS Form 3115 – Accounting Method Change may be needed, relevant to residential rental real estate reported on Schedule E, attached to the owner's 1040, and an adjustment made as per IRC 481(a).

Polling The Experts

Uncertain, I polled other Fellows of the National Tax Practice Institute in the hopes of arriving at a consensus opinion. Instead, I got a range of opinions deemed #buzzworthy. The most aggressive opinion came from the National Association of Tax Professionals:

> *"Although this topic is not explicitly stated in IRC, nor are there any court cases one way or the other, generally when an asset is over-depreciated it is due to error in calculation. Therefore, upon disposition of the property, the taxpayer should report the gain (or loss) on sale of building as they have it calculated. There isn't a need to go back and amend returns or report a 481(a) adjustment in year of sale because this generally stems from a miscalculation or error."*

A majority of the other respondents interested in the question generally agreed that:

- Adjustments to depreciation should "in theory" occur with Form 3115 and be filed with the 2015 tax return.
- As a tax practitioner, Justin really cannot address the years he doesn't "know" about.
- All tax records prior to 2005 are nonexistent, including those purged from the IRS.

EXCESS DEPRECIATION CLAIMED: AN ETHICAL DILEMMA

How is Justin to report on the 2015 1040 form? I believe Justin should consider:

- Disclosing to Independent-Widow in written detail that the Washington Park property was over-depreciated.
- Relying on the "allowed or allowable" depreciation claim in the year of sale and adjust the basis to $0.
- Reporting the installment sale in 2015, asserting that all the proceeds are taxable as either ordinary income, capital gain, and/or interest.
- Disclosing an uncertain tax position regarding depreciation with the tax return, letting the chips fall where they may with the IRS.

Considering the gain is all basically unrecaptured gain, gross profit percentage on the installment sale is 100 percent.

However—take this at face value.

An IRS Opinion

When I laid out the fact pattern for one of my friends inside the IRS, it became abundantly clear that from their perspective, a Form 3115 filing requirement with a positive 481(a) adjustment is in order and that the positive adjustment may be added to income for reporting purposes proportionally over the next four years.

The problem with this position is that the IRS concedes that you have to know the total amount of depreciation taken over the life of the property to correctly make the calculations. However, there is no way of accurately determining total depreciation claimed as no tax records exist anywhere prior to 2005, not even inside the IRS.

EAs Weigh In

Conservative enrolled agents believed that an obligation exists to help the taxpayer essentially "guess" what depreciation he or she claimed between 1977 and 2004, prepare the 3115 Form accordingly, and claim the 481(a) positive adjustment over the next four tax years to lighten the income tax burden.

Less conservative enrolled agents basically shrugged their shoulders, hung their heads, and said it appears Independent-Widow got away with over-depreciating her property.

In conclusion, how taxpayers report this real estate transaction for income tax purposes seems to be between them and their god. How you advise them is another question altogether.

When matters get complicated like this, the best course of action comes through a strict adherence to U.S. Treasury Circular 230. As students and purveyors of the U.S. Tax Code while navigating the shoals of particularly trying times, we have a duty now more than ever to rely on the Code, Regulations, and Procedures, even in the face of vacated records inside the IRS. EA

About the Author

John R. Dundon II, EA, is president of Taxpayer Advocacy Services, Inc. He is also an NTPI Fellow and Certifying Acceptance Agent in the IRS ITIN Programming Office. John has been in private practice for 14 years, taking on some of the most challenging preparation and representation files. He also writes a tax blog at www.JohnRDundon.com about issues and experiences associated with being an enrolled agent. He currently serves on the NAEA Public Relations Committee and previously served on the NAEA Marketing Committee. John has been an officer of the Colorado State Affiliate in one capacity or another from 2008 through 2016. He can be reached at John@JohnRDundon.com.

LEARN TO LEAD AT SSLA

By Jerry Gaddis, EA

Are great leaders born or made? This question has been debated for generations. In my opinion, the answer is a resounding, "both."

Some people do seem to have an innate something that makes others gravitate toward them and follow their lead. Yet leadership is also a skill that can be studied, practiced, and developed over time. Imagine what kind of leader you would be today if you had been taking 30 hours of leadership education every year during your career, rather than that pesky tax law CPE!

One of the benefits of NAEA membership is the opportunity to improve your leadership skills by attending the Schuldiner/Smollan Leadership Academy (SSLA). Founded in 2011 and funded by a generous gift from the late Sydney Schuldiner, NAEA's founder and first president, SSLA helps members develop their leadership skills and strengthen our organization at the local, state, and national levels. To date, 190 members from 35 states have graduated from SSLA, and the reviews have been excellent.

Outstanding Instructors, Top-notch Curriculum

What can you expect from the Leadership Academy? Outstanding instructors, for starters, including NAEA past presidents Lonnie Gary, EA, USTCP, and Terry Durkin, EA, MBA, and CSEA past president Raven Deerwater, EA, PhD. These instructors bring a wealth of leadership experience and a unique knowledge of NAEA to the classroom in an intimate, hands-on setting. Interacting with these outstanding leaders is one of the highest rated parts of the SSLA experience.

The SSLA curriculum is also well-regarded. Its two-tier approach combines individual leadership training with information about NAEA's history, structure, and culture. Are you ready to explore strategies for working effectively with different personalities and communication styles? Could you use some new tools to help you plan and execute effective meetings? Are you struggling to define your organization's purpose, procedures, and bylaws? If so, the leadership academy has something for you.

A Chance To Serve Alongside New Colleagues

One important part of the SSLA is a service project, chosen by each participant, to better their local chapter or affiliate. Projects often overlap, giving classmates the opportunity to work together and add value to their organizations. I was fortunate enough to attend SSLA Class V, where I worked with one of my classmates to create a member survey. We used the results to create a three-year strategic plan that guided the organization through his term as affiliate president.

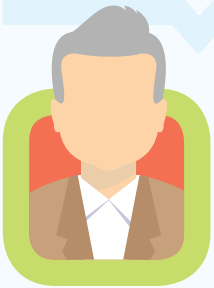
By all accounts, NAEA's leadership academy is a great experience and a great benefit for our members. According to NAEA President Jim Adelman, "SSLA is one of the most important programs ever commenced in NAEA. Other than advancing our profession, the recruiting and training of our future leaders should be and is one of our highest priorities." So what are you waiting for? If you are looking for ways to develop your leadership skills and get more involved in your association, consider signing up for SSLA. Registration for Class XII will be open soon, and you can get more information at www.naea.org. EA

About the Author and Postscript

Jerry Gaddis, EA, MBA, is Founder/CEO of Tropical Tax Solutions, a full-service firm headquartered in the Florida Keys. He became an Enrolled Agent in 2009 and is a proud member of SSLA Class V. You can reach him on LinkedIn and Twitter (@TropicalTax).

No SSLA story would be complete without acknowledging the efforts of the First Lady of SSLA, Sherrill L. (Gregory) Trovato, MBA, MST, EA, USTCP. Mrs. Trovato was NAEA's president during the founding of SSLA and worked tirelessly to create and teach the original curriculum for many years. SSLA would not be the same without her contributions, and those of us who were fortunate to learn from her are better leaders today. Thank you, Sherrill, for your service.

The material that NAEA has put together to train its future leaders is great. The academy is led by past presidents of NAEA with a wealth of knowledge at all levels of the organization. But the most valuable thing for me was the opportunity to get to know other leaders from around the country, make connections that I could draw on when I needed help, and forge relationships that will last a lifetime.



Timothy Dilworth EA, CPA
NAEA Treasurer 2016–2019
Class V

SSLA is an essential step for those who are interested in becoming effective leaders of NAEA and its affiliates. Not only do participants explore theoretical concepts regarding leadership styles, but they also come away with practical information regarding meeting operations.

Angela Radic, EA,
NAEA Secretary
Class VIII

SSLA gave me many tools that I was able to take back to my affiliate and put to excellent use. I also learned many things that continue to help me in managing my own clients and tax practice. The course content and the instructors were great—and the collEAgues I got to know were grEAter!

Phyllis Jo Kubey, EA,
Class IX

THE TAX PREPARATION ISSUES TRACK

KEEPING YOU ON YOUR TAX TOES

By Paula J. Posas, PhD

Did you know that even if you are not looking for representation education specifically, the NAEA National Conference has something for you? It's the Tax Preparation Issues Track! You can attend the conference and reap abundant benefits just as those who participate in the National Tax Practice Institute™ (NTPI®) do, including earning 24 hours of IRS-approved continuing education credits!

TAX PREPARATION ISSUES CLASSES AND INSTRUCTORS

Class	Credits	Instructor
Preparing Form 1040	2 CE	Frank Degen, EA, USTCP
Death and Taxes	2 CE	John R. Dundon II, EA
International Information Returns for the US Taxpayer	2 CE	Steven Walker, JD
Real Estate Professionals	2 CE	John R. Dundon II, EA
280-E Marijuana Tax Prep Issues	4 CE	John Sheeley, EA
Ethics for the Tax Preparer	2 CE	John R. Dundon II, EA
Shared Economy	2 CE	Lisa Ihm, EA
Foreign Workers	2 CE	John Sheeley, EA
Repair Regulations	2 CE	Lisa Ihm, EA
Group Discussion - Hot Topics	2 CE	John Sheeley, EA
AMT	2 CE	Lisa Ihm, EA

The track is taught by some of the nation's best and most engaging instructors and is beneficial to any aspiring Circular 230 practitioner, new EAs, and EAs with decades of tax preparation experience. The track's classes help you grow your business in terms of number of clients or in terms of sophistication of cases at a higher fee. For either one, enhancing tax knowledge is helpful and necessary. Enter the NAEA National Conference Tax Preparation Issues Track! Bill Nemeth, EA, Chair of the Tax Preparation Committee, says that the track "provides a mechanism for all tax professionals to increase their preparation skills to broaden their business modelsand command higher fees for more complex returns."

Longtime EAs call this track one of the conference's best kept secrets and go back to it year after year, always learning something new and applicable to their practices and work. Jeff Gentner, EA, and NTPI Fellow, attends because "I walk away with new information … that makes me a better return preparer." Last but not least, participants eagerly look forward to the opportunity the track provides to meet and network with other dedicated tax professionals from across the country.

The Tax Preparation Issues track subject matter changes every year. The topics come from feedback in the previous year's evaluations, current trends, and timely and challenging material that will keep you on your tax toes! See you at the conference and Tax Preparation Issues track, July 31-August 3, 2017!

To learn more about the Tax Preparation Issues Track, visit www.naea.org or contact Bill Nemeth, EA, Chair of the Tax Preparation Committee (wgnemeth@aol.com) or the Education Department (education@naea.org). EA

About the Author

Paula J. Posas, PhD, is communications manager at the National Association of Enrolled Agents. She is responsible for curating and editing content for print and digital publications, including the bimonthly *EA Journal*, the weekly *E@lert* e-newsletter, and the NAEA website. She is the Educating America Task Force staff liaison and acts as the point of contact for internal and external content contributions. She works closely with other members of the Marketing, Communications, and Public Relations team, NAEA members, and other staff on strategic communication initiatives. Paula has previously had communications roles in academic, non-governmental, and international development bank contexts. She holds BA, MS, and PhD degrees from Duke University, the University of Florida, and the University of Liverpool.

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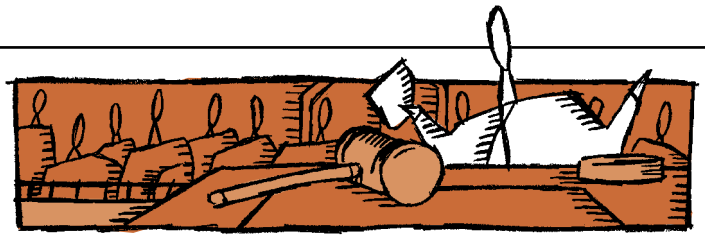


TAX COURT CORNER

Is the United States Tax Court a Court of Equity?

Grisel A. Smyth, Petitioner
v.
Commissioner of Internal Revenue, Respondent
T.C. Memo. 2017-29
Filed February 7, 2017

By Steven R. Diamond, CPA

Under the United States Constitution, the U.S. Tax Court is an Article I court. This means that the powers of the Tax Court are more restricted than those of courts that are granted power under Article III of the Constitution. When Congress created the Tax Court, it did not grant it general or specific equitable powers. Furthermore, the Supreme Court has stated that the Tax Court lacks equitable power. This is a problem, particularly in light of the fact that the Tax Court hears well over 90 percent of litigated federal tax cases.

FACTS

Grisel Smyth (petitioner) provided a home and care for her two young grandchildren. She claimed them as dependents on her 2012 tax return and requested a refund of $5,300, which was made up of $2,900 for taxes plus $2,400 in refundable credits.

Petitioner is a certified nursing assistant living in El Paso, Texas. In 2012, petitioner's adult son, his wife, and two grandchildren, ages 2 and 4, lived with petitioner in her home. Petitioner had a higher adjusted gross income than either her son or his wife. In 2012 she was the sole income earner. Her son did not work and was dealing drugs, while his wife stayed home to take care of the children.

Petitioner filed her 2012 tax return and claimed the two children as her dependents. However, in February 2014, she received a notice of deficiency that disallowed the children as "qualified dependents." IRS proposed a tax deficiency of $5,000 plus a $1,000 penalty (IRS eventually dropped the effort to assess the penalty before trial). Initially, petitioner thought she was a victim of identity theft, but then realized that her son and his wife claimed the dependency exemption for the children. Her son eventually prepared an amended 2012 tax return that deleted his claim that the children were his dependents and even wrote an affidavit in support of his mother's right to claim the exemptions.

OPINION

IRC Sec. 151(c) authorizes a taxpayer to deduct an exemption for each individual who is a dependent of the taxpayer for the taxable year. IRC Sec. 152(a) defines a dependent as a qualifying child or qualifying relative of the taxpayer. Among other statutory requirements, a qualifying dependent must have the same principal place of abode as the taxpayer for more than half the year. This was the only statutory requirement the parties did not agree on as it related to a qualifying dependent.

The A taxpayer with a child (or with children) may claim the benefits of claiming exemptions, child tax credits, and earned income credits if the child (or children) is considered a "qualifying child." To be a "qualifying child," the child must:

- Bear a certain relationship to the taxpayer
- Share a home with the taxpayer for more than half a year

About the Author

Steven R. Diamond, CPA, owns a tax practice in Westport, Connecticut. His practice is limited to compliance issues and representation before the IRS. He has an MSM 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.

- Be less than 19 years old
- Not provide more than half his support, and
- Not file a joint tax return.

The parties agreed that the children were "qualifying children" of petitioner. The Code, however, lets only one person claim "qualifying child" each tax year. In this case, the children were also the "qualifying children" of petitioner's son and wife.

In this case, the Code has tie-breaking rules. If the same children are the "qualifying children" of both their parent(s) and someone else, then only the parent(s) can claim the children. However, if the children's parents do not claim them, the other person may claim them if the other person has a higher adjusted gross income than either parent. However, the Commissioner argued that the exception did not apply because the children's parents claimed the exemption on their 2012 tax return.

Petitioner argued that the IRS was wrong because the son and wife never filed an original 2012 tax return and that in any event, they amended the return before trial and released any claim they had for claiming the children as dependents.

The Tax Court found little evidence supporting the petitioner's contention that her son and his wife did not file an original 2012 tax return. Petitioner testified that she didn't know her son and wife had filed their own tax return claiming the children as dependents. She also testified that she would never have claimed the children as dependents if she thought her son and his wife had claimed them. While the Tax Court found her testimony to be honest and made in good faith, it was not enough to prove that her son didn't say one thing and do something else.

The Tax Court noted that the IRS has a program that automatically flags returns for further investigation if it notices that more than one taxpayer has claimed the same "qualifying child." Therefore, because the IRS chose petitioner's return for review, it was highly likely that her son and wife had already filed an original 2012 tax return in which they claimed the children as dependents. Petitioner also testified that her son admitted that he filed a return in order to get the refund for his drug purchases and then prepared an

amended return to correct his previous filing. This information supported the Tax Court's finding that petitioner's son and wife filed an original 2012 tax return.

As to the amended tax return, there was a question as to whether it was ever filed. The Code states that a taxpayer must file her tax return in the internal revenue district where she resides or at the service center for that district. Any amended returns also have to be filed with the correct service center.

There was no dispute that petitioner's son and wife prepared an amended tax return for 2012. Petitioner testified that the return was filed by having their return preparer deliver it to the Commissioner's counsel. However, the Tax Court noted that in another case it was determined that hand delivery of a return to counsel does not constitute the filing of that return. This was a problem for the petitioner in this case. The Commissioner's counsel is neither the service center nor a person the IRS has assigned to receive tax returns for the local IRS office.

Therefore, the Tax Court had to find that the amended return was not properly filed and cannot be the basis for a claim that petitioner's son and wife had given up their right to claim the children as dependents. That meant that under the tie-breaking rules, petitioner's son and wife, and not petitioner, got to claim the children. Since the children were neither the "qualifying children" of petitioner nor her "qualifying relatives," the Tax Court had to conclude that petitioner did not get the dependency exemption for the children.

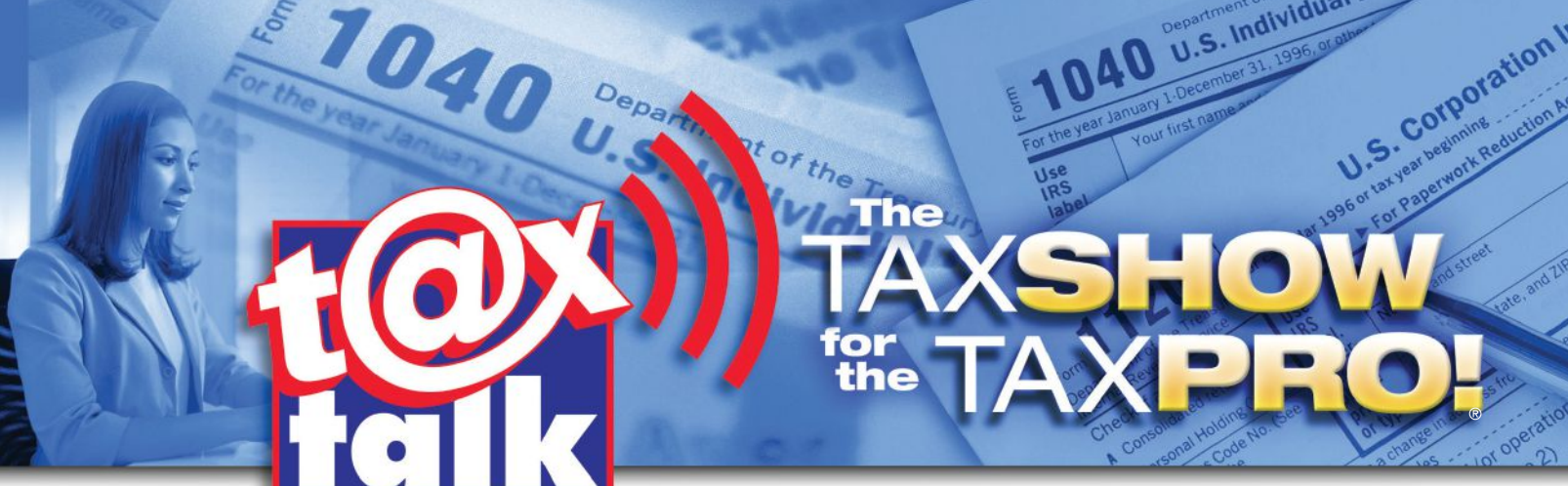
As petitioner was not entitled to the dependency exemption for the children, she would only be eligible for the earned income credit if her adjusted gross income were below a certain amount for a single taxpayer without any "qualifying children." In 2012, her adjusted gross income exceeded that amount and therefore she was not eligible to claim the earned income credit. Furthermore, the child tax credit is only allowed if a taxpayer is entitled to a dependency exemption of a child under the age of 17. Since petitioner didn't qualify for the dependency exemption, she was also not entitled to the child tax credit.

In conclusion, the Tax Court stated that they were sympathetic to petitioner's position. She provided all the financial support for the children, her son told her to claim the exemptions for the children, yet she got stuck with the tax bill. The Tax Court said that it was hard for them to explain why a hardworking taxpayer like petitioner should end up with this result, other than that the Court is bound by the law. The Tax Court also noted that it was impossible for them to convince themselves that the result they reached—that the IRS was right to not send the money to a person who cared for small children but rather to someone who spent it on drugs instead—was just in any way. However, the theory of justice requires a judge to follow the law but explain his decision in writing so that those responsible for changing the law may notice. EA

ENDNOTES

This case is a memorandum decision. Memorandum decisions deal with either "fact" cases or cases involving well-settled legal issues. Memorandum decisions may be cited as precedent in briefs and legal memoranda, although they tend to be less authoritative than regular opinions.

1. IRC Sec. 6511, 6512
2. IRC Sec. 152(c)
3. IRC Sec. 152 (c)(4)(A)
4. IRC Sec. 152 (c)(4)(C)
5. IRC Sec. 6091
6. *Quarterman v. Commissioner*, T.C. Memo 2014-241.



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JUNE

Tuesday, June 13, 2017
2:00 - 3:50 PM ET

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2 Hours of CPE Credit

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2017 CALL FOR AWARDS

DEADLINE FOR NOMINATIONS: JUNE 2, 2017

WHAT WOULD WE DO WITHOUT wonderful volunteers who give so generously of their time? Do you know someone who is active in the EA community and should be recognized for their outstanding contributions? How about someone who tirelessly sacrifices their time to enhance the enrolled agent profession?

Each year, NAEA recognizes the achievements of its members and volunteers through its awards program. The Awards Committee needs you to nominate individuals who have demonstrated their commitment to improving our profession. The process to nominate someone is simple! Fill out the form on p. 33, or visit www.naea.org/awards to download a form. We will honor the award winners on August 2, during the National Conference in Las Vegas. The deadline to submit nominations is June 2, 2017, so do not delay!

The following awards highlight the commitment of those who generously give their time through public awareness, education, and advocacy.

NAEA FOUNDERS AWARD

PURPOSE The Founders Award is the Association's highest recognition bestowed on a member. This once-in-a-lifetime achievement award recognizes significant leadership and contributions of an enrolled agent who contributes to the growth and progress of the Association.

ELIGIBILITY NAEA member of at least three years and in good standing—except for a posthumous nomination in which the requirements would have been met at the time of the nominee's demise. Member should be someone who contributed significantly to the development and growth of NAEA, must be or have been active on the national level, and should have been active on the state affiliate or chapter level. All nominations are for the current year only. Whether or not a person is compensated for the activity to be recognized will not be a consideration.

NAEA EXCELLENCE IN EDUCATION AWARD

PURPOSE The Excellence in Education Award recognizes those who demonstrate significant leadership ability and contributions having immediate or long-term impact on the NAEA education program.

ELIGIBILITY Current NAEA member in good standing within the Association or any non-EA who meets the criteria as follows: The immediate or long-term contributions could be made through, but not limited to, teaching, writing, development, service for an NAEA education program, or other activity. Whether or not a person is compensated for the activity will not be a consideration. Posthumous nominations are permissible.

EXCELLENCE IN PUBLIC AWARENESS AWARD

PURPOSE The Excellence in Public Awareness Award is given to members who make "enrolled agent" and "EA" more readily recognized nationally, regionally, or locally as America's tax experts.

ELIGIBILITY NAEA member in good standing within the Association or any non-EA who meets the criteria as follows: The immediate or long-term contributions could be made through, but not limited to, teaching, writing, development, service for an NAEA education program, or other activity. Whether or not a person is compensated for the activity will not be a consideration. Posthumous nominations are permissible.

EA MENTOR AWARD

PURPOSE To recognize significant contributions having immediate and/or long-term impact on the growth of the enrolled agent profession in general and the growth of the membership of NAEA in particular.

ELIGIBILITY Limited to an individual who is a current member in good standing with the Association. Posthumous nominations are permissible. The nominee is an individual who has contributed significantly to the promotion of the enrolled agent profession and to the increase in the membership of NAEA. The contribution will be made by an individual dedicated to the causes of enrolled agents, and who instills excitement for those causes by leading, encouraging, and nurturing those who follow. Whether or not a person is compensated for the activity to be recognized will not be a consideration.

OUTSTANDING VOLUNTEER AWARD

PURPOSE The Outstanding Volunteer Award recognizes enrolled agents who tirelessly assist at the chapter, affiliate, or national level.

ELIGIBILITY Nominee is limited to a member who either at the local, state, or national level has made an outstanding contribution to the chapter, affiliate, or NAEA during the year, or who has made significant contributions over a lifetime of service. The individual must be a current member in good standing with the Association and must have, through his or her volunteer efforts, demonstrated the value of their volunteer efforts at any or all levels of participation, be it local, state, or national. A person compensated for his or her efforts, such as a paid speaker, paid staff, or paid volunteer, would not be eligible. Posthumous nominations are permissible.

OUTSTANDING SUPPORTER OF EAs AWARD

PURPOSE The Outstanding Supporter of EAs Award recognizes non-NAEA organizations and those individuals who are not enrolled agents who make "enrolled agent" and "EA" more readily recognized nationally, regionally, or locally as the tax professional of choice.

ELIGIBILITY Nominations are limited to non-NAEA organizations and to those individuals who are not enrolled agents. Posthumous nominations are permissible. Nominee should be an organization or individual who has contributed significantly in the area of public awareness, having immediate or long-term impact on the heightened public recognition of enrolled agents, or NAEA, its affiliates, chapters of its affiliates, or an NAEA education program. The contribution could be made through, but not limited to, public or media appearances, public awareness administration, serving on an NAEA committee, teaching, writing, development, service with a public agency, or other activity. Whether or not a person is compensated for the activity to be recognized will not be a consideration. Employees of NAEA or any state affiliate are ineligible to receive the Outstanding Supporter of EAs Award.

BILL PAYNE ADVOCACY AWARD

PURPOSE In July 2010, William D. "Bill" Payne, EA, passed away. The Bill Payne Advocacy Award was created in recognition of Bill's generous donation of his time and effort to the Association throughout the years and his unswerving dedication to protecting the rights of EAs before Congress. This annual award recognizes an NAEA member who best exemplifies Mr. Payne's commitment to advocacy on behalf of enrolled agents.

ELIGIBILITY Nominee is limited to an NAEA member who best exemplifies Mr. Payne's commitment to advocacy on behalf of enrolled agents, whether at the local, state, or national level. Posthumous nominations are permissible.

NAEA 2017 AWARD NOMINATION FORM

The NAEA Awards Program is a great way to recognize fellow enrolled agents. If there is somebody you know who deserves to be honored, be sure to submit your nomination by filling out the following form or by visiting us online at www.naea.org/awards.

NOMINEE'S NAME: _____

PERSON SUBMITTING NOMINATION: _____

DATE: _____

NOMINATION FOR:

- ☐ Founders Award
- ☐ Excellence in Public Awareness Award
- ☐ EA Mentor Award
- ☐ Outstanding Volunteer Award
- ☐ Bill Payne Advocacy Award
- ☐ Excellence in Education Award
- ☐ Outstanding Supporter of EAs Award
- ☐ Emerging Leader Award

In 500 words or less on a separate page, state how the nominee exemplifies the award category for which he/she is nominated. Identify and be specific about the short- and long-term impact of the nominee's contributions.

Submit your nomination no later than 5 p.m. ET June 2, 2017, to Kimberly Muse at kmuse@naea.org or fax to 202-822-6270 Attn: K. Muse.

Only one nomination per form please. Awardees are eligible to win one award per year, and nominations are accepted from members and associates.

THE NAEA BOARD OF DIRECTORS 2018-2019 GOVERNANCE YEAR

MAKE A DIFFERENCE IN YOUR ASSOCIATION! NAEA is accepting nominations for its 2018–2019 Board of Directors. By serving in a leadership capacity in the one professional association dedicated solely to enrolled agents, you can make a positive impact on your profession.

NAEA board members are responsible for strategic thinking, planning, and evaluation. They set the direction of the Association. Previous board members report significant professional and personal growth from the board. Serving on the board is interesting, sometimes challenging, and often fun—it can change you for the better!

If you are willing and able to contribute your time, energy, and good ideas to help NAEA advance the enrolled agent profession, or if you know someone who would be an asset to NAEA in a leadership position, please fill out the form below and return it to NAEA by **June 11, 2017**. Take this opportunity to give back to the profession you love!

I WOULD LIKE TO NOMINATE

Nominee's Name: _____

For the office of:

☐ President-Elect ☐ Director

Nominator's Name: _____

Please note: Nominees for an officer position must have previously served at least one year on the Board.

Mail, fax, or e-mail this form to:
NAEA Nominating Committee
1730 Rhode Island Ave, NW, Ste 400
Washington, DC 20036
E-mail: nominations@naea.org
Fax: 202.822.6270 Attn: Nominations

NAEA NATIONAL ASSOCIATION OF ENROLLED AGENTS — POWERING AMERICA'S TAX EXPERTS®

PRESIDENTIAL CALL TO ANNUAL MEETING

To Members of the National Association of Enrolled Agents

This is your official invitation to the 2017 Annual Meeting, scheduled for 5:15 p.m. on Tuesday, August 1, 2017, at The Cosmopolitan of Las Vegas. The NAEA Annual Meeting gives all members the opportunity to participate in the discussion about the strategic direction of the Association and the future priorities for NAEA. All members are encouraged to attend the meeting and share their ideas, concerns, and experiences with the leaders of NAEA and fellow members. If you believe there is an issue that should be discussed during the meeting, please contact me or Executive Vice President Cedric Calhoun, CAE, FASAE. The agenda for the meeting is in the right-hand column of this page.

Members are also invited to attend the NTPI graduation and NAEA awards ceremonies that will be held on Wednesday evening, August 2, 2017, and the NAEA Board of Directors meeting held on Thursday, August 3, 2017. I hope you are able to attend, and I look forward to seeing you there.

James R. Adelman, EA
NAEA President

45TH ANNUAL MEETING AGENDA

Tuesday, August 1, 2017
5:15 PM–7:00 PM

- Call to Order
- Pledge of Allegiance
- Approval of the 2016 Annual Meeting Minutes
- President's Remarks
- New Business
- Good of the Order

NAEA NATIONAL ASSOCIATION OF ENROLLED AGENTS — POWERING AMERICA'S TAX EXPERTS®

Invest in Your Career by Attending the

2017 NAEA **National Conference**

JULY 31 – AUGUST 3

"Well-coordinated, on time, outstanding instructors and content – my first and surely not my last. Always attended IRS forums in Las Vegas – will now do NAEA. Programs are much better run…sessions are excellent for covering the topics in full…cannot say how delighted I was!" "As a CPA who specializes in tax, I'm required to complete plenty of continuing education each year, but nothing I've attended has been anywhere near as valuable as the National Tax Practice Institute. The information covered was exactly what I needed – the course was challenging, but I enjoyed it immensely." "All instructors were helpful and provided good information and tools to use in practice." "Enjoyed entire conference. Worth every penny! Thank you!"

We hear the feedback year after year, and expect this year's conference at The Cosmopolitan of Las Vegas, July 31-August 3, to be another success! On the fence if you should join us in Vegas or not? Here's why you can't afford to miss this investment opportunity for your career!

National Tax Practice Institute™

The National Tax Practice Institute™ (NTPI®) offers attendees – EAs, CPAs, and tax attorneys – the opportunity to earn up to 24 IRS-approved CE credits in NTPI Levels 1, 2, 3, Graduate Level in Representation or Tax Preparation Issues.

Photographs courtesy of Sammy Vassilev

Level 1, the first step in becoming an NTPI Fellow™, provides the basics of representation – an introduction to non-filers, communications with the IRS, engagement letters, collections, audits and appeals, as well as how to deal with criminal investigations.

Noted as the favorite level from most conference attendees, Level 2 centers around interactive case studies which keeps participants on their toes as they work through real-life proceedings. There is an additional $55 workshop fee for Level 2 to offset the cost of the printed workbook, enhanced A/V and the increased number of instructors, which allows for a 9:1 student-teacher ratio.

Level 3 is the final level required to receive the prestigious designation of NTPI Fellow. This level explores: an advanced study of examinations, appeals, and criminal investigation; bankruptcy and statutes of limitation; and also offers students a hands-on learning experience on offers in compromise with a workshop. Once you've completed Levels 1, 2, and 3 – in order – you will be presented with your certificate of fellowship during the graduation ceremony held on the last day of the conference! After the ceremony, celebrate your achievement with your graduating class and network with other tax professionals…you never know who may send you referrals in the future!

Graduate Level in Representation and Tax Preparation Issues

Already an NTPI Fellow and wondering what's next for you in your education? The Graduate Level in Representation offers Fellows and other advanced Circular 230 practitioners a unique curriculum of topical and highly complex representations courses. The NTPI Committee makes sure the material is fresh every year, so this is a course many attendees return to annually. This year's stellar lineup is the following:

- **Current IRS Enforcement Priorities** Steven Walker, JD
- **Advanced Federal Tax Liens** Robert E. McKenzie, EA, JD
- **Tax Research for the Representative** Kevin C. Huston, EA, USTCP & Thomas A. Gorczynski, EA, USTCP
- **Community Property and Collections** Travis Greaves, JD

- **Rules and Doctrines in Tax Court** Frank Degen, EA, USTCP
- **Advanced Ethical Issues in Representation** Claudia A. Hill, EA
- **I Have a Client Who…** Howard Levy, JD
- **Advanced Offers in Compromise** Travis Greaves, JD
- **LLC Collections** Clarice Landreth, EA
- **Identity Theft** Jo-Ann Weiner, EA

For those interested in learning how to resolve tricky tax issues, Tax Preparation Issues is the track for you! This three-day course offers solutions on how to handle difficult tax prep issues that may come your way. Attendees can look forward to a variety of topics covered in this track:

- **Preparing Form 1040** Frank Degen, EA, USTCP
- **Death and Taxes** John R. Dundon II, EA
- **International Information Returns for the US Taxpayer** Steven Walker, JD
- **Real Estate Professionals** John R. Dundon II, EA
- **280-E Marijuana Tax Prep Issues** John Sheeley, EA
- **Ethics for the Tax Preparer** John R. Dundon II, EA
- **Shared Economy** Lisa Ihm, EA
- **Foreign Workers** John Sheeley, EA
- **Repair Regulations** Lisa Ihm, EA
- **Group Discussion - Hot Topics** John Sheeley, EA
- **AMT** Lisa Ihm, EA

NTPI Fellows

You may be wondering why you should become an NTPI Fellow. This prestigious designation is the highest education achievement in representation and illustrates that you are fully qualified to represent your clients before the IRS. In addition to Fellows proudly advertising their status in their marketing materials, your achievement will be displayed on your NAEA online profile page and your name will be listed on our NTPI Fellows page on naea.org (located under the Education tab). Taxpayers searching for an enrolled agent to manage their taxes may search for an NTPI Fellow on NAEA's "Find an EA Directory."

Event Highlights

This year's plenary is a can't miss event. United States Tax Court Judge Mark Holmes will present, commenting on the function of the Tax Court, the role representatives play in effective tax administration, and the importance of tax professionals who provide expert advice to their clients, both business and personal.

Judge Holmes earned a B.A. from Harvard College and a J.D. from the University of Chicago Law School. After graduating from law school, Holmes clerked for Judge Alex Kozinski on the Ninth Circuit; worked for Cahill Gordon & Reindel, Sullivan & Cromwell, and Miller & Chevalier; served as Counsel to the Chairman of the United

COMMITTEE MEMBERS RESPONSIBLE FOR NAEA'S 2017 NATIONAL CONFERENCE

While NAEA's board of directors has oversight over all NAEA activities and programs, the following committees have worked tirelessly to ensure that NAEA's educational programming meets the needs of members. Education is more than simply meeting a number of CE hours—it is the groundwork necessary for enrolled agents to excel and maintain their tax expertise.

EDUCATION COMMITTEE CHAIR

Alan Pinck, EA (Chair)

NTPI PLANNING COMMITTEE

Melinda Bossard, EA, USTCP (Co-chair)
Clayton Brown, EA, USTCP (Co-chair)
Tom Gorczynski, EA, USTCP
Clarice Landreth, EA
Karen Summerhays, EA, USTCP
Ricardo Rivas, EA
Linda Ward, EA

TAX EDUCATION COMMITTEE

Bill Nemeth, EA (Chair)
Jennifer Brown, EA
Catherine Bostock-Hudy, EA
Rose Fulton, EA

NATIONAL CONFERENCE SPEAKERS AND DISCUSSION LEADERS

NAEA is extremely fortunate to have top-notch speakers participating in the National Conference. The following is an alphabetical listing of instructors and discussion leaders as of April 1, 2017.

Aaron Blau, EA, CPA
Melinda Bossard, EA, USTCP
LG Brooks, EA
Clayton Brown, EA, USTCP
Salvatore P. Candela, EA
Catherine A. Clow, EA
Frank Degen, EA, USTCP
Joseph Dimino, EA
Marc Dombrowski, EA
John R. Dundon II, EA
Thomas A. Gorczynski, EA, USTCP
Travis Greaves, JD
Bert Hartmann, EA
Claudia A. Hill, EA
Kevin C. Huston, EA, USTCP
Lisa Ihm, EA
Jake Johnstun, EA
Amy King, EA
Clarice Landreth, EA
Howard Levy, JD
Robert E. McKenzie, EA, JD
Alan Pinck, EA
Ricardo V Rivas, EA
John Sheeley, EA
Craig Smith, EA, USTCP
Karen M. Summerhays, EA, USTCP
Steven Walker, JD
Jo-Ann Weiner, EA
Aaron B. Whitaker Jr, EA
Lorraine Zistler, EA, CPA

States International Trade Commission; and spent two years as a Deputy Assistant Attorney General for the United States Department of Justice's Tax Division. He was appointed by President George W. Bush to be a United States Tax Court Judge on June 30, 2003, for a term ending June 29, 2018. He is known for writing colorful, engaging opinions on tax matters.

NAEA's annual members meeting will be held Tuesday, August 1 from 5:15 to 7:00 p.m. All NAEA members are encouraged to attend and participate in discussions on the association's governance, strategic direction and future priorities. Join us and help shape the future of your association!

Congratulate the newest class of NTPI Fellows during the graduation ceremony on Wednesday, August 2 from 5:30 to 7:00 p.m. NAEA will also recognize exceptional members who have demonstrated leadership and vision during this time. The graduation and awards presentation will be followed by a brief reception – another great opportunity to network!

The NAEA Board of Directors will meet at 8:30 a.m. on Thursday, August 3. NAEA members in good standing are invited to attend and may address the board during a designated segment.

Scholarships are Available!

The NAEA Education Foundation offers scholarships for the national conference. Scholarship applications are due by **Thursday, June 1, 2017**. Any applications received after June 1 will not be accepted. Attendees selected to receive a scholarship will be notified by June 27. If you would like to register for the conference ahead of time, you are welcome to do so; if you are chosen as a scholarship recipient, your registration fee will be refunded. Please note that you are only eligible to receive one scholarship per year. A separate application period will be held in the late summer for NTPI ORL.

Hotel Information

All events will take place at the luxurious Cosmopolitan of Las Vegas. To make a reservation, call 855-435-0005 and make sure to mention group code **SNMNN7** to receive the discount! You may also make your hotel reservation by visiting https://resweb.passkey.com/go/SNMNN7

The room rate is $164 single or double occupancy, plus 13% tax for program participants. A mandatory resort fee of $10 per night will be charged and includes internet access throughout the property, domestic long-distance, fitness center and tennis court access.

Reservations must be made by Wednesday, July 5, 2017, or until the availability in the room block is exhausted. A deposit of the first night room rate and tax will be charged to your credit card immediately. If you need to cancel, please do so 48 hours prior to arrival for a full refund of the first night room and tax. Reservations canceled within 48 hours of arrival are subject to a penalty of the first night room and tax.

Questions?

If you have any questions about the national conference, please contact the Education Department (education@naea.org).

APPROVED CONTINUING EDUCATION PROVIDER

IRS Continuing Education Credits
NAEA is recognized and approved by the Internal Revenue Service Return Preparer Office (RPO) as an approved continuing education provider.

NASBA Statement
National Association of Enrolled Agents 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. (Sponsor #108268)

NAEA
NATIONAL CONFERENCE
LAS VEGAS 2017

REGISTRATION FORM

JULY 31–AUGUST 3, 2017
THE COSMOPOLITAN OF LAS VEGAS
WWW.NAEA.ORG

Register early and save $150!

PERSONAL INFORMATION

Your name badge will reflect the information included on this registration form, so please print clearly.

☐ Check here if you have any disability that requires a special accommodation to fully participate. **Please attach a statement of your needs.**

NAME _____ **NICKNAME (FOR BADGE)** _____

P ___ ___ ___ ___ ___ ___ ___ ___ PTIN Please include your PTIN so your CE can be reported to the IRS.

☐ Member ☐ Non-Member NAEA ID# _____ ☐ EA ☐ CPA ☐ JD ☐ USTCP ☐ CFP ☐ OTHER _____

ORGANIZATION _____

ADDRESS _____

CITY _____ **STATE** _____ **ZIP** _____

PHONE _____ **FAX** _____ **EMAIL** _____

COURSE SELECTION OPTIONS

The National Tax Practice Institute™ (NTPI®) is only open to enrolled agents, CPAs and tax attorneys. If your interest is to become an NTPI Fellow, taking the levels in order is imperative.

NTPI Level 1	MON-WED	24 CE
NTPI Level 2*	MON-WED	24 CE
NTPI Level 3	MON-WED	24 CE
Graduate Level in Representation ±	MON-WED	24 CE
Tax Preparation Issues ±	MON-WED	24 CE
A La Carte (Graduate and Tax Prep only) ±		

*** Noted as the favorite level of attendees, Level 2 centers around real-life cases worked in small groups, each led by an instructor. There is an additional $55 workshop fee for Level 2 to offset the cost of the printed workbook, enhanced A/V and the large number of instructors.**

± A La Carte Registration is available for the Graduate Level in Representation and Tax Preparation Issues Track only. 16 CE are required and registration must be completed online. Levels 1, 2, and 3 are only available only as a complete, pre-set track.

IRS Program numbers are available at NAEA.org.

REGISTER EARLY & SAVE!

Early Bird: Postmarked or received on or by Wednesday, July 5, 2017.
Regular: Postmarked or received on or after Thursday, July 6, 2017.

Member (Early Bird) $795
Member (Regular) $945
Non-Member (Early Bird) $955
Non-Member (Regular) $1,235

*Additional $55 workshop fee for Level 2

TOTAL DUE: _____

PAYMENT

☐ Check included payable to NAEA
☐ MC ☐ VISA ☐ AMEX

CARD NUMBER _____

EXP. DATE _____

CARDHOLDER'S NAME (AS IT APPEARS ON CARD) _____

SIGNATURE _____

DATE _____

REGISTER BY:
Fax, mail, or at www.naea.org

Return completed registration form and payment to:

1730 Rhode Island Ave. NW, Suite 400
Washington, DC 20036
Fax: 202.822.6270

All registrants will receive a confirmation e-mail.

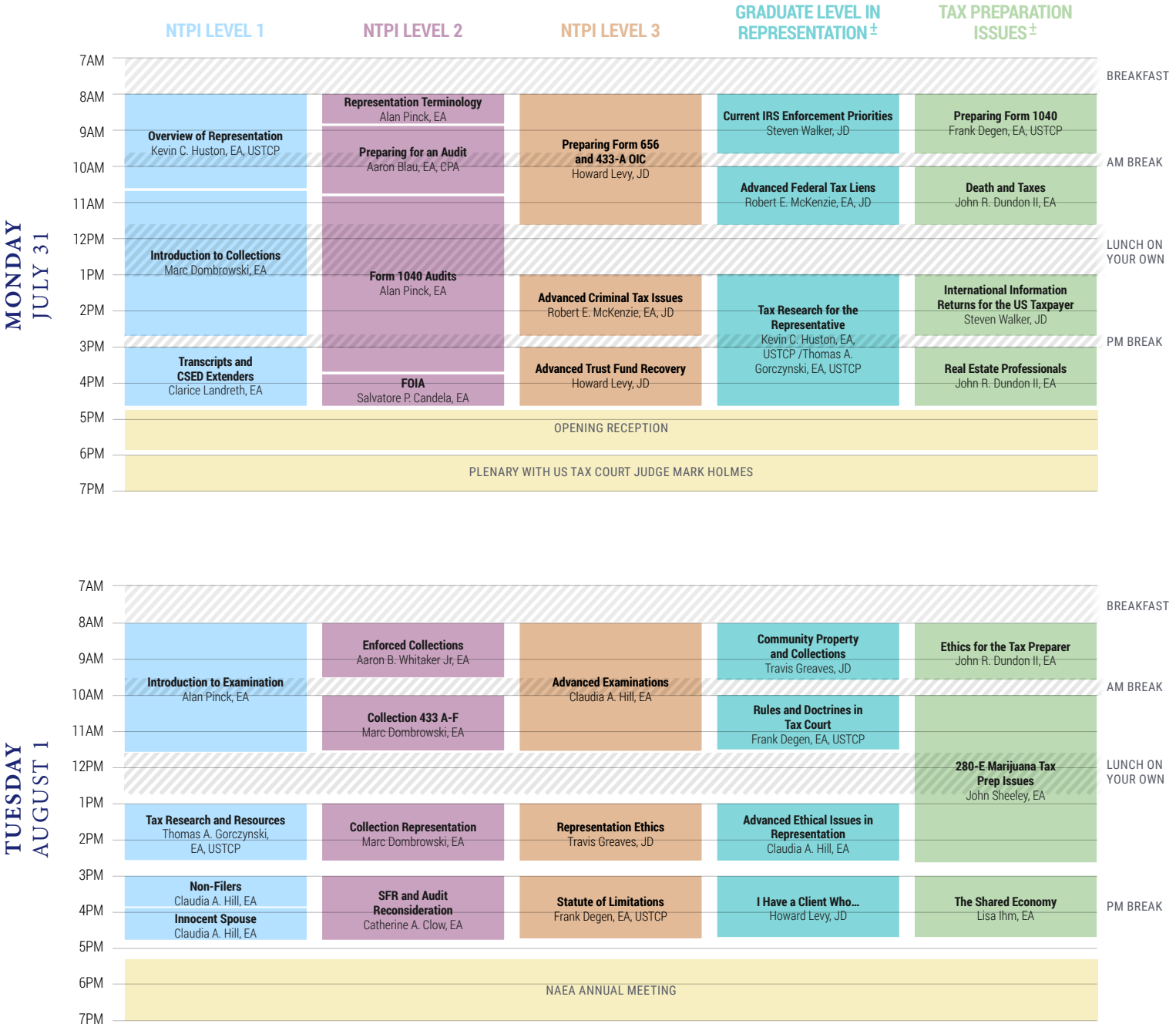
Contact NAEA at education@naea.org or 855.880.6232 with any concerns.

See cancellation policy below.

CANCELLATION POLICY

Requests for refunds must be received in writing by July 1, 2017 and will be subject to a $75 administrative fee. No refunds will be granted after July 2, 2017.

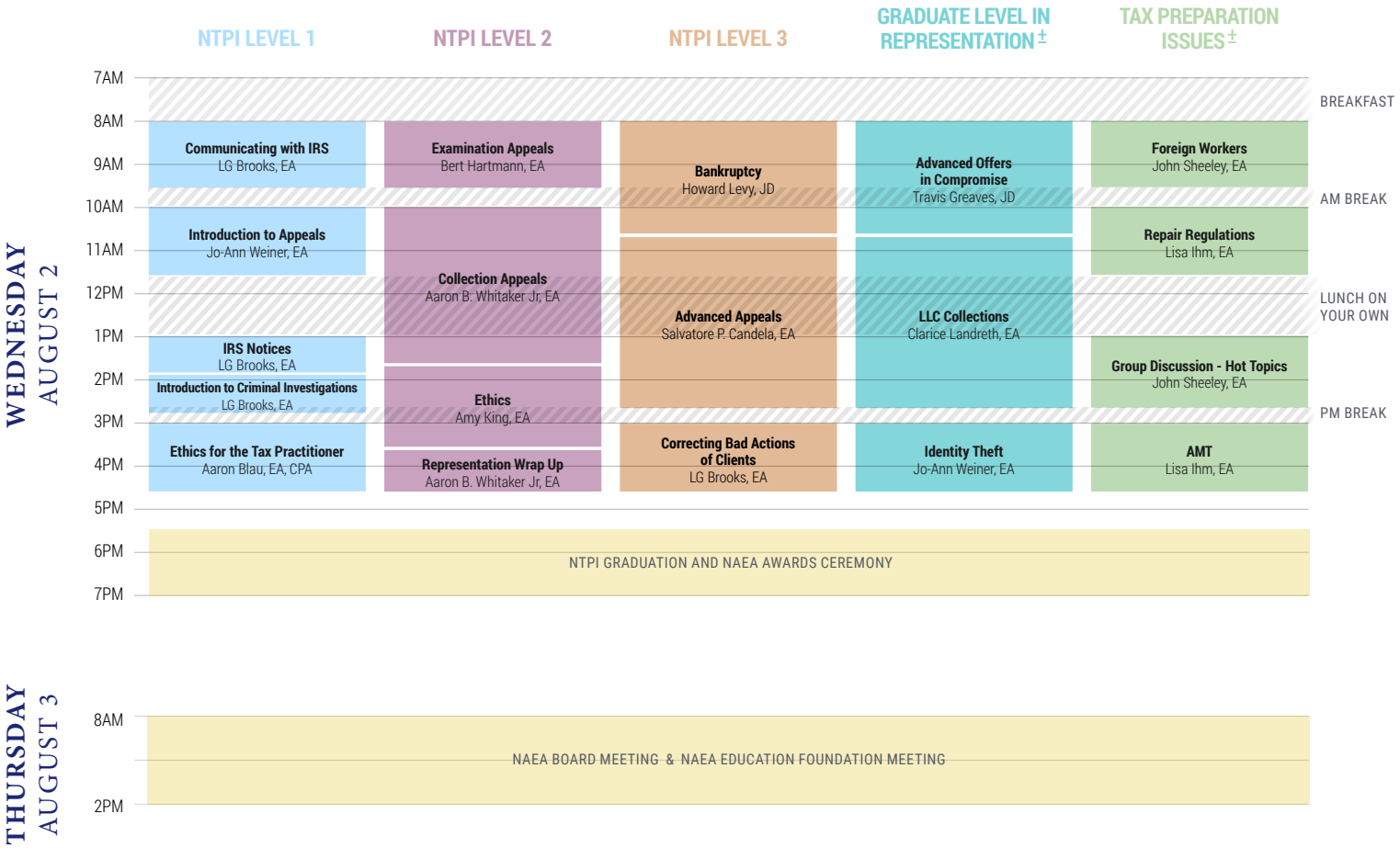
NAEA
NATIONAL CONFERENCE
LAS VEGAS 2017



NAEA
NATIONAL ASSOCIATION OF ENROLLED AGENTS
POWERING AMERICA'S TAX EXPERTS®

SCHEDULE OF EVENTS

JULY 31–AUGUST 3, 2017
THE COSMOPOLITAN OF LAS VEGAS
WWW.NAEA.ORG



REGISTRATION NOTES

Prerequisites: Only enrolled agents, CPAs, and tax attorneys may register for National Tax Practice Institute™ (NTPI®) Levels 1, 2, 3, or the Graduate Level in Representation. Completion of Levels 1, 2 and 3 (in order) are required to become an NTPI Fellow™. Registration for Levels 2 and 3 requires the successful completion of the prior level. The Graduate Level in Representation is designed for NTPI Fellows and other highly experienced practitioners.

± A La Carte Registration: This year, NAEA is pleased to offer à la carte registration for the Graduate Level in Representation and Tax Preparation Issues Track only. Registration of a minimum of 16 CEs are required in order to pick and choose the classes that best suit you. Please note: Levels 1, 2 and 3 are available only as a complete, pre-set track.

Daily Schedule: Classes will be held daily from 8 AM- 4:40 PM. Continental breakfast will be available daily from 7-8 AM. A morning and afternoon break will be provided from 9:40-10 AM and 2:40-3 PM. In addition, the conference will break for lunch (on your own) from 11:40 AM-1 PM daily.

APPROVED CONTINUING EDUCATION PROVIDER

Two-Hour Online Home CE Test

May/June CE Test
IRS Program Number: X9QQU-E-00437-17-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 20 questions.

ETHICS RULES, PENALTIES, AND THE ENGAGEMENT LETTER

1. IRC 6694 assesses penalties for the understatement of a taxpayer's liability. Which of the following statements is correct?

A. The penalty for an understatement due to an unreasonable position taken that the preparer knew or reasonably should have known about is the lesser of $1,000 or 50 percent of the income derived by the preparer.

B. A position is unreasonable if there is substantial authority for the position and the position was disclosed.

C. The penalty for an understatement due to reckless or intentional disregard of the rules or regulations is the greater of $5,000 or 50 percent of the income derived by the preparer.

D. The penalties are added together if the understatement is a result of both taking an unreasonable position and reckless or intentional disregard of the rules or regulations.

2. Which of the following is NOT a $50 penalty under IRC 6695?

A. Negotiation of a check issued to the taxpayer.

B. Failure to furnish a copy of the return to the taxpayer no later than the time it is presented for the taxpayer's signature.

C. Failure to sign the return.

D. Failure to furnish a PTIN as an identifying number.

3. Which of the following statements is correct regarding the civil penalty for disclosure or use of information under IRC 6713?

A. The penalty is $500 for each occurrence (up to a maximum of $10,000 in a calendar year).

B. The penalty is civil and not criminal if the action is not reckless.

C. The preparer can be imprisoned.

D. The preparer has to both disclose confidential information and use information for any purpose other than to prepare a return to be assessed this penalty.

4. Which of the following is not true about the criminal penalty for disclosure or use of information under IRC 7216?
A. The monetary penalty is not more than $1,000.
B. The criminal penalty is imprisonment for not more than one year.
C. The preparer can be found guilty of a felony crime.
D. Both the monetary and criminal penalties can be assessed as well as the costs of prosecution.

5. Which of the following statements is correct regarding the penalty for promoting abusive tax shelters?
A. The penalty is $2,500 per activity.
B. The penalty is 100 percent of the gross income from each activity.
C. The penalty is $1,000 per activity plus 50 percent of the gross income from each activity.
D. The penalty is $1,000 per activity, or (if less) 100 percent of the gross income from each activity.

6. Which of the following is not a criterion for being assessed a penalty for aiding and abetting an understatement of tax liability under IRC 6701?
A. The person aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other such document.
B. The person knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws.
C. The person knows that such portion (if so used) would result in an understatement of the liability for tax of another person.
D. The person notifies the Internal Revenue Service that a fraudulent return is being filed and omits his PTIN number when he signs the return.

7. A preparer can be penalized for fraud and false statements under IRC 7206. Which of the following is not a true statement?
A. The preparer can be found guilty of a felony.
B. The monetary fine cannot exceed $100,000 ($500,000 in the case of a corporation).
C. The prison sentence cannot exceed two years.
D. The preparer can be assessed a monetary penalty and sentenced to prison.

8. Which of the following statements is correct regarding the penalty for fraudulent returns, statements, or other documents under IRC 7207?
A. The penalty is a felony.
B. The monetary fine can be in excess of $10,000 ($50,000 in the case of a corporation).
C. Then prison sentence must exceed one year.
D. The preparer can be assessed a monetary penalty and sentenced to prison.

9. IRC 7525 outlines preparer confidentiality privileges for taxpayer communications. The confidentiality protection applies to communications that would be considered privileged if they were between the taxpayer and an attorney and that they relate to criminal tax matters before the IRS.
A. True
B. False

10. If the IRC 6694 penalty for understatement of a taxpayer's liability involves willful or reckless conduct, there is no statutory period for assessment of this penalty.
A. True
B. False

INTERNAL REVENUE CODE

11. Amendments to Code sections can include which of the following?
A. Changes in the wording of the Code
B. Provisions that have been repealed
C. Extensions to the code section's provisions
D. All of the above

12. The common meaning of the word "permanent" is "intended to last or remain unchanged indefinitely." Code sections that are made "permanent":
A. Will never change again, ever
B. Are permanent until Congress changes them again
C. Rarely change again, but might be changed a little
D. Can only be changed by executive order

EXCESS DEPRECIATION CLAIMED: AN ETHICAL DILEMMA

13. What IRS Form must be included to report an accounting method change?
A. 1040
B. 3115
C. 1099
D. 3116

14. An uncertain tax disclosure is appropriate for this tax return.
A. True
B. False

15. It is appropriate under U.S. Treasury Circular 230 to guess accumulated depreciation.
A. True
B. False

TAX COURT CORNER

16. As an Article I court, the U.S. Tax Court is granted constitutional authority to use equitable relief when reaching a decision.
A. True
B. False

17. Petitioner testified at trial that:
A. She did not believed that her son and his wife filed their own 2012 tax return and that she would never have claimed the children as dependents if she thought her son and his wife had done so.
B. She needed the exemption for the children so she could generate a refund on her tax return and use the proceeds to purchase Powerball lottery tickets.
C. Her son and his wife filed their amended 2012 tax return with the IRS service center that serviced the El Paso, Texas area.
D. She felt she was entitled to claim the earned income credit even if she was not entitled to the dependency exemption for the children.

18. The Internal Revenue Code clearly states that tax returns must be filed in the internal revenue district in which a taxpayer resides or at the service center for that district.
A. True
B. False

19. If two or more taxpayers claim a dependency exemption for the same child:
A. The tie-breaker rules state that the exemption goes to the taxpayer with the higher taxable income.
B. The tie-breaker rules require the taxpayers to flip a coin before a local magistrate to determine who gets the exemption.
C. The tie-breaker rules require that if the parents do not claim the exemption, the person ultimately entitled to claim the dependency exemption must take a solemn oath to use the money for the children.
D. If the same children are the "qualifying children" of both their parents and someone else, then only the parents can claim the children. However, if the children's parents do not claim them, the other person may claim them if the other person has a higher adjusted gross income than either parent.

20. The Tax Court felt that:
A. Their decision was just and equitable.
B. Their decision was groundbreaking and would probably make the judge who wrote the opinion a candidate for becoming a justice on the Supreme Court.
C. Their decision was made because the Court was bound by the law.
D. Their decision was made because they hoped this would justify them not following the law when they felt it was inequitable.

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