



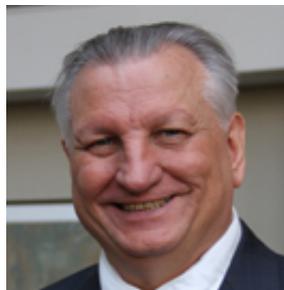
Tax Prep National Averages: NSA's Latest Fee Study Results Released

How Do Your Fees Compare?

Tax Consequences of
Distributions from S Corporations

The Annual Tax Meeting is Dead

PRESIDENT'S MESSAGE



HOW DO YOUR FEES COMPARE? JUST PUBLISHED: NSA'S 2016-2017 INCOME AND FEES OF ACCOUNTANTS AND TAX PREPARERS IN PUBLIC PRACTICE SURVEY REPORT

\$273

Itemized 1040 with
Schedule A & State Return

THE ANNUAL TAX MEETING IS DEAD



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PRESIDENT'S MESSAGE



Alfred Giovetti, CPA, ABA,
ATA, ARA,
NSA President, 2016-2017

Since the NSA Annual Meeting in Tampa, Florida, NSA's committees have been busy and are holding monthly meetings. Thanks to all who have volunteered their time to serve their fellow members. A few committee highlights:

- Steve Haworth and the Right to Practice Committee are busy reviewing laws and regulations in all jurisdictions. At the request of Rep. Kevin Brady, chair of the House Ways and Means Committee, our Federal Tax Committee will review the GOP tax reform proposal developed by Brady and provide comments to the committee from our perspective as small business owners and tax professionals.
- Sue Robertson and the Leadership Development Committee are working on the Leadership Development Program, the Leadership Networking Conference and the ASO Reporter newsletter for affiliates.
- Harlan Rose and the Membership Committee are exploring ways to enhance NSA's member benefits help members make the most of their membership. One such benefit is the NSA fee study.
- The new [2016-2017 Income and Fees Survey Report](#) is now available. It is an invaluable tool that our members can download and use to compare firms, fees and services across the country.
- Roy Frick, Kathy Hammer, and the Education Committee are working on educational programming and seminars including the 2017 Annual Meeting in Reno next August, a full slate of webinars for next year and the NSA Enrolled Agent Review course. NSA held a successful Gear Up 1040 seminar at the Mohegan Sun Resort in Connecticut, November 10-11.
- Mary Lemons and the Governance Committee are updating NSA's Administrative Policies and are developing a new awards program for NSA members and staff who have gone above and beyond.
- Bill Silzer and the Long Range Planning Committee have started charting the NSA course for years to come.

As always, the NSA staff is busy working with leadership and the committees to pursue a more integrated and efficient future of NSA.

NSA Executive Vice President, John Ams and I attended the National Association of State Boards of Accountancy (NASBA) 109th Annual Meeting in Austin, TX. We discussed with NASBA leadership several areas where NASBA, the Accreditation Council for Accountancy and Taxation (ACAT), and NSA may be able to work cooperatively for the good of all our members, one of which was the NASBA Center for the Public Trust (CPT), which promotes ethics for accountants. The CPT works with accounting honor societies and students of accounting to raise student ethical awareness. NSA committees are currently exploring a partnership with CPT to work together for mutual benefit.

As you know and we can see from the fee study, the cost of running a business keeps going up and as a result, so do tax preparation fees. NSA's operating expenses have been going up as well. We have been very fortunate to hold NSA dues at \$199 since 2010. That's seven years without an increase. In 2017, NSA dues will be increasing. More detailed information is on [this](#) page. You can renew your NSA membership at any time and lock in the current rate for up to three years.

Finally, should you wish to get involved with the committees, please let me know. We have room and tasks enough to go around for leaders in most every committee.

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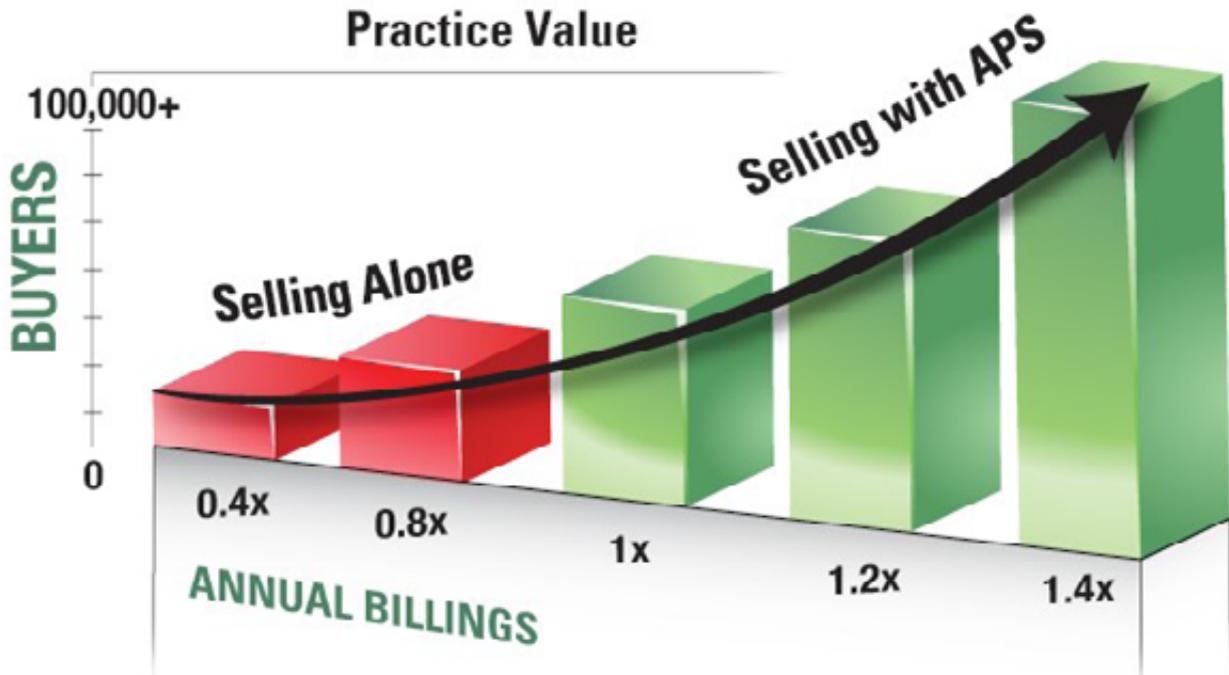
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Tax Prep Fees National Averages



No Itemized Deductions?

\$273

Itemized 1040 with
Schedule A & State Return

\$176

Form 1040 & State Return

\$457

Itemized 1040 with
Schedule C Business
Income & State Return

How Do Your Fees Compare? Just Published: NSA's 2016-2017 Income and Fees of Accountants and Tax Preparers in Public Practice Survey Report

NSA Survey of Accountants and Tax Preparers Includes Fees for Tax Preparation, Accounting, Advisory, Audits, Financial and Other Services by Practice Demographics, National, Regional and State Averages.

The 2016-2017 Income & Fees Survey contains detailed information on fees charged for tax and accounting services, broken down by state, geographic region and practice size. Demographic data on the respondents describes type of practice, community size, gender, credentials, years in practice, and education level. Operating expenses broken down by category are included in addition to information on succession planning, billing practices, practice management and more.

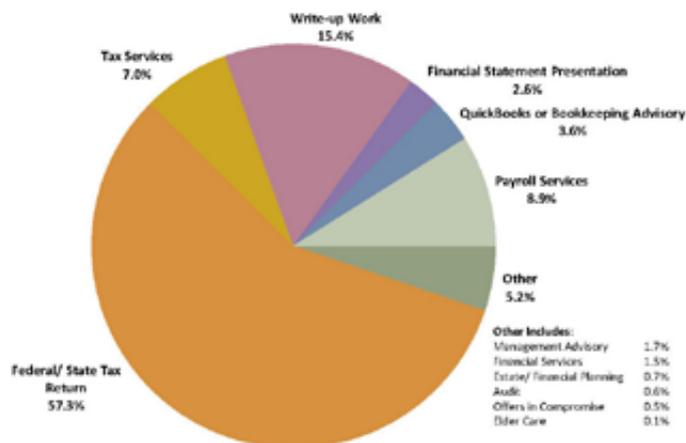
National Overview: The Practice

Tax and accounting firms surveyed are owners, principals and partners of "Main Street" tax and accounting practices who have an average of 28 years in public practice and hold multiple credentials.

The average annual gross income reported decreased to \$269,461 from \$285,605 two years ago. More than 64% of gross income is derived from tax preparation, planning and related tax services which is up from prior years. Most other client services as a percentage of gross income remain consistent to prior years with the exception of write-up work decreasing almost 2% and payroll services increasing a percent.

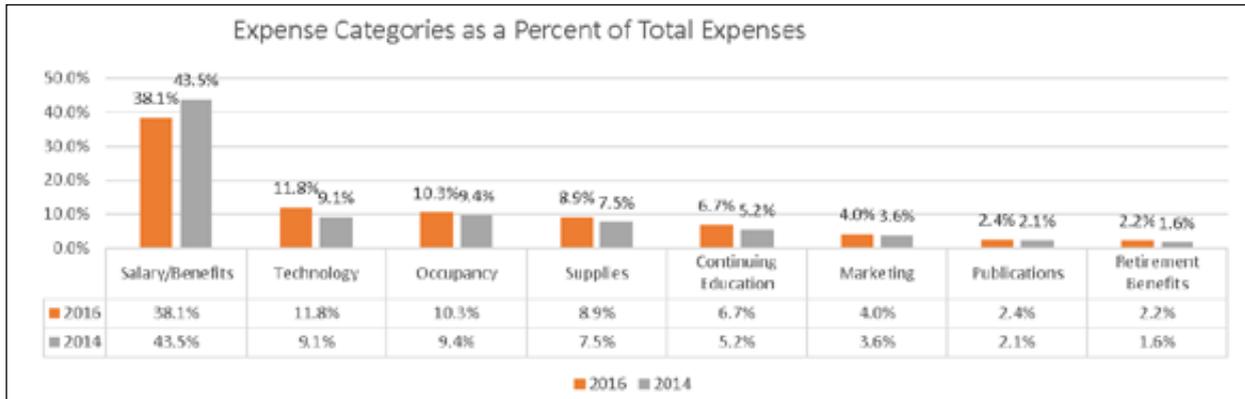
In correlation to the gross income decrease, salary and benefit expenses (other than retirement) also decreased to an average of 38.1% down from 43.5% of total operating expenses. The average number of employees reported is down to 3.5 from 4.2, however practices are now hiring

Client Services as a Percent of Gross Income



Continued on the following page

more seasonal employees up to an average of 3.2 from 2.3. The average gross income per full time employee in a practice has increased to \$100,212.



Most other specific operating expenses as a percentage of total expenses have slight increases, most notably, allocation for technology expenses is up 2.1%.

National Average Fees

Average Fees for Federal Tax Returns by Form

Form 706 (Estates)	\$1,563
Form 709 (Gift Tax)	\$413
Form 940 (Federal Unemployment)	\$69
Form 941 (Employer's Quarterly Return)	\$91
Form 943 (Employer's Quarterly for Farms)	\$89
Form 990 (Exempt Organization)	\$733
Form 990-T (UBI for Tax Exempt Orgs.)	\$415
Form 1040 (Itemized-Schedule A & State Return)	\$273
Form 1040 (Not Itemized & State return)	\$176
Form 1041 (Fiduciary)	\$482
Form 1065 (Partnership)	\$656
Form 1120 (Corporation)	\$826
Form 1120S (S Corp.)	\$809
Form 3115 (Application of Change in Accounting Method)	\$282
Form 5500 (Pension/Profit Sharing Plans)	\$532
Form 8824 (Like-Kind Exchanges)	\$242
Schedules:	
Schedule C (Business)	\$184
Schedule D/Form 8949 (Gains & Losses)	\$124
Schedule E (Rental)	\$135
Schedule F (Farm)	\$180

The average fee for an itemized 1040 and state return remains unchanged from 2014, holding at \$273. The cost to prepare a Form 1040 and state return without itemized deductions increased to \$176 from \$159. This year, for the first time, we asked practitioners how much they charge for Affordable Care Act forms, Form 3115 (Application in Change in Accounting Method) and Form 8824 (Like-Kind Exchanges).

On average, preparers said they raise all fees annually and increased tax preparation fees 6% in 2016 and plan to raise fees an average of 6.4% in 2017.

NATIONAL AVERAGE FEES FOR ACA FORMS

Form 8962 (Premium Tax Credit Calculation)	\$59
Form 8965 (Health Coverage Exemptions)	\$53
Form 1095-A (Health Insurance Marketplace Statement)	\$58
Shared Responsibility Payment Calculation	\$57

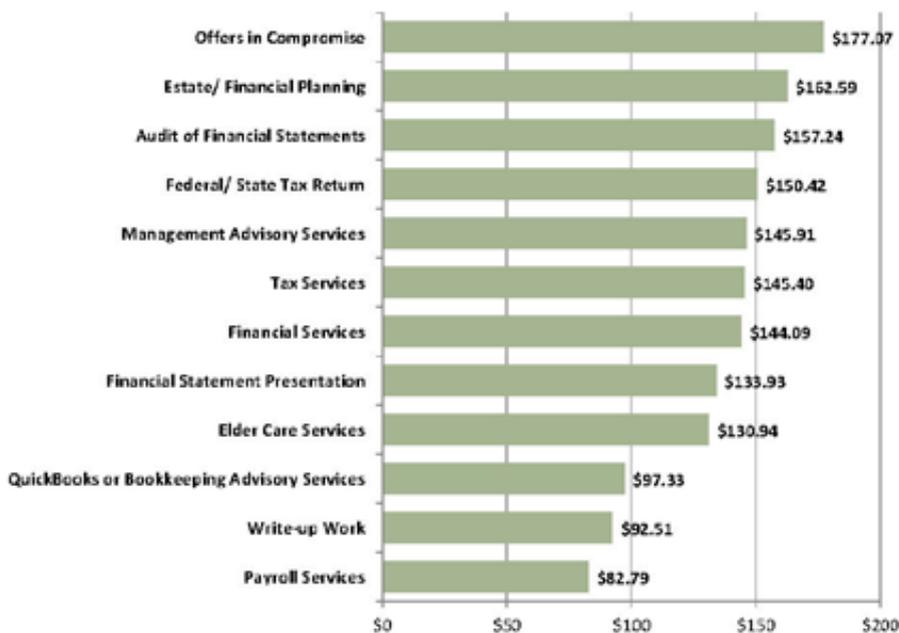
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Fees vary by region, firm size, population and economic strength of an area. The average tax preparation fee for an itemized Form 1040 with Schedule A and a state return in each U.S. census district are:

- New England (CT, ME, MA, NH, RI, VT) – \$333
- Middle Atlantic (NJ, NY, PA) – \$290
- South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) – \$268
- East South Central (AL, KY, MS, TN) – \$210
- West South Central (AR, LA, OK, TX) – \$271
- East North Central (IL, IN, MI, OH, WI) – \$249
- West North Central (IA, KS, MN, MO, NE, ND, SD) – \$214
- Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) – \$263
- Pacific (AK, CA, HI, OR, WA) – \$329

A typical firm bills for tax preparation by form (39.5%). Accounting, payroll and other services are billed by fixed fees or hourly rates.

Average Hourly Fees



Fees vary sharply by state.

Most preparers (89%) continue to offer prospective clients a free consultation. While most do not charge a fee to file extensions (67%), those who do, collect an average of \$45. More and more practitioners are adding on fees for procrastinating clients and to expedite returns. The majority of practitioners (71%) continue to tack on to shoebox clients an average fee of \$116.74 for time spent on disorganized or incomplete files.

Continued on the following page

Additional Fees for Federal Tax Returns		
Additional Fee:	% Yes	Average Fee
To file extensions	33.0%	\$44.92
To expedite returns	24.2%	\$84.50
If receive tax information after set deadline	21.8%	\$78.64
For disorganized/ incomplete files	71.0%	\$116.74

Audits

The majority of those surveyed (58.3%) have not seen any change in the number of audits. The average hourly fee for an in-person IRS audit is \$150 and the average fee for an IRS audit response letter is \$128. Only 8.8% of preparers never charge for an audit response letter. Sixty-two percent charge for IRS audit response letters when the return was prepared by another party; 47.5% charge when they are not at fault for a return they prepared and 10.3% always charge or an IRS response letter.

Dispute Resolution

Most practitioners (80%) are fortunate to not have been involved in any client disputes over the last year. When asked how often they review problem clients, most practitioners (80%) said they do so as problems occur. Those surveyed rank raising fees first (59%) and disengaging second (49%) as the most likely options for handling problem clients.

Most practitioners pay all of the interest and penalties for errors that are totally or partially the fault of the practitioner.

Succession Planning

A higher proportion of respondents (71.5) in the 2016 survey indicated they have NOT made succession plans compared to 2014 (64.8%). Most (69.6%) indicate they are not planning on retiring anytime soon or they are building their practice. The average number of years until preparers say they need to plan for succession is 8.1.

Technology

It's no surprise that practices continue to increase technology operating budgets and continue to adopt new technologies. Notably, the typical practice is 50% paperless with most reporting being paperless for tax preparation (46%).

Most practices (54%) are now using secure web portals or cloud platforms to share files with clients compared to 2014 when most did not (56%). When collecting data from clients, more are reporting their clients upload documents into a secure filing sharing program compared to 2014 – 7.8% vs. 2.9%. However, the face-to-face, in person interview is still the most popular way to collect data from clients with 44.1% of practitioners conducting in-office client interviews (down from 45.7% in 2014).

NSA members get free access to the [2016-2017 Income and Fee Survey Report](#).





Tax Consequences of Distributions from S Corporations

Jeramie J. Fortenberry

Because the tax consequences of S corporation distributions depend on the shareholder's basis, it is important to keep up with changes in the shareholder's basis over time.

An S corporation's income, losses, deductions and credit are passed through to the shareholders for Federal tax purposes and taxed directly to them.¹ Because the income of S corporations is taxed to the owners when the income is earned, a mechanism is needed to ensure that the shareholder is not taxed again when the earnings are distributed. This is done through a system of rules that track and adjust the shareholder's stock basis. While there are some differences, the S corporation basis system is similar to the rules that apply to partnerships.

Shareholder Tax Consequences

The tax consequences of distributions by an S corporation to a shareholder depend on the shareholder's basis in the S corporation stock. Distributions to the shareholder are not included in the shareholder's gross income to the extent that the distribution does not exceed the shareholder's basis in the stock.² If the amount of the distribution exceeds the shareholder's basis, the excess is taxed to the shareholder as capital gain.³

Because the tax consequences of distributions depend on the shareholder's basis, it is important to keep up with changes in the shareholder's basis over time. A shareholder's basis in his S corporation stock is increased by the share of the S corporation income that is passed through to the shareholder.⁴ This effectively gives the shareholder a credit to apply against the earned income when it is ultimately distributed to the shareholder, ensuring that the income is only taxed once.

The shareholder's basis is decreased (but not below zero) by the shareholder's share of the S corporation's items of loss and deduction, nondeductible expenses (except expenses that are not chargeable to the capital account), depletion deduction for oil and gas property, and distributions to the shareholder that are not made from accumulated earnings and profits.⁵ This helps ensure that the shareholder only benefits once from reductions in income earned by the S corporation.

Corporate Tax Consequences

Like C corporations, S corporations do not recognize any gain or loss on a distribution of cash to its shareholders. If the S corporation distributes appreciated property to a shareholder, the corporation must recognize gain as if the property were sold

Continued on the following page

to the shareholder at fair market value.⁶

Note: Special rules apply if the S corporation has accumulated earnings and profits.⁷

Tax Consequences of Liquidation

Liquidating distributions are not governed by the normal S corporation distribution rules. Instead, liquidation of an S corporation is governed by the same rules that apply to liquidation of a C corporation. If the corporation distributes the assets in kind to a shareholder pursuant to a plan of liquidation, it is treated as having sold the assets to the shareholder for fair market value.⁸ This is essentially the same treatment that would apply if the corporation sold its assets to a third party and distributed the resulting cash to the shareholder.⁹ Either way, the corporation will recognize gain or loss to the extent that the amount realized (or the property's value) differs from the corporation's basis in the distributed asset.

The shareholder will also have tax consequences from the liquidation. First, if the corporation distributes appreciated or depreciated assets as part of the liquidation, the S corporation's gain or loss from the deemed sale of assets is passed through to the shareholder.¹⁰ The shareholder's basis in her stock will be increased to reflect the gain or loss.¹¹ The shareholder will take a basis in the distributed property that is equal to the property's fair market value.¹²

The shareholder will also be taxed on the liquidation itself. The amount that a shareholder receives in a liquidating distribution is treated as full payment in exchange for the shareholder's S corporation stock.¹³ In other words, if the S corporation is making a liquidating distribution, the shareholder is treated as having sold her stock for the amount of the distribution. The shareholder will recognize gain or loss equal to the difference between the amount of the distribution and the shareholder's basis in the S corporation stock.

Note that these rules differ from the ordinary rules applicable to distributions from S corporations.¹⁴ To the extent that the shareholder has basis in the S corporation stock, distributions to the shareholder are tax free. By contrast, liquidating distributions are treated as though the shareholder had sold her S corporation stock to the S corporation in exchange for the distribution from the S corporation. This will result in sale treatment.

Note: Since the ordinary distribution rules do not apply, the S corporation's accumulated earnings and profits or accumulated adjustments accounts do not determine the character of the distribution. S corporations with accumulated earnings and profits should take advantage of this distinction by clearly identifying liquidating distributions in the documents authorizing the liquidation.

Liquidating distributions involve a specific sequence of adjustments. A shareholder's basis in her subchapter S corporation stock is ordinarily determined at the end of the year.¹⁵ But if the shareholder is treated as having sold her stock, the basis adjustment is treated as having occurred immediately prior to the sale. *Id.* This ensures that the stock is adjusted appropriately before the shareholder computes her gain or loss from the sale.

Note: Special rules apply to distributions involving liabilities.¹⁶

Comparison to Partnerships and Limited Liability Companies: In the partnership context, no gain or loss is recognized on a distribution of money or property to a partner.¹⁷ This allows partners to defer recognition of gain in appreciated property that they receive from the partnership. In contrast, distributions of appreciated property by C corporations and S corporations are treated as though the property were sold to the shareholder at fair market value.¹⁸

Footnotes

1. I.R.C. §§ 1366(a)(1); 1377(a)(1).
2. I.R.C. § 1368(b)(1).
3. I.R.C. § 1368(b)(2).
4. I.R.C. § 1367(a)(1).
5. I.R.C. § 1367(a)(2).
6. I.R.C. § 311.

7. See I.R.C. § 1368.
8. I.R.C. § 336.
9. I.R.C. §§ 1001, 61(a)(3).
10. I.R.C. § 1366(a).
11. I.R.C. § 1367(a).
12. I.R.C. § 334.
13. I.R.C. § 334.
14. Ordinary distributions from a subchapter S corporation are governed by Section 1368, which applies to distributions “to which ... section 301(c) would apply.” I.R.C. § 1368(a). But Section 331 provides that Section 301—which would obviously include 301(c)—does not apply to distributions in liquidation. I.R.C. § 331(b). This means that the normal distribution rules of Section 1368 do not apply to liquidating distributions. If the shareholder has multiple bases in her stock, the exact amount of the gain or loss will depend on whether there are single or multiple liquidating distributions. Rev. Rul. 68-348, 1968-2 C.B. 141; Rev. Rul. 85-48, 1985-1 C.B. 126.
15. Treas. Reg. § 1367(d)(1).
16. See I.R.C. § 336(b).
17. I.R.C. § 731(b).
18. I.R.C. § 311(a), (b).



About the Author: Jeramie J. Fortenberry, LL.M.

Jeramie Fortenberry is an [attorney based in Austin, Texas](#). He has an LL.M. in taxation from New York University and more than a decade of experience in business, nonprofit, and trusts and estate law. He has a wide range of experience in advising companies and individuals on business matters, including for-profit and nonprofit taxation, mergers and acquisitions, choice of entity and company formation, and corporate governance. Jeramie’s estate planning practice involves maximum use of federal credits and preservation of wealth through the use of trusts, partnerships, closely held businesses, private foundations, and charitable trusts.



New Economy to Benefit as IRS Clarifies Key R&D Standards

Michael Silvio

These days, the solutions often mean investing in software; the guidelines for such research and development tax credits have been too vague to utilize effectively – until now.

For decades, companies have hesitated to invest in new software because the cost of developing it would throw off the bottom line.

Ideally, such a program would pay for itself over time either as a back-office tool that streamlines critical functions or as an asset tracker that ensures efficiencies and prevents the loss of expensive equipment. But this takes time, and for many businesses in competitive industries, the upfront investment can be too much to absorb while executives and investors wait to see how things “play out.”

This is where research and development tax credits can be most valuable – when business leaders need to innovate their way to a customized solution. These days, the solutions often mean software; however, the guidelines for such research and development tax credits have been too vague to utilize effectively – until now.

The final software regulations recently issued by the IRS under Regulation 1.41-4 provide much needed clarity for businesses in this situation. If the software being created is for internal use (such as general and administrative functions) and there is a subset of the software intended for use by third parties (such as an online client portal), the company may qualify for research and development tax credits offsetting some of the upfront expense.

This is established in the final reg’s dual-function test, which serves as a safe harbor for companies that develop software for internal use that has additional functionality for customers that is not internal use. If 10 percent of the dual function is used by the customer, the company may be eligible for a 25 percent research and development tax credit for the cost of developing the program. Depending on the size of the organization and the relative cost of the research and development investment, these credits can have a big impact on the bottom line.

In many ways, this is the clarity that tax professionals have been patiently awaiting since the proposed software regulations were issued. Prior to these final regulations, internal use software could only be qualified for research and development purposes using the “High Threshold of Innovation Test.” This unclear test created more problems than it

Continued on the following page

solved. Business leaders were rightfully skeptical of pursuing credits because they faced too many burdens under these tests and often were not certain whether their claims would hold up to IRS scrutiny.

Under these proposed regulations, three criteria were established:

1. The software had to be “innovative”
2. The company needed to incur a “significant” economic risk
3. The program could not be commercially available

While the definition of “significant” is still debatable, certain areas are coming into focus. For instance, generally, software designed solely for internal use that does not meet the “High Threshold of Innovation Test” is not qualified if it is of a general or administrative function, such as payroll or bookkeeping.

If a company’s intention at the outset is to develop software that enables customers or third parties to interact with it and initiate functions in the company’s system, the software has a good chance of qualifying for the research and development credit. For example, a client-facing component, such as an online portal for customers to access their accounts and initiate transactions, should qualify. The software would not be seen as internal use software as it was not developed for use in a general and administrative capacity and it allows customers and third parties to access it and initiate functions using it.

For the right company, this could generate millions of dollars in savings for much needed research and development. Since the standard is now known ahead of time, companies can plan accordingly and develop software with the purpose of having such a qualified dual function without having to meet the “High Threshold of Innovation Test.”

However, it is important to note that the IRS has left some portions of the code open to interpretation. In reviewing the reg for the “High Threshold of Innovation Test,” there is no bright-line test defining what a “significant” economic risk is for this type of research and development. Accountants, tax professionals and CFOs will have to use their best judgment to determine how much money can be put into the project in order to qualify as taking a significant economic risk.

One standard is to compare the qualified research expenses to the company’s revenue. Showing that the qualified expenses are a significant percentage of revenue may support that this portion of the “High Threshold of Innovation Test” has been met.

Hopefully, this area of the code will be clarified in the near future so business owners can have more knowledge to make better-informed decisions on investment strategies and the future of their companies. Other areas of the tax code would benefit from more clarity as well, but this final reg is an excellent start.

While many industries can benefit from this clarification of the tax code, the software developers are probably the clearest winners. They should expect a nice windfall as cloud-based service providers look to revamp their proprietary platforms and pay a premium for the developers’ coding skills knowing that they can likely recoup a sizeable portion of the investment through the research and development tax credit.

Tax professionals will be called upon to guide companies through this decision-making process. It is critical that all figures are projected in the most accurate manner possible, and accountants with the deepest tax credit-claiming experience will be best positioned to consult on this type of research and development strategy. After all, it would be a tremendous waste for a company to invest in a new software program with the expectation of receiving a tax credit only to find out after paying the bill that the credit will not be coming.



About the Author: Michael Silvio

Michael Silvio, CPA, is the Director of Tax Services at Hall & Company. He has more than 25 years of experience in public accounting and tax and has served a variety of public and private businesses in the manufacturing, distribution, pharmaceutical and biotechnology sectors. He can be reached at ms@hallcpas.com or 949-910-4255. Learn more at <http://hallcpas.com/>.

The IRS is Coming: How to Prepare for the New IRS Partnership Audit Rules



Travis Greaves and Josh Wu

The Bipartisan Budget Act of 2015 puts into place several significant changes that partnerships should consider now before the law goes into effect on January 1, 2018.

If you ask an accountant whether he or she has advised on an IRS partnership audit, the likely answer is “no”. In the past, the IRS rarely audited partnerships¹, and when America’s least favorite agency showed up at a partnership’s door, that partners often went through the audit unscathed because the partnership audit rules were so burdensome for the IRS. Those days are over. In an effort to increase IRS audits of entities taxed as partnerships, Congress recently passed the most sweeping change to the partnership audit rules in more than 30 years. These new rules, buried in the Bipartisan Budget Act of 2015 (BBA), do more than impact partnership audits. The rules effectively impose an entity-level tax on partnerships, taking away one of the greatest benefits of organizing as a partnership. Moreover, the BBA puts into place a number of other significant changes that partnerships should consider now before the law goes into effect on January 1, 2018.

These new rules will have a tremendous impact on small partnerships, limited liability companies (“LLCs”) and other entities taxed as partnerships.² Gone is the small partnership exception from Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”); small partnerships and LLCs must now elect out annually to avoid the cumbersome BBA rules. Given the breadth of the BBA changes discussed below, all partnerships and LLCs must amend their agreements to ensure that the appropriate BBA provisions are included.

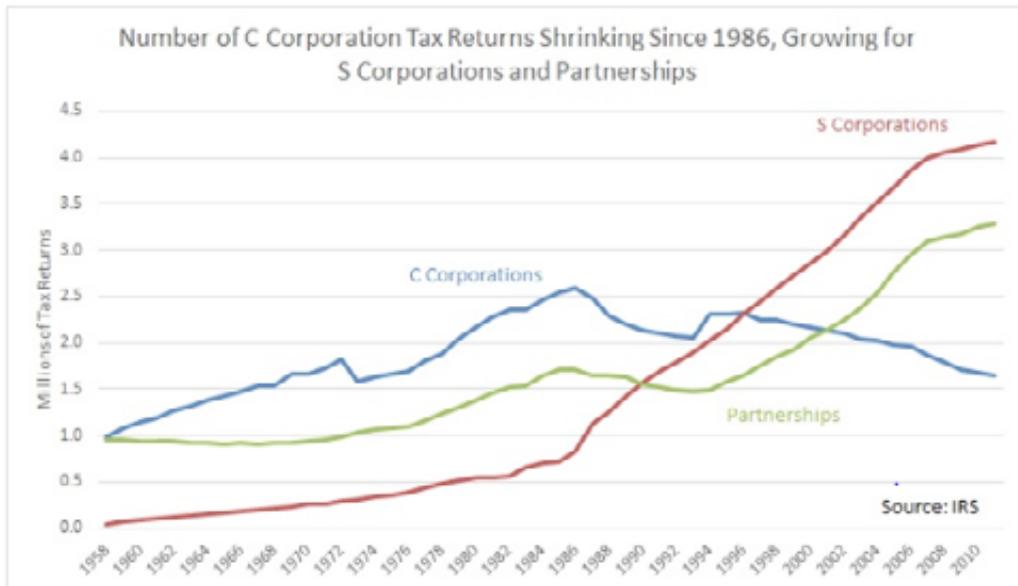
In Part I of this series, we review the law on partnership audits over the last 30 years and then contrast the IRS audit rules under the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”), which are in effect until 2018, and those in the newly-enacted BBA. In later parts, we will examine the Treasury Regulations and IRS guidance on the BBA as well as how your partnership or clients should respond to these changes.

Background

Partnerships and LLCs have become a popular entity choice for doing business over the past 50 years. Since 2003, the number of partnerships has grown at an average annual rate of 3.9 percent, with over 3,300,000 entities filing partnership tax returns in 2012 (see Figure A). LLCs and small partnerships have accounted for the majority of this growth.³

IRS tax enforcement efforts have been unable to keep up with the increase in number of partnerships and LLCs. According to IRS data, the IRS audited only 0.47 percent of partnership returns in 2012, with barely half actually

Figure A



receiving any type of adjustment. The lack of adjustments has less to do with a partnership accurately reporting its tax position, and more to do with the cumbersome and ineffective TEFRA partnership audit rules. To fully appreciate why Congress replaced TEFRA with the BBA, it helps to see why Congress enacted TEFRA in the first place.

Prior to 1982, the IRS did not audit partnerships; rather, the IRS examined the income tax return of each individual partner of a partnership in making tax adjustments. As syndicated partnership tax shelters and multi-tiered partnerships became more prevalent, the process of conducting audits became more inefficient and costly for the IRS. Partnerships often included thousands of partners, making it impossible for the IRS to audit all the partners within the statute of limitations or locate all the partners to obtain a statute extension. The IRS also had less incentive to settle because the settlement would only bind those partners who were parties to the settlement.

In response to pleas from the IRS to create a more workable audit process, Congress passed TEFRA in 1982 to create a unified audit procedure for all but certain small partnerships. TEFRA equipped the IRS with the tools to attack syndicated partnership tax shelters; however, TEFRA was not designed to deal with the proliferations of legitimate partnerships that we have seen over the past 30 years.

TEFRA shifted audits away from individual partners to the partnership. Under the law, the tax treatment of all “partnership items” (e.g., income, deductions, credits) as well as penalties, additions to tax, or additional amounts that relate to a partnership item must be made at the partnership level. TEFRA encouraged partnerships to name a partner as tax matters partner (“TMP”) to serve as the primary representative in dealing with the IRS during the audit. The TMP coordinates the audit and keeps the partners informed, but each partner generally has the right to participate in his or her own separate proceeding and to negotiate his or her own settlement with the IRS. At the conclusion of the audit, the IRS mails the TMP and other partners a notice of final partnership administrative adjustment (“FPAA”). Thereafter, the TMP (or another partner) may file suit in the U.S. Tax Court, a U.S. district court, or U.S. Court of Federal Claims. Following all IRS and court challenges, the partnership item adjustments flow through to the partners to pay assessed tax, penalties, and interest.

The IRS found the TEFRA rules improved audits of some partnerships, but were virtually useless in auditing large partnerships (those with 100 or more direct and indirect partners). Large partnership audits became very time intensive for the IRS due to the sheer number of partners and the ability that each partner had to intervene in the audit. Consequently, Congress modified TEFRA to include new IRS audit rules for large partnerships known as the “Electing Large Partnership (ELP) Regime” in 1997. The ELP Regime differed from TEFRA in a number of ways. The primary goal of the ELP Regime was to lessen the administrative work for the IRS by requiring the partnership (rather than the individual partners) to pay the tax and requiring fewer notices to partners. Moreover, any IRS adjustments flowed through in the year of adjustment, not the tax year in question. Interestingly, the 1997 law did not require large partnerships to enter the ELP Regime but allowed them to elect in. Not surprisingly, few partnerships elected in because doing so would only make it easier for the IRS to audit them.

In a 2014 report, the Government Accountability Office found that from 2002 to 2011, the number of large partnerships

more than tripled to 10,099 and almost two-thirds of large partnerships had more than 1,000 direct and indirect partners. It would often take months for the IRS auditor to identify the TMP, giving the IRS little time to actually audit and make the necessary adjustments before the statute of limitations on assessment expired. The process by which the IRS determines each partner's share of the adjustment became time consuming and labor intensive. In fact, a Treasury report found that since 2010, the IRS has failed to assess taxable partners approximately \$14.5 million resulting from audits of partnership returns.⁴ As a result, almost all large partnerships avoided the audit process solely because of their entity structure. Political leaders on both sides of the aisle called for significant changes to TEFRA, if not repeal and replacement. It took Congress looking for revenue for the TEFRA regime to be put to rest.

Bipartisan Budget Act of 2015

In 2015, Congress was working on passing its budget, and it needed to find revenue to offset spending in the bill. Congressman Jim Renacci introduced a bill earlier in the year, the Partnership Audit Simplification Act, which essentially forced all partnerships into the ELP Regime. The shift of collecting tax at the partnership, rather than partner, level would have made IRS audits of partnerships and LLCs much easier (and much more likely) and the Joint Committee on Taxation estimated \$9.35 billion over ten years in revenue from such audits. Though many members and practitioners took issue with provisions in the Renacci bill, the general framework was added to the BBA, and after significant changes, a new IRS partnership audit regime was born.

Entity-Level Tax

The most controversial provision within the BBA is the entity-level tax. As discussed above, TEFRA required the IRS to pass adjustments down to the partners following the partnership audit. By contrast, under the BBA, the IRS collects taxes associated with audit adjustments at the partnership level, effectively imposing an entity-level tax on the partnership itself. The IRS nets all adjustments and imposes an "imputed underpayment" taxed at the highest individual or corporate tax rate at the conclusion of a BBA audit. Issues clearly arise where the partnership includes tax-exempt entities or partners with significant net operating losses that would not be subject to tax. Congress punted on these issues and asked that the IRS and Treasury Department issue additional guidance on how to treat the imputed underpayment in such cases. A partnership seeking to reduce its imputed underpayment must supply supporting documentation to the IRS within 270 days of issuance of the proposed partnership adjustment.

Furthermore, the BBA requires the IRS to assess the partnership for the current year (known as the "adjustment year") rather than the audited year (known as the "reviewed year"). This puts the economic burden of the tax on the current year partners, who may not have had any interest in the partnership during the reviewed tax year. Here's an example to illustrate how this works under the BBA. In 2018, an oil and gas drilling partnership passed down unwarranted deductions that each partner took on his or her tax return. In 2019, Partner A sells his interest to Partner B, a new partner to the partnership. In 2020, the IRS audits the partnership for tax year 2018; 2020 is considered the adjustment year and 2018 is considered the reviewed year. The IRS determines that the deductions were unwarranted and requires the partnership to pay additional tax for the 2018 tax year. Partner B would be liable, by way of his present interest in the partnership, for any taxes, penalties, and interest the IRS assesses for 2018, even though Partner B lacked any economic interest in the partnership during that year.

Opting-Out

All partnerships are subject to the BBA unless the partnership elects out. This includes small family limited partnerships with royalty interests to MLPs with thousands of miles of pipeline. The BBA offers an exception to the entity-level tax in the adjustment year, though the usefulness of such exception remains to be seen. The partnership can "push out" the adjustments to its reviewed year partners by providing them with adjusted Schedules K-1 reporting their allocable share of any partnership-level audit adjustments. This must be done within 45 days from the date of the final partnership adjustment, and results in an additional two percent interest rate hike on any underpayment. It's highly unlikely that a large MLP, a fixture in the midstream oil and gas industry with partnership shares trading daily, could even locate the partners within 45

days, much less prepare and send out adjusted Schedules K-1. If a partnership can meet the deadline, the imputed payment obligation passes to the reviewed year partner.

In addition, qualified partnerships may elect out of the BBA regime, so long as the partnership properly elects out on the Form 1065 every year. A partnership qualifies for this exception if it (i) furnishes 100 or fewer Schedules K-1 with respect to its partners, and (ii) each of its partners is an individual, a C corporation, any foreign entity that would be treated as a C corporation were it domestic, an S corporation, or an estate of a deceased partner. In other words, a partnership with a trust or partnership as a partner may be ineligible to elect out. The forthcoming Treasury regulations should address whether having a trust or partnership as a partner will make a partnership ineligible to elect out of the BBA. If the partnership is eligible, it must notify each partner of this election. In such case, the IRS examines each partner separately, which could result in inconsistent treatment among partners. This differs from the TEFRA small partnership exception for partnerships with 10 or fewer partners.

Partnership Representative

The BBA also creates a new role within a partnership called the “partnership representative.” The role bears some similarity to the TMP under TEFRA, but with significantly more authority. The TMP represents the partnership before the IRS and in federal civil litigation, and must keep the partners informed of the partnership proceedings. The TMP may be a general partner of a partnership or a member-manager of a limited liability company. If there is no TMP named in the partnership agreement, the IRS may select another partner as TMP based on specific ordering rules.

By contrast, the partnership representative has sole authority to act on behalf of the partnership and the partners, including in any IRS or court proceedings. The partnership representative need not be a partner; he or she need only have a substantial presence in the U.S. It is imperative that partnerships designate someone as the partnership representative; failure to do so gives the IRS the opportunity to appoint anyone, including theoretically the IRS agent themselves, to that role. We expect that the IRS and Treasury Department will issue considerable guidance on who can serve in this position over the coming months, and we will address such guidance in future editions of this newsletter.

Notification Provisions

Another consequential change relates to the notice provisions. Under TEFRA, the IRS must give most partners notice of all significant events in a TEFRA partnership proceeding, including notice at the commencement of the audit and when the IRS issues the FPAA. In addition, the TMP must furnish information to all “notice partners” and all representatives of “five-percent notice groups” of all significant audit and litigation events. Under the BBA, the IRS need only notify the partnership representative. Thus, if partners want to have notice of significant audit events that may result in large tax liabilities, notice provisions must be drafted into the partnership agreement or otherwise be contractually created.

Inconsistent Reporting

In some cases, a partner may choose to report a position inconsistent with how the partnership treats the position. Under TEFRA, a partner’s tax return must be consistent with the Schedule K-1 the partnership issued, unless the partner files a notice of inconsistent treatment. If a partner fails to file the notice, the IRS may treat any underpayment of tax resulting from the inconsistent position as a mere mathematical error or clerical error and can assess the tax without issuing a notice of deficiency. The BBA requires each partner to report items on its return consistently with the treatment on the partnership return. Similar to TEFRA, the BBA allows a partner to file a notice of inconsistent treatment or face assessment as a mathematical or clerical error. In Notice 2016-23, 2016-13 I.R.B. 490, the IRS requested comments regarding the rules for notifying the IRS of an inconsistent position under the BBA, the treatment of partners who properly file such notification, and whether the existing TEFRA framework for inconsistent partner returns should apply under the BBA regulations.

Administrative Adjustment Requests

As with TEFRA, partnerships may file an administrative adjustment request (“AAR”) to adjust its taxable income prior to the IRS issuing an FPAA. Under the BBA, the IRS treats any decrease in income or increase in loss as occurring in the year the AAR is filed, not the tax year in question. The BBA permits only the partnership representative to file the AAR. This is in contrast to TEFRA, which allowed either the TMP or an individual partner to file an AAR.

Conclusion

The BBA partnership audit rules should be of significant concern to all partnerships, not only because the partnership is more likely to be audited but also the partners must address and agree to a number of changes to the partnership agreement before the new audit rules go into effect on January 1, 2018. In the next part of this series we intend to discuss the proposed Treasury Regulations, what they mean for partnerships and LLCs, and what your clients should do to comply with the new law.

Part 2 of this series will appear in an upcoming issue of *Main Street Practitioner*.

Endnotes

[1] A partnership is the relationship between two or more persons who join to carry on a trade or business. Each person contributes money, property, labor, or skill with the expectation of sharing in the profits and losses of the business, regardless of whether a formal partnership agreement was made. Every partnership that engages in trade or business, or has income from sources in the United States, must file an annual information return, Form 1065, U.S. Partnership Return of Income, or Form 1065-B, U.S. Return of Income for Electing Large Partnerships, with the Internal Revenue Service.

[2] An LLC may be classified for federal income tax purposes as a partnership, corporation, or an entity disregarded as separate from its owner by applying the rules in Regulations section 301.7701-3. In this article, when we discuss the effect the rules have on the BBA rules will have on LLCs, we are referring to those LLCs that have elected to be taxed as a partnership.

[3] Partnerships with less than three partners made up more than half (55.9 percent) of all partnerships. These same-sized partnerships accounted for more than a quarter (26 percent) of all partnerships with total assets of \$100 million or more.

[4] See Treasury Inspector General for Tax Administration, 2015-30-004, Additional Improvements Are Needed to Measure the Success and Productivity of the Partnership Audit Process (Mar. 18, 2015).

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THE ANNUAL TAX MEETING IS DEAD

Frank Stitely

We had been prescheduling tax meetings for over twenty years. We thought clients wanted them. They came because we told them to, not because they wanted to.

Here's part of an e-mail referral I received this past week. "Frank is a great CPA, and you don't even have to meet with him." Guess the age of the client and prospective client. If you guessed under fifty, you're wrong. Both are well into their fifties.

Just when you conquered the night sweats from meeting new people at chamber of commerce meetings, Lucy swipes the ball away from you again, Charlie Brown. Face to face meetings are so 1990s. The tax meeting is dead.

Clients killed it. A few years ago, during a classic tax season gather up all the documents meeting, a client asked me, "Do I really have to come in next year? You have this portal thing. It's a pain driving all the way out to Chantilly." Believe me, it's a pain to drive to Chantilly, even if you live in Chantilly.

We had used our cloud based practice management system for five years or so to get client documents electronically. However, we had been prescheduling tax meetings for more than twenty years. We thought clients wanted the meetings.

They did – back in the 1990s. In 2012, less than a quarter of our clients posted their documents electronically, and we mistakenly thought that was the right percentage. Clients actually were coming to prescheduled meetings because we told them to, not because they wanted to.

We missed the change in client demands. Clients no longer value the annual meeting. Sure, clients over sixty still mostly come in for annual meetings. That generation views having "my accountant" as a sign of status and affluence. Younger clients prefer having time back in their personal lives over devoting a couple hours to tax return preparation. Time is their valued commodity.

I feel your objection. "We can't provide good personal service without meetings." Yes we can. The required skill sets are just different. Writing ability becomes our most important communications tool.

But what about all that face to face personal interaction? Today's clients don't place a high value on it. They prefer choosing how they spend their time. You may find this surprising, but clients don't enjoy talking about taxes. Shocking, I know.

Yes, they still value our expertise and want interaction and advice. They're just choosing a communications medium that meets their needs. Here's how I made the transition last year.

First, I stopped prescheduling meetings. I heard the internal objection that the admin staff would be overwhelmed with

phone calls and e-mails to set appointments. Nope, didn't happen. Next, I heard that everyone would want to come in the last week of March. Nope, didn't happen.

Phone volume actually went down. Prescheduled meetings cause more phone calls than they prevent. People call to reschedule or cancel. People coming in for meetings were actually prepared. No more meeting with people with brokerage accounts in early February, because that was the only place in my completely filled tax season dance card.

After the switch, my schedule actually meant something. I didn't have to worry about no shows. Actually, I never worried about them. I depended on them to get work done. No shows were a thirty minute window to do work.

During tax season, I now devote half days to appointments every day except, Wednesdays, Saturdays, and Sundays. I have no appointments on those days. I do schedule appointments on one Saturday in February each year for some older long time clients.

What about the people, who can only come in on weekends and evenings? They aren't my clients. Their bosses are my clients. Their bosses love weekday appointments if they come in at all. Most don't. Last year, my appointment volume went down 40% and our admin staff benefited from less phone volume. This year, I'm hoping for an even bigger reduction in appointments.

Imagine a tax season, where you're not chasing your backside all day trying to put out fires. OK, there are still plenty of fires to put out, but you have the time to extinguish them. Imagine having time for project management and follow-up. Imagine having the time to make real tax projections for estimated taxes. Imagine having time to make proactive phone calls and meet with people, who truly need to meet.

You get the practice you create. You get the clients you deserve. Hook into what 21st century clients value and create your dream accounting or tax practice at the same time. Imagine owning a profitable business and living a somewhat sane life during tax season. You can.



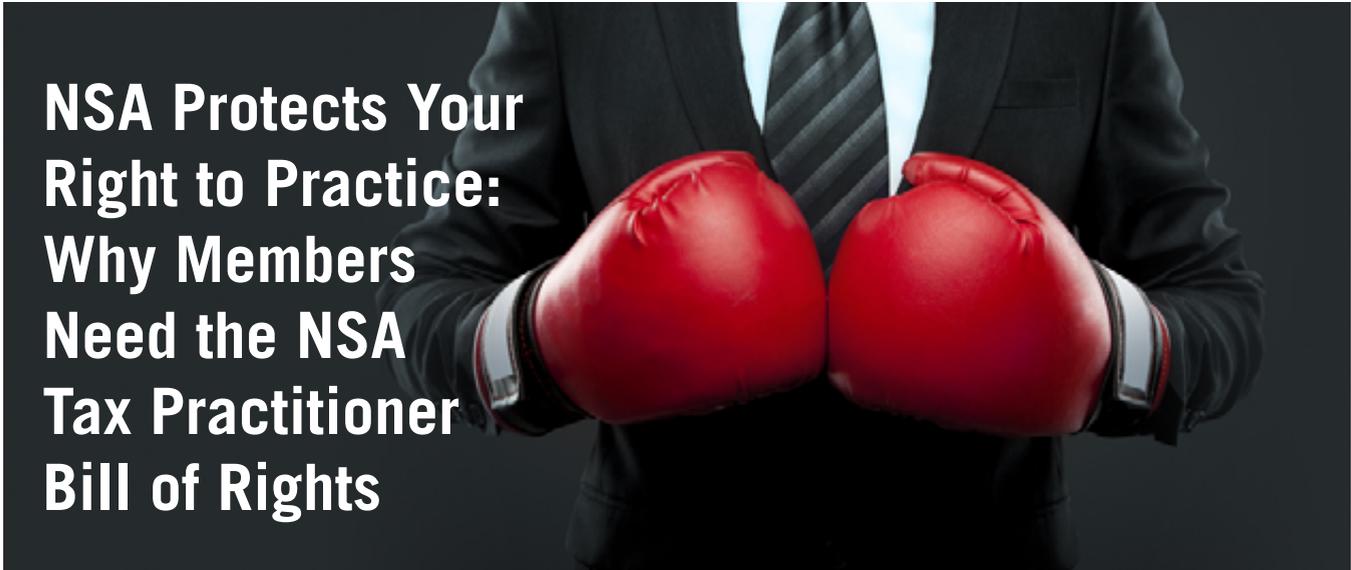
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NSA Protects Your Right to Practice: Why Members Need the NSA Tax Practitioner Bill of Rights

Julia Wilkinson

Tax audit on April 15? IRS agents insulting accountants? Based on the stories we heard from members, the NSA's Tax Practitioner Bill of Rights is sorely needed.

The NSA Tax Practitioner Bill of Rights is designed to help practitioners dealing with problems arising from the IRS' handling of various issues. We reached out to NSA members with a survey, and followed up to see what stories they had around the topics covered by the Bill of Rights.

Here is a roundup of what we heard back.

Audits

NSA's First Vice President Brian Thompson dealt with perhaps the worst appointment time for an audit: April 15th.

"During the 2015 filing season, one of my business clients brought me a notice from the IRS which indicated they were being audited," he said. "After reviewing the notice, I saw that the appointment date for the audit was surprisingly set for April 15th." He then called the auditor to obviously try and reschedule the audit until after the tax filing deadline.

"I was greatly disappointed to find out from the auditor during the call that this audit set for April 15th could not be rescheduled," he said. "After I got over the jaw-dropping surprise after hearing the news, of course I expressed my surprise and displeasure that the IRS could not be more flexible, especially given the date chosen for this audit. After all, who in their right mind chooses April 15th for an audit?"

He found out later when the auditor showed up in his office on April 15th, that the reason it could not be postponed to a more convenient time was that it was a training audit. "It turns out that the reason was that the auditor in training was coming from out-of-state and had very strict travel days," he said. "The audit did in fact take place on April 15th at my office as planned, however, after the auditors had toured my client's business," he said. "Generally I would be at my client's business to accompany the auditor on the tour. However, in this case, I simply didn't have the time because of the need to deal with extensions for a host of other clients which also had to be done on April 15th. "

Meanwhile, Jeff Krieger, of Jefferson City, Missouri, EA, ABA, ATA, ATP, said that he had an audit during last tax season "that is just now wrapping up." Another problem he encountered was that there was "no POA [Power of Attorney] on file, but we have proof that it went to the IRS."

"Audits should not be allowed during tax season," said Krieger. "Because of the hours we have to work in order to meet

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the IRS deadlines, I did not answer an auditor's 10-day request, so I had to have a conference call with both of his supervisors, which took time out of my already hectic schedule to tell them why I couldn't meet his requirements," he said. "It seems it is OK for us to wait on the IRS, but when they ask for information, we are commanded how, when and where," he added. It needs to be equal on both sides of the fence, he said.

As for the POA, "this is the favorite response from anybody with whom you make contact with the IRS about your clients," he said. "They tell us they do not have the form 2848, which we have proof of them receiving it, but it hasn't been put into the system." However, he added, the funny thing is that "sometimes they do what we ask them to as POA, but [they] send a letter to our client that they have no record of the Power of Attorney.

"I have been preparing taxes and doing Accounting for 36 years, and the IRS is a complete joke at this time," he added. He said he has clients who have not received refunds for their 2014 returns, unanswered communications, and "all kinds of examples of the nonsense that takes place on a daily basis."

The best one from last year, he said, was during the audit he previously mentioned, the IRS auditor faxed him someone else's audit information, with very detailed information. "I haven't shared that with him, as we are still finalizing that audit, which will be a year old in December." In this instance, Krieger got a 10-day demand notice, "but we are still waiting on the auditor to finish his job."

Ninety-Day Letter Received the Day Before Her Audit

For Jan Telesky, of Telesky Financial Services in San Jose, CA, the audit was for herself. She explains, "I received an audit letter for myself covering two years. The audit was scheduled for mid-February. They would not reschedule. I received the 90-day letter just the day before my scheduled audit."

She says she ended up filing pro se in tax court. "The audit was on fringe benefits. I have always paid the medical and dental insurance for my staff." Anyway, audit results were a "no change" [the returns stood as filed], she said. "They could have looked up my record to see how many hundreds of returns I file by April 15. There was no way I had the time to go to an audit, much less prepare for one," she said.

She further explained, "By April 15, I personally have prepared around 400 returns including individuals, corporations, trusts, LLCs, LLPs, partnerships. Most of my individuals have rentals, businesses, stock sales, etc. That means I have no life and no time for anything other than tax prep."

This was the only audit she has had during tax season, and they were auditing two years on her own return. "The IRS could have checked to see how many returns I filed and would know I had no time but they didn't care," she said.

Communication

Meanwhile, Bill Nemeth, EA, of Atlanta, Georgia, has had problems with communication with the IRS.

"I have several clients under full Form 2848 POA," he explains. "When they have balances due, I get a copy of the CP14 Letter showing the tax liability. I do NOT get copies of the CP14H which is the liability for the Shared Responsibility Payment." He said he just called into the IRS PPS Line to discover that his client has a Shared Responsibility Liability for 2014 (that he knew nothing about) as well as a Shared Responsibility Liability for the recently filed 2015.

"The Shared Responsibility liabilities do not show up on the IRS Account Transcripts," he said. "Fundamentally, the current IRS system has taken away my ability to assist the taxpayer through the confusion of the ACA." He added that he just spent an hour on hold to talk to a PPS assister who informed him of the 2014 and 2015 Shared Responsibility Liabilities. "The taxpayer has the means to pay these amounts immediately but looks to me to advise him when to pay. All this is complicated by the fact that the taxpayer has an ID Theft Flag on his 2013 return (I just requested the ID Theft Flag be removed because it sounds like my client called the IRS in a confused state and created the ID Theft Situation in the first place)."

Nemeth explains that his standard policy is to have an active 8821 (Information only) or 2848 (IRS Power of Attorney) on every one of his clients with the box checked to have the IRS send him a copy of all IRS correspondence.

"With the IRS form in place (8821 or 2848), I create a 'virtual partnership' with each of my clients and monitor their IRS accounts. I get copies of all their IRS letters (except those relating to the ACA - think CP14H and ID Theft). We have reported the issue of no CP14H to Nina Olson, Taxpayer Advocate."

He gives one simple example: "I filed taxpayer's 2014 return and he had a tax balance due, as well as a penalty for no

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health insurance. I work with him to pay off his tax bill. The Health Insurance penalty is a separate liability and I have no way of knowing he has an outstanding obligation except to call the IRS PPS with my authority in place (8821 or 2848).”

Refunds

For Lori Owens, of Celina, Texas, the problem was one of refunds. She said she had three clients this year that did not receive their refunds. They also did not receive any correspondence to why they had not received them, she said. All were electronically filed prior to April 15, “and none receiving refunds until end of September.” She said it took “hours on the phone on hold and being shifted around to find out they needed no additional info, but that they couldn’t even read the return correctly, with the correct code being used from the beginning. Incredibly frustrating.”

She added that she still has two clients that have not received their refunds. “One was electronically filed on April 13th, and we received the acceptance notification right away,” she said. “The other was filed the first part of April, and that client still has not seen anything on their refund either.” The other was filed the middle of March, and it took until late September before he received his refund.

“In all cases I have spent hours on hold and being transferred from one agent to another,” she said. “In the end, on the last one I had to tell the agent what he was looking at and that they were reading the return incorrectly. After bringing it to their attention they finally agreed with the way the return was filed,” she said, adding, “Pretty sad that we have to tell them where to look and what was involved before they will process the return.”

In all three of these cases, she said, “none of my clients received any correspondence stating why their returns were being held up or requesting additional information. Now one of the other two ladies is trying to apply for health insurance and has hit a brick wall because it says her return has not been filed. To say that I am a little frustrated with this entire experience is an understatement. I have been preparing returns now for 25 years and have never had anything like this happen even once in the past.”

Client Owed \$40,000

Linda Wegge of Grayslake, IL, had the IRS file a tax lien on a client who was owed a \$40,000 refund. In her survey response, she summarizes: “Amended return filed August of 2014; 2013 return. To date 10/18/16 amendment has not been processed. Repeated calls to Collections. I was told they were working on it. 10/5/16 I was told IRS lost return and I had to resend it. There was a \$40,000 refund we applied to 2014 return.” She said it is all legitimate, and the IRS has now filed a tax lien on the client. “They have put a 30-day stay on collections. What is going on with the IRS? Clients think I am not doing my job,” she said, adding, “This has to stop.”

Wegge explained what happened in more detail over the phone: She applied an overpayment from ’13 to ’14, “so we filed a ’14 return. Obviously the IRS processed it [as] \$40,000 missing. I called and they said we received the amended return that was filed, but it hasn’t processed yet.”

Wegge had one IRS rep say he would “definitely send this down and find out – we’ll have this processed within 30 days.” But then another six months went by and she didn’t hear anything, and then her client got another notice. She was also tracking it on wheresmyamendedreturn.com. Wegge called a second time, and was told it had been assigned out to an agent and would be done within 30 days.’

“So the next thing I know, in September of ’16, my client gets a notice of federal tax lien,” she said. So Wegge called another IRS rep and explained the situation, and he said, “You have an amended return that hasn’t been processed? Can I put you on hold please?” After being transferred to other reps and continued to be put on hold, she was told, “I’m really sorry to tell you, we don’t know where that amended return is.”

Wegge explained where some of the confusion came from. Her client had sold a company in ’13, and during that time he took a distribution of \$95,000 from his IRA. But it turned out he had put the money back his IRA within 60 days, so Wegge agreed then it wasn’t taxable after all. “So that’s what prompted the amendment,” she said.

At this point, explained Wegge, “they put a 120-day stay on the tax lien. So I guess they’re not going to file it; well that’s what they told me, but I don’t talk to the IRS anymore because they tell me one thing and they do [another]. But at this writing,

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Wegge planned to bring up the case at a big IRS tax symposium in the ChicagoLand area. “And I’m going to grab these guys and bring in the file, and I’m going to ask them to personally oversee this and get this done. Because this is absolutely ridiculous what they’ve done to this poor man. There’s \$40,000 at stake sitting here. And we did everything correct.”

And Wegge had another story. She had been filing “this gentleman’s tax return for probably 30 years. He’s about 70 years old now and he’s been a self-employed insurance broker.” He had a refund coming back, and he had a schedule C. It had been over a year, and the client told her “Linda, I still haven’t gotten that refund back yet.”

“So I said ‘you’re kiddin’ me,’” said Wegge, and she got POA. “And I call in, and I get a very nasty woman. She said, ‘Well the first problem was with the schedule C.’

First the woman said the Schedule C had a zero dollar amount, so they thought it was odd or fraudulent. But Wegge explained the Schedule C she sent in had a \$25,000 profit. But then the rep said the problem was with that the return was taking advantage of the earned income credit. Wegge had to explain that not only did she not file a return with an earned income credit, this gentleman didn’t even qualify for the it because he’s 70 years old, and earned income credit is only for ages from 25 up to 65. She said, “Oh, well that may be so but we’re still not giving you his money back. He’s not getting his refund with you.”

Wegge then brought the client’s case in to the very first IRS Tax Forum in Chicago, where they had case resolutions. An agent there agreed her client was owed that money, but then she was told she couldn’t get an answer from the division to release the money, because they weren’t answering their phones. She had to go back and forth with several agents, at one point being told she wasn’t allowed to leave until they resolved it, until she could get a satisfactory answer. Finally, an agent said Wegge’s client would have his money in about two to three weeks.

“And my client did get his money back within three weeks,” confirmed Wegge. “So he was happy.”

But Wegge stressed that she had two “very bizarre cases where the IRS has just totally dropped the ball.” And she added that “what really upsets me about this whole thing is I spent a lot of time on this. And sometimes the client gets upset with me when I charge them...and I say, look, we did the return right; the IRS admitted we did the return right, and they’re the ones that messed it up. And the client says, ‘Yeah, yeah, yeah I know.’”

Rude Auditors and IRS Employees

Cecilia Bowers, of Tulsa, OK, says, “I have been preparing taxes for 59+ years and during that time have had multiple horror stories of rude and incompetent auditors. I have always just taken the position that ‘tax particular Human should not be where they are,’ and I am going to ask for a group manager, or the current in-office “complaint department.”

Fortunately, for her that has resolved the problem in 80% of the issues, she says. “Beyond that, I have simply gone to Tax Payers Advocate Service and I don’t recall ever having them fail me.” But Bowers is skeptical that “a bill of rights or any other written rule is ever going to change who people are or how they think and respond,” and she suggests tax professionals “just move on to the many good employees. Spoke to one this morning at ACS collections and he was awesome.”

Nils Lenz, of Zephyrhills, Florida, says he also has worked with IRS Agents that are very rude. “I have had several Compliance Officers insult myself and well as my clients, plus they try to intimidate us also,” he said. “My agent said that ‘even his dog could be a CPA Candidate’; another asked me if I was going to practice another year, and still another one used to shake the Schedule C in front of both client and myself if there a was loss and said that it did not make sense, regardless of the fact that all of the expenses and revenue were documented.

Another problem he has with them is “they tend to disallow too much, even though the correct documentation had been presented,” he said.

There were two different agents with whom he had a very hard time dealing. He said he had two agents disallow everything for two different clients who are Over the Road Truckers, even as the documentation was all sorted out to make It easier for the agent; “I had gone through the trouble of sorting everything by category, and sorted chronologically,” he said.

And “the other agent never stated what the issues were.” Both of these disallowed everything because of their impatience, he said.

He said he took both of these Over the Road Truckers cases to appeals, and fortunately the appeals agents were both very nice and allowed everything. “Either through appeals, audit reconsideration or amendments, I was able to get the entire taxes abated,” he said.

Continued on the following page

Then, he added, “Don’t get me started on CP2000 letters, I had sent many back almost ten times, with the issues already covered the first time,” he said. He explained that CP2000 letters are from underreporting, and “always have mistakes.” But “then when I send in a response, I might receive four or five letters saying that nothing has been corrected and want to keep increasing the taxes, interest and penalties, so I have to reply to each one, saying it has already been corrected, several letters ago. I understand the main issue with CP2000 letters, is that it is automated, all by computer; the process would not be corrected until an actual human starts working on the case; otherwise it can drag on for months.”

Overall, he said, “With the four or five agents in the small business section in Tampa, I do not want to have to deal with them anymore,” though he says he has no problem with any of the other offices, even Lakeland. And, he says that “when I have spoken to other preparers about these same agents, they all have very similar opinions, they hate dealing with them also.”

Correspondence Not Received?

Sometimes the problem can be maddening, especially when the tax professional has sent in timely responses, and yet they seem to go into a black hole at the IRS. Lennison Alexander of Atlanta, GA, tells of one such case: “Filed for Innocent Spouse Relief. IRS agent in charge of the case calls and verbally request additional information. Additional information provided within two days.”

Ten months later, he said, the taxpayer receives a letter via standard first class US Mail from the agent denying spousal relief, and stating that since the taxpayer did not respond to in a timely manner to several pieces of IRS correspondence regarding this, the time to appeal and petition the tax court has elapsed. “Needless to say the taxpayer never received any correspondence, and when told of this, the agent claimed that all correspondence was sent via certified mail but could not or flatly refused to provide proof of service,” he said.

“After protestation on my part,” he continues, “the agent offers to look into the case once more and ‘see what I could do if anything to help.’” Alexander says, “Since my objective is to win this case for my client, I have not cried foul thus far. However, if denied a proper hearing I will be screaming ‘bloody murder’ and demand a meeting with the supervisor,” he says.

Other Issues

With some other types of problems, it’s with the decision itself, and would require a supervisor or appeals process.

For Roger Lubiens, of Folsom, CA, the problem just seemed one of a bad decision on the IRS’s part. “The IRS audited my client’s tax return and disallowed three dependents who live with the client. Despite tax law, court rulings, school records, birth certificates, and medical records, the agent denied one of claimed children as a tax dependent citing a divorce decree,” he said, adding that “Common sense did not prevail, and even the Taxpayer Advocate could not override the IRS agent’s onerous decision.”

As for Wegge, she is all for the NSA’s Tax Practitioner’s Bill of Rights. “I’m happy about anything that can be done for our taxpayers,” she said, so that when there are problems, it can be handled in a timely fashion by competent IRS people. “And I think that’s our big problem right now; there are very few competent IRS people.”



About the Author:

Julia Wilkinson
Freelance Writer
Alexandria, VA



Tax Practitioner Bill of Rights

1

The Right to have Tax Laws and Rules passed in a Timely Manner

Including:

- a. The right to have tax laws affecting the current tax year enacted no later than September 1st of that year.
- b. The right to have IRS forms reflecting any new laws for the current year available no later than October 1st of that year.

2

The Right to Quality Service From the IRS

Including:

- a. The right to have telephone calls answered within 15 minutes, on a practitioner-only hotline, staffed by knowledgeable employees.
- b. The right to have taxpayer correspondence answered within 20 days.
- c. The right to have any collection action on the taxpayer's account frozen while the IRS is considering a taxpayer's timely filed response to IRS collection activity.
- d. The right to have one IRS representative deal with a tax issue from start to finish until the issue is resolved.
- e. The right to request a supervisor be involved in resolving a matter if the initiating IRS representative is unwilling or unable to resolve an issue.
- f. The right for practitioners with Practitioner Tax Identification Numbers (PTINs) to communicate electronically with the IRS on taxpayer matters in a secure manner.

3

The Right to Practice without Undue IRS Demands During Tax Filing Season

Including:

- a. The right to have an IRS audit moratorium during the three weeks immediately before major tax deadlines such as March 15, April 15, September 15, October 15 of each year.
- b. The right to have an IRS moratorium on collection actions or collection information requests during the three weeks immediately before major tax deadlines such as March 15, April 15, September 15, October 15 of each year.
- c. The right to have an IRS moratorium on planned software maintenance and computer downtime periods during the three weeks immediately before major tax deadlines such as March 15, April 15, September 15, October 15 of each year.



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Sign the Petition

www.ipetitions.com/petition/nsa-bill

• ALL AROUND NSA

• Resources for your business

NSA'S CAREER CENTER LAUNCHES

The National Society of Accountants [Career Center](#) is now ready for resumes and job postings.

Recent graduates and experienced tax pros can use NSA's Career Center to find the next step on their career path. Job seekers can search for positions, upload a LinkedIn profile or resume so employers can find them with ease. Our system also allows for users to upload more than one resume, allowing job seekers to tailor their submissions.

Members and other companies can use the new site to recruit experienced employees who are looking for an opportunity, or recent graduates who are just starting out in their career in the industry. NSA offers a variety of job posting packages to meet the needs of our members and other advertisers.

NSA Members save \$100 on 30-day and 60-day ads, and substantially on other packages.

Visit the [Career Center](#) to learn more, place an ad, or create your profile and start looking for your next great job.

Be sure to tell your colleagues that the National Society of Accountants career center is open to job postings from non-members. Click [here](#) to learn more.

NSA LAUNCHES NEW CLASSIFIED ADVERTISING FOR MEMBERS

SOLD

NSA's new [classified](#) advertising community is a place where members can now post for sale, wanted, help wanted, and other kinds of classified ads.

There is no charge to post a classified ad and only NSA members can post classifieds.

[Post to Classifieds](#)

View current listings at: <http://connect.nsacct.org/classified-ads>.

Call toll-free at 800-966-6679 or email members@nsacct.org if you have questions or need help posting your classified ad.

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on Social Media!



Be sure to join in on the discussions in our [LinkedIn group](#).

NSA'S CONNECTED 2016-2017 WINTER WEBINAR SCHEDULE

NSA is committed to continuing professional education for today's accounting and tax professional. NSA ConnectED webinars are offered both live and on demand for self-study.

There are many opportunities to earn end-of-the-year continuing education credits in December.

Order 4 or more webinars in one order save 20%! Click "Add More Webinars" and when you have at least 4 webinars in your cart, 20% will be taken off at the final step of checkout when you click "Next".

Form 3800 Business Tax Credits: What Your Clients Don't Know Could Hurt Them

December 6, 2016 at 2:00 PM EST

IRS CE: 2 Hours/Federal Tax Law

NASBA CE: 2 Hours/Taxes

Join us and learn about Form 3800 Business Tax Credits. See how these could save you and your clients tax dollars. We'll cover such things as tax breaks for mining companies, railroad companies, employers starting up pension programs or providing child care facilities, businesses which incur costs to become compliant with ADA, and companies that bear R&D costs just to name a few. Form 3800 can be used in conjunction with several other forms and schedules for many different types of businesses and offers a great variety of legitimate tax advantages to many companies. Not taking these tax breaks could be costing your clients more money unnecessarily. Build value with your clients by helping them save even more through Form 3800 business tax credits!

Presented by Kay Mortimer, EA

[Register](#)

Tax Savings Opportunities with Vacation Home Rentals

December 7, 2016 at 2:00 PM EST

IRS CE: 2 Hours/Federal Tax Law

NASBA CE: 2 Hours/Taxes

This webinar will examine in detail the complicated and somewhat contradictory rules of Sec. 280A as related to vacation home rentals. The basic Sec. 280 rules are explained through a series of examples, and the controversy over reporting interest and tax deductions is examined closely. This will be followed by a series of planning techniques, including de minimis rentals, legitimate repair days, swaps, and tax opportunities afforded by pooling arrangements following the Razavi court decision. The discussion will also examine situations via examples where it might be to the taxpayer's advantage to increase personal use days in order to have the Sec. 280 limitations apply.

Presented by John O. Everett, CPA, Ph.D., and Cherie J. Hennig, CPA, Ph.D.

[Register](#)

Preparer Penalties in the Real World

December 8, 2016 at 2:00 PM EST

IRS CE: 1 Hour/Federal Tax Law

NASBA CE: 1 Hour/Tax

As the weight of tax payer compliance continues to focus on the tax practitioner, we are more and more exposed to preparer penalties. While tax preparer penalties have become a new revenue source, in this time of fraud and ID theft, they are necessary. In this session, we will give you an updated overview of preparer penalties, including changes from the PATH Act,

Continued on the following page

and what tools and tips you need to stay in compliance.

Presented by Kathy Hettick, EA, ABA, ATP and Gene Bell, EA, ATA, CFP

[Register](#)

Due Diligence and Form 8867

December 13, 2016 at 2:00 PM EST

IRS CE: 1 Hour/Ethics

NASBA CE: 1 Hour/Regulatory Ethics

With the passing of the PATH Act in late 2015, Form 8867 has undergone a major revision. Learn the new reporting requirements and additional penalties for Form 8867 that have now been expanded to cover not only the Earned Income Tax Credit, but the American Opportunity Tax Credit, the Child Tax Credit and the Advanced Child Tax Credit as well. Learn what you need to know to stay in compliance and meet your due diligence requirements for the filing of the revised Form 8867. This is a must attend hour of CE for every paid preparer!

Presented by Kathy Hettick, EA, ABA, ATP and Gene Bell, EA, ATA, CFP

[Register](#)

Expatriation Tax

December 15, 2016 at 2:00 PM EST

IRS CE: 1 Hour/Federal Tax Law

NASBA CE: 1 Hour/Tax

Leaving so soon, my little pretty? Why my little party's just beginning." So says the Wicked Witch of the West to Dorothy. Apparently the little girl from Kansas isn't the only one in a hurry to escape – U.S. taxpayers by the thousands are abandoning their citizenship in hopes of fleeing the evil clutches of the IRS. But the party may indeed just be starting with the imposition of the expat tax, the government's last-ditch attempt to grab its "fair" share. This course will help practitioners determine who is subject to the exit tax, how it is computed, and when it must be reported.

Presented by Monica Haven, EA, JD

[Register](#)

Taking the S-Corporation K-1 to the 1040

January 10, 2017 at 2:00 PM EST

IRS CE: 1 Hour/Federal Tax Law

NASBA CE: 1 Hour/Tax

In this updated session, we will show you how to take the S-Corporation Schedule K-1 items to the 1040 tax return. Where do you begin? What questions do you ask, and what do you need to know? What about items not reported on the K-1? Basis? We need that information to accurately complete our clients 1040 tax return. We will cover all of this in an hour CE session along with reporting requirements you should be aware of and potential hazards to avoid.

Presented by Kathy Hettick, EA, ABA, ATP and Gene Bell, EA, ATA, CFP

[Register](#)

Continues on the following page

Business Expenses and the S-Corporation

January 17, 2017 at 2:00 PM EST

IRS CE: 1 Hour/Federal Tax Law

NASBA CE: 1 Hour/Tax

S Corporations continue to be the most popular business entity for taxation in the US today. In this hour, you will gain an understanding of business expenses related specifically to the preparation of the S Corporation tax return. What is the difference of separately stated items and regular expenses? We will also discuss the reporting of fringe benefits, depreciation, employee-shareholder compensation, home-office issues and more! This session will give you real answers, tips and solutions to give you confidence about reporting expenses on the Form 1120-S.

Presented by Kathy Hettick, EA, ABA, ATP and Gene Bell, EA, ATA, CFP

[Register](#)

Have I Told You Lately About My Swiss Bank Account: Understanding the Forms and Processes for Disclosing Offshore Assets and Accounts

January 24, 2017 at 2:00 PM EST

IRS CE: 2 Hours/Federal Tax Law

NASBA CE: 2 Hours/Taxes

For a number of years, many U.S. persons either intentionally or unintentionally failed to disclose foreign assets on the proper tax forms, and generally such persons suffered no consequence for the failure. Those days are over. The IRS and DOJ, armed with an arsenal of civil and criminal penalties, have made finding those with undisclosed foreign assets a priority. This webinar will cover the various forms that your clients must file if they have offshore assets, bank accounts, or interest in a foreign corporation or partnership.

Presented by Travis A. Greaves

[Register](#)

The Art of Appraisals: Appraising for Tax Purposes

January 26, 2017 at 2:00 PM EST

IRS CE: 2 Hours/Federal Tax Law

NASBA CE: 2 Hours/Tax

Assigning values – for income or estate tax purposes, separation agreements or business mergers, insurance and depreciation calculations – can be challenging and the results are indeed often challenged by the tax authorities. This course examines valuation methodologies, contribution rules and restrictions, qualified appraisals, art appraisals, and fraudulent schemes.

Presented by Monica Haven, EA, JD

[Register](#)

TAX RESOURCES FOR NSA MEMBERS

Whatever it takes, NSA is here for you this tax season!

As tax season approaches, there's no better time to make the most of your NSA membership and get connected to the people, programs, information, and resources to help you get answers you need and save you time.

Here are NSA Members' Tax Season Benefits Quick Links:

[NSA Tax Help Desk](#): Active & Associate members get five federal tax questions researched and answered free each year.

[CCH Tax Center](#): NSA members get code, regs, court cases, daily tax news, briefings, and tax alerts.

[NSA Tax Talk](#): Members can ask and answer questions for your peers, as well as search the Tax Talk archives anytime online by topic or keyword.

[Post to Tax Talk](#)

[Search Tax Talk](#)

[Income & Fees Survey Data](#): Know what your competition is charging with the latest data from the 2016-2017 survey that includes fees for tax preparation and other services broken down by state, geographic region and practice size.

[NSA Resource Libraries](#): Download sample client, disclosure, and engagement letters, the [2016 tax organizer](#) and more.

[NSA Bookstore & Discounts](#): Members save on CCH publications and Master Tax Guide, Quickfinder, TheTaxBook; RIA/PPC, cyber liability insurance, office supplies, credit card processing, client newsletters, shipping, and much more!

[Technology Search](#): When you need help finding the right accounting or tax software for your practice, use the free Technology Search for help.

[2016 Federal Tax Key Facts and Figures](#): A quick reference guide for income tax rates and more.

Whatever it takes. NSA is here for you! If you have any questions about your NSA membership, please contact NSA Member Services toll-free at 800-966-6679 or email members@nsacct.org.

Here are quick links to your

[My Account](#)

[My Benefits](#)

NEW MENTOR COMMUNITY FOR YOUNG PROFESSIONALS AND THOSE NEW TO THE INDUSTRY

Young professionals and new to the industry members of the National Society of Accountants have a new resource: the [NSA Mentor Community](#).

To join the community either for mentoring advice or as a mentor, go to www.nsaacct.org/mentors and click "Join Community" on the top right corner.

Ask the Mentor Community: [Post a Message](#)

The mentor community is not intended to be an alternative to NSA Tax Talk. To ask tax-specific questions, share answers, or access thousands of discussions, use NSA [Tax Talk](#).

SHOP ONLINE ON AMAZON FOR THE HOLIDAY SEASON AND SUPPORT THE NSA SCHOLARSHIP FOUNDATION

In the spirit of giving this holiday season, make your purchases count when you shop with [AmazonSmile](#). For every purchase you make, a donation will be made to the NSA Scholarship Foundation to support student scholarships. In addition to shopping on AmazonSmile, you can also make a year-end tax-deductible donation to the NSA Scholarship Foundation. Donating is easy. Go to: www.nsacct.org/donate

Each year, thousands of students contact the National Society of Accountants (NSA) seeking help to meet the ever-increasing costs of higher education. The NSA Scholarship Foundation awards between \$35,000-\$50,000 per year in scholarships to deserving undergraduate and graduate students who are committed to pursuing a career in accounting, helping to develop more qualified young accountants.

Since its formation in 1969, the NSA Scholarship Foundation has awarded over \$1 million to accounting students. The scholarships range from \$500 – \$2,500.

“This is truly a gift that keeps on giving,” says NSA Executive Vice President John Ams. “The money we invest in these students today will come back to benefit the entire profession in future years after they graduate and become skilled tax professionals and accountants.”

Students can apply for 2017-2018 scholarships online between January 3 and April 3, 2017. Scholarship guidelines, eligibility requirements and FAQs are online at www.nsacct.org/scholarships.

For students nearing graduation or new to the accounting profession, the Accreditation Council for Accountancy and Taxation (ACAT), which is affiliated with NSA, offers an Accredited Business Accountant/Advisor (ABA) credential. Learn more at www.acatcredentials.org.



NSA DUES INCREASE

As you also know, the cost of running a business keeps going up and, as a result, so do tax preparation fees. Costs for NSA have gone up as well.

We have been very fortunate to hold NSA dues at \$199 since 2010. After seven years without any dues increase, the NSA Board has voted to increase membership dues beginning in May 2017.

NSA Active, Associate, International and Vendor member dues will be \$225; Firm and Young Professional member dues will be \$175 and Educator dues will be \$125.

These increases will begin for members who have a May 31, 2017 paid through renewal date.

All NSA members can renew their membership online any time of year at <https://web.nsacct.org/Home/Membership-Renewal>. You do not need to wait until your actual renewal date to renew. Plus all members can renew for one, two or three years and lock in the current rate.

For all members who have May 31, 2017 or later renewal paid through dates, you can [renew online](#) now through April 30, 2017 without a dues increase. After April 30th, all renewal notices and online renewal fees will increase.

QUICK LINKS

[My Account](#)[My Benefits](#)[Renew Online](#)

CYBER LIABILITY PROTECTION NOW AVAILABLE TO NSA MEMBERS

Maybe you have heard about some of the large cyber-breach victims over the last few years. Keep in mind it's not just large businesses being hit by cyber criminals right now. Did you know, over 60% of the victims are small to mid-size businesses? Most business owners never recover from such an attack as it can cost hundreds per record breached in remediation fees. The impact of a cyber-attack on your accounting business can be devastating.

NSA is pleased to announce that our insurance partner, Forrest T. Jones & Company is now offering accounting and tax firms of all sizes protection at an affordable price. Their small business cyber protection plans start around \$750 depending on your revenue. The application is easy and they will guide you all along the way. Any network can be compromised, so take the first step in protecting yourself and your firm by calling Ronda at FTJ: 1-800-821-7303 ext.: 1556 or send an email to rjones@ftj.com

Did you know...



of cyber breach victims are small to mid-size businesses

1. Complying with breach notification laws costs time and money

Breach notification laws exist in 46 states across the US. Even if you are lucky enough to be in one of the states that has not yet enacted a law, the chances are you will still fall foul of another state's rules or one of the emerging federal laws. These generally require businesses that lose sensitive personal data to provide written notification to those individuals that were potentially affected. Notices need to be drafted by appropriately qualified lawyers, printed and sent out by physical mail. Expensive computer forensics are generally required to identify the source and nature of the loss. Affected individuals often demand credit monitoring services or an equivalent in order to minimise the risk of identity theft. All of this can be exceptionally expensive and even the smallest breach can cost several hundred thousand dollars to manage. Cyber policies not only provide the financial resources to pay for these breaches but can also provide access to specialist breach response resources to help you manage and contain the incident.

2. Third party data is valuable and you can be held liable if you lose it

We all hold more data than ever before and often this data belongs to our customers and suppliers. Non-disclosure agreements and commercial contracts often contain warranties and indemnities in relation to the security of this data that can trigger expensive damages claims in the event that you experience a breach. Increasingly, consumers are also seeking legal redress in the event that a business loses their data. Regulatory actions are also on the rise with significant fines now in place for businesses that place sensitive personal information or medical data at risk.

3. Data is one of your most important assets yet it is not covered by standard property insurance policies

Most businesses would agree that data or information is one of their most important assets. It is almost certainly worth many times more than the physical equipment that it is stored upon. Yet most business owners do not realize that a standard property policy would not respond in the event that this data is damaged or destroyed. A cyber policy can provide comprehensive cover for data restoration and rectification in the event of a loss no matter how it was caused and up to the full policy limits.

Protect Your Practice Against Cyber Threats

Accounting and bookkeeping firms face security challenges other small businesses don't because of the sensitive data they retain for client tax preparation and payroll. Social security numbers, bank account information, and other types of highly sensitive financial data can be easy pickings for a hacker if your security is lax.

Limit your exposure to breaches, follow these [cyber security](#) best practices.

Continued on the following page



of devices and websites
are not secure

4. Systems are critical to operating your day to day business but their downtime is not covered by standard business interruption insurance

All businesses rely on systems to conduct their core business, from electronic point of sales software to hotel room reservation systems. In the event that a hack attack, computer virus or malicious employee brings down these systems, a traditional business interruption policy would not respond. Cyber insurance can provide cover for loss of profits associated with a systems outage that is caused by a “non physical” peril like a computer virus or denial of service attack.



of small businesses
that have been
breached close within
6 months

5. Cyber crime is the fastest growing crime in the world, but most attacks are not covered by standard property or crime insurance policies

New crimes are emerging every day. The internet means that your business is now exposed to the world’s criminals and is vulnerable to attack at any time of the day or night. Phishing scams, identity theft, and telephone hacking are all crimes that traditional insurance policies do not address. Cyber insurance can provide comprehensive crime cover for a wide range of electronic perils that are increasingly threatening the financial resources of today’s businesses.

6. Retailers face severe penalties if they lose credit card data

Global credit card crime is worth over \$7.5bn and increasingly this risk is being transferred to the retailers that lose the data. Under merchant service agreements, compromised retailers can be held liable for forensic investigation costs, credit card reissuance costs and the actual fraud conducted on stolen cards. These losses can run into hundreds of thousands of dollars for even a small retailer. Cyber insurance can help protect against all of these costs.

7. Your reputation is your number one asset, so why not insure it?

Any business lives and dies by its reputation. Although there are certain reputational risks that can’t be insured, you can insure your reputation in the event of a security breach. When your systems have been compromised, you run a risk of losing the trust of your loyal customers which can harm your business far more than the immediate financial loss. Cyber insurance can not only help pay for the costs of engaging a PR firm to help restore this, but also for the loss of future sales that arise as a direct result of customers switching to your competitors.

8. Social media usage is at an all-time high and claims are on the rise

Social media is the fastest growing entertainment channel in the world. Information is exchanged at lightning speed and exposed to the world. But often there is little control exercised over what is said and how it is presented and this can give rise to liability for businesses who are responsible for the actions of their employees on sites such as LinkedIn, Twitter and Facebook. Cyber insurance can help provide cover for claims arising from leaked information, defamatory statements or copyright infringement.

9. Portable devices increases the risk of a loss or theft

The advent of portable devices and the ability to work away from the office has made life a lot easier for many of us. However, this new style of working also means that important and confidential data can be stolen or lost much more easily. A laptop left on a bus, an iPad stolen in a restaurant, or a USB stick going missing are all good examples. In addition, the devices themselves are being targeted with a growing number of viruses being built just for them.



**Start protecting
your business today**

Continues on the following page

Cyber insurance can help cover the costs associated with a data breach should a portable device be lost, stolen or fall victim to a virus.

10. It is not just big businesses being targeted by hackers, but lots of small ones too

Whilst the large-scale hack attacks on the news often involve big companies, small companies are also at risk and often don't have the financial resources to get back on track after a hacking attack or other kind of data loss. In fact, over a third of global targeted attacks were aimed at businesses with less than 250 employees'. Cyber-attacks are quickly becoming one of the greatest risks faced by smaller companies, making cyber liability insurance a must. It can help protect smaller companies against the potentially crippling financial effects of a privacy breach or data loss.

2016 TAX ORGANIZER

The image shows a form titled "National Society of Accountants Tax Organizer for Tax Year 2016". It includes a "Compliments of:" box and various fields for personal and contact information. The fields are organized into two columns: Taxpayer and Spouse. The Taxpayer column includes Name, SS No., Address, Telephone (Home), Telephone (Work), Cell Phone, and Email Address. The Spouse column includes SS No., Birthdate/Age, Telephone (Home), Telephone (Work), and Email Address. At the bottom, there is a "Check One" section with radio buttons for "Single", "Married Filing Joint", "Surviving Widow/Wither", "Married Filing Separately (enter spouse's name/SS No. Above)", and "Unmarried Head of Household".

The 2016 tax organizer is available [now](#). Customize the tax organizer with your firm information and send it to clients to collect important information for their tax returns.

[Download Tax Organizer in Word](#)

[Download Tax Organizer PDF](#)

The advertisement features the Travelers logo (an umbrella) and the text "TRAVELERS". Below this, it says "Accountants Professional Liability Insurance". The main headline reads "Managing risk is good business!". On the right side, there is an image of a man in a suit walking a tightrope. In the bottom right corner, there is a red button that says "LEARN MORE". The number "7286" is visible in the top right corner of the ad.

Tax Topics

LATEST QUESTIONS AND ANSWERS FROM THE TAX HELP DESK

Here are some of the issues that the Tax Help Desk has encountered as well as a few issues that may be of importance to tax practitioners during this time of the year.

Q-1 We have clients or taxpayers come in on occasion that have formed a charitable remainder trust along with the help of their attorney, and then they come to us not knowing what to do next. They ask us, as their tax preparer, what kind of tax deduction do they get and do they have to file any additional tax forms with their Form 1040?

A-1 The charitable remainder trust is a trust that is used to shift wealth from a taxpayer's control who may have estate tax planning considerations, have charitable goals in mind as well as assisting in the creation of tax deductions. This kind of tax planning also allows for the transfer or gifting of the income from the trust to non-charitable beneficiaries for a period of time.

The charitable remainder trust (CRT) has many different forms and names to fit all of its various purposes. These purposes are based on the taxpayer's financial, charitable, estate and tax planning goals. But despite its name, it does not file the traditional Form 1041 that the typical or normal trust would.

There is a different form, the Form 5227 – this form is filed for a taxpayer's charitable remainder trust (CRT) that is governed under IRC Sec 664. So the charitable remainder trust files the Form 5227 and not the traditional Form 1041. The form is filed separate from the Form 1040, rather than as an attachment. It does, however, like the Form 1040, file on a calendar year basis and is due by the 15th day of the fourth month following its calendar year. The form is currently sent to the IRS Service Center in Ogden UT.

As for the charitable deduction, the individual taxpayer who sets-up a CRT will receive a current charitable deduction in the year that the charitable remainder trust is funded, despite the future nature of the charitable contribution. The tax deduction is based on the present value of the future gift. Often times the organization that will benefit from the future contribution, or the sponsor of the "trust", will assist with or may actually make the tax deduction calculation.

So the CRT is a trust that creates a charitable contribution tax deduction but does not file the traditional Form 1041 for a trust, but instead files the Form 5227.

Q-2 Another very common question that crosses the Tax Help Desk is the ability to deduct a loss on the sale of an inherited personal residence. The typical or common event is when a parent passes away, leaving the personal home to the surviving children. The beneficiaries, or surviving children then fix-up or renovate the home, list it for sale, and sell the prior principal residence of the deceased parent at a loss. Can they as the sellers of the personal residence deduct the loss on the sale?

A-2 The answer to this question is YES. Absolutely, the beneficiaries—the surviving children— can take a capital loss on the sale of their parent's principal residence; even though had the parents sold their home before their death, this loss would not have been allowed.

The individuals who inherit the principal residence of a decedent—and who themselves do not occupy the residence post-death—are allowed to deduct the loss on its sale, as it has become investment property rather than personal property.

The reason that there is often a loss on the sale of a decedent's personal residence is the tax concept of stepped-up basis under IRC Sec 1014. This Code Section allows for the basis of the inherited residence to step-up to the property's fair market value (FMV) on the date of the decedent's death. This step-up, or change in basis, is typically upward and combined with the post-death improvements to the residence, as well as the closing costs—which also effect the gain/loss on the sale—which will result in the basis of the property (the home) being sold to exceed the sales price of the property.

The taxpayers, the beneficiaries, or sellers of the property, will often receive a Form 1099-S with their share of the sales

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proceeds. This, combined with their share of the stepped-up basis, will be reported on the Form 8949 /Schedule D of their personal Form 1040. Then, absent any other capital gains, their individual tax return will be limited to a deduction of \$3,000 per year – under the rules of deducting capital losses.

There is a bit of a side note to this tax situation if the personal residence remains titled in the decedent's name and/or estate. If this is the case, the sale of the principal residence of the decedent will be reported on the Schedule D of the Form 1041 of the estate of the deceased taxpayer.

This presentation will still result in a loss—a capital loss—and this loss will ultimately benefit the decedent's beneficiaries. There is a dissenting opinion with the IRS: an internal memo (SCA 1998-012) that states that it is their opinion (the IRS's) that a decedent's personal residence sold within their estate is still a personal residence and that the loss should not be allowed. So the advice that should be made to every individual who is inheriting the personal home of a deceased taxpayer is:

Do not move into it, and make sure the title is changed from the decedent, or the estate of the decedent to the beneficiaries personal names and social security numbers before the closing to the sale of the property.

These steps will ensure the position of a deductible capital loss to the owners and sellers of a decedent's principal residence

Q-3 The spouse in a divorce who may not work, or did not have a retirement account, will often ask for a share of or half of the other spouse's 401(k) plan. The question that often arises is how this part of a divorce or property settlement is handled. The bigger issue is how the recipient spouse is taxed or not taxed on this part of the divorce settlement, and is there a 10% penalty on the distribution?

A-3 The process of splitting assets in a divorce will often surround the IRC Sec 1041: the tax-free gifting rules under the tax concept of the property settlement. However, income based assets like the IRA or the employer-based Sec 401(k) plan asset are a different story...they can create tax and penalty if not handled correctly.

There is a procedure or mechanism in which divorcing taxpayers can legally split their employer based retirement assets through what is formally called a "qualified domestic relations order" or a QDRO for short. This provision covers the employer based retirement assets and does not cover the IRA. It effectively allows for the avoidance of the 10% early distribution penalty under IRC Sec 72(t) as well as making sure that the recipient spouse is taxed on the retirement plan distribution and not the actual owner of the Sec 401(k) plan assets.

Without the use of the QDRO, the ex-spouse that is giving up their part or half of their Sec 401(k) would be taxed and penalized; their subsequent transfer would be a part of the "property settlement" and would be tax-free to the recipient spouse. So depending on which side of the divorce that you—as the tax practitioner—are on and when in the divorce proceedings your advice is sought, the QDRO can be a key component to the divorce negotiations relating to the employer based retirement assets.

Just remember that the provisions of the qualified domestic relations order, or QDRO, does not eliminate the income tax on the retirement plan distribution... it can just shift the responsibility for the tax to the recipient spouse and can also allow for the waiver of the IRC Sec 72(t) 10% early distribution penalty. This is a big part of the whole divorce tax situation and often a rather big part of the whole divorce's financial assets settlement.

Q-4 We often receive tax questions or issues, here at the Tax Help Desk, that relate to how to handle the cost of computer software. This is an expense of almost every business these days, whether they are buying off-the-shelf tax software, or maybe it is just a part of the equipment, the computer they buy—whether they are spending thousands of dollars on

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specially designed software applications for their business—or the company website... The questions always arise as to how to handle the costs, the expense of this often intangible asset.

So how does one write-off, or deduction for tax purposes, the cost of a special computer software application that they are spending \$20,000 or \$50,000 on?

A-4 Believe it or not, but with all of the activity in the computer software and website design industry, the IRS uses a Revenue Procedure issue over 15 years ago as its guide. Rev Proc. 2000-50 is the rule or the guide as to how to handle computer software and the tax treatments vary for a current expense to a capitalized cost as part of the equipment or as a separate intangible asset.

The computer software may even be a cost that is eligible for the research and development (R&D) credit under IRC Sec 41.

But the bottom line to the software development costs that are incurred by a taxpayer is that they can be currently expensed under a tax concept contained in IRC Sec 174, or they can be capitalized and amortized over a period of either 36 months or 60 months. The details to Rev Proc. 2000-50 should be reviewed for any or every tax situation to see how they may affect your taxpayer's situation. Also, what needs to be considered is that their prior tax treatment of similar costs as this treatment in the past, could bind you and them to a "current expense" method or one of capitalization. Because once a taxpayer adopts a method of handling or treating computer software costs they are bound by that method, and actual IRS permission is required should something different be used by a taxpayer on a year-by-year basis. This is a point often missed by tax practitioners in dealing with software costs.

We have attached a copy of the Revenue Procedure for reference and review should this particular tax situation be one you are currently dealing with. This is often a year-end expense or cost that our taxpayers are contemplating and could be a good source of year-end tax planning fees for us as their tax consultants, and a good reason to sit down for that year-end tax planning meeting.

Q-5 Speaking of year-end tax planning... How about a couple of year-end tax planning tips, ideas, or even potential necessary steps that need to be taken before December 31st rolls around?

A-5 One of the first things that comes to mind, as year-end approaches, is the year-end salary check for the corporate shareholder or owner...that year-end reconciliation check for the S-Corporation owner whom has taken a draw against their earnings, their AAA, all year long—that we now have to turn into a reasonable and defensible salary check to match a decent Form W-2, based on the profits of the S-Corp.

This is also the time to decide and pay year-end bonuses to owners and shareholders – in which the actual check and payment need to be made before year-end. Unlike the non-owner employee bonuses which can be made for up to 2 ½ months after year-end, and still be deducted on the prior years' tax return, the owner/ shareholders bonus does not have that same cushion or window: it must be paid by year end to be deductible.

Next you might check for any expiring carryovers, a NOL or a charitable deduction carryover. Check for any expiring tax laws or provisions that may not be in place next year. Or if a capital loss carryover can be used to absorb the gain on the sale of a capital asset that might be needed for cash flow or to fund a year-end payment.

And speaking of year-end payments, the status of the taxpayer's estimated tax payments should be reviewed: has enough been paid in; should the last payment or installment in January be modified or maybe there should be some final paycheck Federal tax withholding to help cover an early in the year tax liability—because remember, Federal withholding is spread ratable over the year—where an estimated tax payment is just applied to tax liability at its date of payment.

The end of the year is also a good time to analyze whether or not to defer income, a bonus or paycheck, to accelerate a tax deduction, or buy some equipment or a piece of business property and take advantage of "bonus" depreciation or IRC Sec 179 and the expensing election.

Then there are the retirement plan issues if your taxpayer is older and receiving their required minimum distributions.

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Has it been distributed, did they receive their MRD or RMD? Did they turn age 70 during 2016, and is their birthday before July? They could have a required IRA distribution to make before December 31st. They may want to avoid this IRA distribution from being taxable by rolling it over to a charity. This is one of those tax planning tactics that needs to take place before the end of the year.

There is also the forming of some more formal retirement plans like a Sec 401(k) plans or profit sharing plan that can be funded after year-end, but actually need to be “formed”, opened before the end of the physical calendar year. Where the traditional IRA and the SEP (simplified employee pensions) can be formed and funded after year-end, other plans need some attention before the end of the year.

Prepaying some bills such as the property tax bill or a state estimated tax payment can save some taxes, prepaying a business expense, an insurance premium, or some liability due next January or February. There is also the possibility that deferring an expense into next year, or accelerating some income into the current year, can help save taxes in 2017. The key here is, with all of this, you just do not know unless you sit down and talk to your clients. Extend that offer to meet, to have that year-end talk about where they are at “tax-wise” or even financially – because some things do need to be done in 2016, before they bring in their tax organizer in February or March. By then it might be too late.

Your membership in the NSA give you access to tax organizers like this [one](#) to help your clients better prepare for that pre-tax season meeting.

Legislative Link



John Ams
Executive
Vice President

Rule Clarifying Business Definition Set for December Release

Companies should be able to better distinguish between a business that is being bought or sold and a bundle of assets that are transferred, under a new accounting rule to be issued in December by the Financial Accounting Standards Board (FASB).

The planned final standard, the release of which FASB authorized on November 9, is expected to lead to more asset classifications and fewer sales and acquisitions treated as business combinations. Currently, the definition of a business in ASC 805, on business combinations, is applied too broadly, according to FASB staff, leading to transfers of assets being labeled combinations.

FASB members said the new rule will put in place a practical way to differentiate between the sales at issue for accounting purposes. “I think, from my perspective, this standard just kind of puts some common-sense judgment into whether something’s a business versus an asset,” said FASB member Lawrence Smith. FASB Chairman Russell Golden said he had hoped for bigger improvements on the topic, “but I believe this is a very important interim step.” Golden said he hopes “that people will apply judgment, but I do think that the threshold is important to take out some of the costs in the system on asset purchases that clearly are not business combinations.”

FASB voted to allow companies to adopt the standard earlier than the planned rule’s required effective date.

Companies may apply the new definition to acquisitions or disposals carried out in the current quarter, if financial statements covering the period have not been issued yet or, in the case of private companies, not yet made available for issuance.

Public companies on calendar-year reporting timetables will be required to use the new definition of a business in reporting for fiscal years starting after Dec. 15, 2017, and interim periods within those years. Non-public enterprise will have a year beyond that to apply the planned standard.

FASB also plans to issue final rules, probably in January, on a related effort. That topic, formerly called definition of a business phase 2, pertains to accounting for partial sales of nonfinancial assets.

A FASB staff update on the project on defining a business is at available [here](#).



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Election Results: What Impact on Tax and Accounting Professionals?

The January 20 swearing-in of Donald Trump as President - and the resulting change in control of the Administration to Republican hands – will result in significant changes in tax policy.

What can tax professionals expect as we begin tax season and beyond?

IRS Commissioner: IRS Commissioner John Koskinen’s term expires one year from now, in November 2017, but he has said on numerous occasions that he would tender his resignation if the President requests it. Given that Republicans have for the past year suggested they would try to impeach Koskinen, what is likely to happen?

Tax season will formally begin within a few days of Trump’s swearing-in, which means that the performance of the IRS during tax season, good or bad, will be attributed to the Trump Administration. Furthermore, at this point neither a Treasury Secretary or Assistant for Tax Policy has been named, and those individuals would likely have a significant say in how and when a transition to a new Commissioner should occur. As a result, former Republican tax officials, veterans of the Treasury and Capitol Hill, are unanimously recommending a go slow approach. Many also believe that, even if hard right members of the House of Representatives want to have a vote on the impeachment of Koskinen, that vote is not likely to go their way.

Tax Reform: A GOP tax reform plan is likely to be approved in the House fairly quickly after the new Congress comes to town.

The [draft plan](#), which is light on specifics, was first issued last summer as a “Blueprint”. Barbara Angus, the Chief Tax Counsel of the House Ways and Means Committee, in a speech this week said the blueprint contemplates comprehensive tax overhaul, including individual, business and international changes and a restructuring of the Internal Revenue Service.

On the individual side, the Blueprint provides for lower and flatter tax rates and for further reductions in the taxes on investment income, capital gains, dividends and interest, Angus said. It eliminates the individual alternative minimum tax and the estate tax, and it contemplates the elimination of special credits and deductions in favor of lower rates.

On the business side, the Blueprint proposes a 20 percent corporate tax rate and a 25 percent business tax rate for income earned through passthroughs or a sole proprietorship, Angus noted.

The Blueprint also provides for immediate and full expensing of investments in tangible and intangible assets, she said. It provides for the elimination of deductions on net interest and for the carryforward of net operating losses with interest. It also eliminates the corporate alternative minimum tax.

The Blueprint is somewhat different than the proposal outlined by candidate Trump during the campaign, so the overall plan will have to be adjusted. One of the first clues to how to meld the two proposals is likely to be in the Administration’s budget proposal that will be delivered to Capitol Hill in March.



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The Senate is likely to take a much more deliberative approach than the House, with the result that a tax reform plan is unlikely to receive final approval until summer at the very earliest, and more likely in the fall.

As we have seen over the last few years, Senate passage of most contentious bills – and tax reform would be a contentious bill – is held up because it takes 60 votes in the Senate to force a vote (the so-called cloture rule). With only 52 Republican Senators, tax reform is therefore likely to be taken up as part of a budget reconciliation bill, which can be considered on a simple majority vote. A budget resolution would not be introduced after the receipt of the

Administration's budget in March, however, so there is a time lag if this procedure is used.

Another downside to the budget reconciliation process is substantive, however: a budget reconciliation bill must be revenue neutral over a ten year budget projection. So, if tax reform calls for a significant reduction in rates, thereby losing revenue, other items in the budget, whether reductions in other government spending or elimination of tax deductions, must be included to “balance the budget.”

This balancing act is likely to result in significant political warfare, especially if the Administration insists on the massive infrastructure construction/repair program advanced by candidate Trump, because the revenue has to come from somewhere. Many of the Republican Party's more conservative lawmakers, including the members of the hard-right House Freedom Caucus, got their start in politics over concerns about the deficit. Battles over spending levels, the national debt and tax rates are likely to occur within factions of congressional Republicans during the tax overhaul process.

The NSA Federal Taxation Committee has been asked by Rep. Brady, the chair of the Ways and Means Committee, to comment on the Blueprint from a tax practitioner/small business perspective. NSA will provide comments in the near future and will be involved in the tax reform process.

Stay tuned.