NSA MAIN STREET PRACTITIONER

National Society of Accountants

The Magazine for Tax and Accounting Professionals

IRS Revenue Code Section 280: A Tax Potpourri

Sometimes Bad Things Just Happen

Highlights of Pertinent Tax Code Changes in Tax Year 2016

Taxing the Gig Economy, Part 1 & Part 2

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IRS REVENUE CODE SECTION 280: A TAX POTPOURRI

Main Street Practitioner

Publisher
National Society of Accountants

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John G. Ams

Vice President and Director,
Marketing and Member Services
Jodi L. Goldberg

Ad Sales Manager
Diane Griffin, dgriffin@associationvision.com

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Main Street Practitioner is published in digital format by the National Society of Accountants, 1330 Braddock Place, Suite 540, Alexandria, VA 22314.

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

New Beginnings

The new year has arrived and it is time for new beginnings. And it is tax time, too. Many of our members are already very busy with clients and forms.

Speaking of tax time, National Society of Accountant's Federal Taxation Committee has been examining the Trump Tax Plan. Some in the 28% tax bracket will have their top rate increased to 33%. Others in the 10% tax bracket will have some of their income jump into the 12% tax rate. Some taxpayers will pay more; some taxpayers will pay less. Others will pay no tax and will be relieved of filing returns except to get a refund with a new $30,000 standard deduction. Those in a 39.6% bracket will benefit the most since their rate will drop to 33%. It should be an interesting year for income taxes. Only time will tell which of the Trump Tax Plan provisions will become law, and what changes we will need to be prepared to make.

NSA committees are hard at work planning a great 2017

NSA has partnered with TaxSpeaker for 2017 CPE by the Sea, a post-tax season CPE retreat at the Hilton Myrtle Beach Resort, May 17-19. The event will feature six hours of continuing education each morning and afternoons free to enjoy the sun, surf, and local flavor. Topics will cover federal tax updates, social security and technology/practice management. For more information about the TaxSpeaker/NSA 2017 CPE by the Sea, visit this page.

This year's 2017 NSA Legislative Strategy & Leadership Networking Conference (LNC), Motivate...Engage...Lead... Succeed! will be held in Phoenix, AZ, July 24 - 25. The LNC will cover leadership topics and emerging legislative issues to name a few. The LNC is an outstanding networking and idea-sharing program NSA provides for our state affiliates, volunteers and leadership.

NSA's Leadership Development Program is a two-year program for NSA that encourages members to develop leadership skills and give back to the profession through volunteering-whether with NSA, at your Affiliated State Organization, at your workplace or for a related professional organization. A Leadership Development Program Leadership Retreat will be held prior to the LNC on July 23. There are a few openings for the 2017-2019 class. NSA State Director Training will be held after the LNC on July 26. To participate, complete this online application or download an application here.

Mark your calendars and save the date! NSA's 72nd Annual Meeting will be held in Reno, NV, August 21 - August 24, 2017. The Annual Meeting will include the opportunity to earn 16 hours of CPE including hours in accounting, ethics and a special tax planning boot camp workshop.

The acclaimed NSA Enrolled Agent Exam Review Course will be held prior to the Annual Meeting in Reno, Sunday, August 20 through Tuesday, August 22. Course materials include NSA self-study EA Preparatory Course, review and practice exams, study guides, and access to a private online community with the instructors. For more information about NSA's Enrolled Agent Exam Review Course, go to http://www.nsacct.org/eacourse.

By popular demand, we are also bringing back the opportunity to earn the Accredited Tax Preparer (ATP) credential onsite. ATPs are exempt from the Annual IRS Filing Season Program Tax Refresher Course each year.

NSA's Regulatory Oversight Committee (ROC) is updating a spreadsheet of state practice regulations, monitoring state legislation and getting ready for all the potential changes that may turn up during the legislative session that occurs during tax season.

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NSA volunteers are working on special college outreach efforts. The college connection task force committee was formulated to bring information about NSA and the Accreditation Council for Accountancy and Taxation (ACAT) to local colleges, thus giving accounting students more information about careers and credentials.

NSA Executive Vice President John Ams represented the tax professional community in IRS Commissioner Koskinen's Thursday, January 5, 2017 press conference to highlight the start of the tax season. John's remarks centered on how the new security requirements would impact tax professionals and their taxpayer clients. Following the press conference, he attended a quarterly meeting of the IRS Electronic Tax Administration Advisory Committee, where he was recently named chair of the Outreach Subgroup, and expressed NSA member concerns about the effect the "automatic logout" feature in tax software packages would have on the day to day activities of tax professionals. John has also been busy representing NSA on Capitol Hill, where he was recently invited to attend swearing in receptions for Senate Majority Leader Mitch McConnell, Minority Leader Chuck Schumer, Finance Committee members Chuck Grassley and Ron Wyden, and Rep. Kevin Brady, chair of the House Ways and Means Committee.

In closing, I want to remind you that there continue to be openings for volunteers who wish to serve on NSA committees. Volunteers can contact me and tell me how they would like to serve..

Until the next time, have a profitable and busy tax season.

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Sometimes Bad Things Just Happen

Craig Weeks

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Nobody ever wants to lose a client. The foundation of client retention is avoiding the perception that what you provide is ordinary, widely available and easily replaceable.

There is a partner in one of my San Francisco client firms who is really, really accomplished. She's great at accounting marketing, technically competent, diligent, organized and provides great client service to a large book of business.

So why was she just informed by a long time client – seven years – that they were going to go out to bid for their future accounting services?

She immediately spoke with them and was told there were no service issues and that they "loved working with her" and the senior staffer also assigned to the client. As she phrased it, "It's like they suddenly woke up and decided we've been over charging them."

She has an excellent client retention percentage, so this situation is a statistical outlier. But it happened and losing the client represented a serious loss of revenue over the next seven years.

The lesson is that this can happen to anyone, including you. Nobody wants to lose a client, especially a significant one. So, is there some preventative medicine to shorten the odds? What can you do?

The foundation of client retention (unless your marketing emphasis is low price) is avoiding the perception that what you provide is ordinary, widely available and easily replaceable.

Because, if it is – and remember, the vast majority of clients think all accountants can competently prepare taxes – then (the thinking goes) there are lots of other accountants who can do their taxes and surely one of them will offer a lower price.

The most high profile commonly available accounting service is 1040 preparation. Approaching April 15th is it any wonder that we are bombarded with price-related pitches for tax preparation services?

On the other hand, you will NEVER see price pitches for consulting, advice and project work because these are distinctly not commodities.

Unlike 1040 preparation, which can be remotely accomplished with a simple exchange of raw data between client and

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preparer via mail, fax or email (or even with TurboTax or other no-human-involved software), consulting, advice and project work require contact, communication and human interaction.

This provides the foundation for an actual personal relationship. And, these services bring you closer to understanding what's really going on with the client. They afford you the opportunity to become a trusted adviser, board member or strategic partner in the client's success.

When you attain this status your services are more highly valued and cannot be measured by simply focusing upon fees paid.

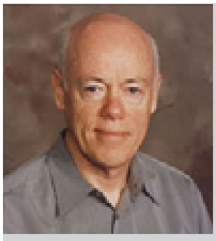
This statement is underscored by the results of a comprehensive survey conducted in 2008 by Hinge Consulting that examined the number of accounting-related services vs. 10 year client retention. In a nutshell, here are the results:

- Provide 1 service to a client and you will retain 12% of these clients 10 years later;
- Provide 2 services and you will retain 24%;
- Provide 3 services and you will retain 63%;
- Provide 4 services and you will retain 81% and
- Provide 5 services and you will retain 98%(**!**).

If she had been providing 4 or 5 services would she still have been informed by her client that they were going to go out to bid? We can't know the answer, but it would have almost certainly reduced the odds.

The lesson here is to always seek out additive services you can provide your good/best clients. Planning, what-if analyses, projections, forecasts and becoming an advisory board member are just a few of the many things besides tax preparation you can provide that bring value to your clients.

Not only do these activities generate more current revenue, they will enhance your retention percentage. This is because while it's relatively easy to replace a preparer based primarily upon price it is much more difficult and risky to replace a valuable adviser who has proven her worth over time.



About the Author:

Craig Weeks, after years of practicing law and then holding executive positions in various companies, Craig became a senior member of a large SoCal Business Consulting firm. Because of his professional services experience, he worked frequently with accounting, law and engineering firms. Craig realized almost immediately that most of the firms were relatively ineffective at business development, and discovered he had a talent for helping them grow and elevate their practices. For the past ten years he has worked exclusively with accountants and accounting firms to teach them effective business development skills.

Going Paperless this Tax Season? These Tips Make It Worthwhile

Jesse Wood

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If you're an accounting or tax professional and thinking about going paperless before the 2017 tax season, these tips will turn a potentially negative experience into a positive one.

5. Know That "Paperless" Only Describes Half the Benefits

There are many ways to go paperless before tax season, but not all are created equal. The best paperless strategies are backed by software solutions that automate, simplify, and securitize processes traditionally completed with paper, and this is where the resulting efficiencies and cost reductions can be tracked.

For instance, going paperless would serve little purpose if all one used was a scanner and a traditional Windows folder structure.

The benefits of paperless can't be realized without the right document management software. Going paperless with nothing more than a scanner and Windows folder structure will cause the same problems paper-based processes cause in accounting offices: misfiling, difficulty retrieving information, poor security, and limited collaboration.

4. Think Paperless Means Breaking the Bank? Think Again

There's a widespread belief in the accounting community that going paperless can cost over $20,000. However, after implementation fees of a document management solution and a monthly subscription fee of roughly $50 per month to use the software, the return on investment begins quickly if the system is leveraged and embedded across existing business processes.

One of the most common mistakes accountants and tax pros make when going paperless is forgetting to leverage the features of a document management solution. This is easily avoidable if selecting a system as intuitive as possible, and therefore easy to remember to utilize and embed into an existing process architecture.

3. Choose a Software Vendor that Can Automate and Encrypt Your Entire Process

To succeed in the 2017 tax season, most accountants and tax professionals will need the following features in a document

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management solution to automate and encrypt processes deeply embedded in their existing, paper-based routines:

Templates

When adding a new client to file structures, accounting and tax professionals must manually create the folder, store it, and tag it. Templates mean that instead of copying, pasting, and moving file and folder and drawer structures, accountants can replicate them in different places, automating a file and folder creation process that would otherwise be repetitive and time-consuming.

Zonal OCR

Zonal OCR for accountants and tax professionals automates the scanning and information management portion of scanned documents. It also enables throughput continuity and simplifies using a document management solution over the long-term, automatically routing documents where they need to go in the solution by identifying relevant metadata.

Encrypted File Sharing

Sending files with sensitive client information via email is no longer acceptable given that email is susceptible to breach and customers are warier of sharing their information than ever. Relying on a web portal as an encrypted file sharing feature has two benefits over email:

1. Never having to remove items from the portal, but rather letting clients access documents via the portal, and
2. impressed clients who feel safe sharing their information. Additionally, some accountants even charge their clients to use these portals and collect extra income because of their ease of use and security.

2. Head for the Cloud to Integrate with Solutions You Already Use

The cloud is the future of all software interdependence and connection, so learning to rely on it sooner rather than later will remove any need to convert data from an on premises technology to the cloud, and also enable longevity to the integrations with software accountants already use, such as Lacerte from Intuit or QuickBooks.

1. You Don't Need to Rush to Get It Done

Going paperless with even the best software should never feel like a rushed, confusing process. Many accountants and tax professionals can complete the process within the span of several weeks without shutting down operations, but still, others choose to opt in for a "phased" implementation, merely scanning a document into their document management solution of choice whenever it's touched. Neither option is better than the other, but a matter of preference.

If accountants and tax professionals remember these tips to prepare for the 2017 tax season, they are bound to succeed in their paperless endeavors.

About the Author:

Jesse Wood is the CEO of Lehi, Utah based eFileCabinet, Inc. Founded in 2001, eFileCabinet, Inc. began as a cutting-edge tool to digitally store records in accounting firms. As it grew in popularity, eFileCabinet developed into a full-fledged electronic document management solution designed to help organizations capture, manage and protect their data. www.efilecabinet.com

Taxing the Gig Economy, Part 1:

'Interesting Tax Situations' Create Gray Areas for On-Demand Drivers

Mike Slack

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Here's what we know and what we don't know about business mileage deductions for drivers using ride-sharing apps working for today's on-demand services like Uber and Lyft.

The changing definition of work is often referred to as the gig economy, the sharing economy, and the on-demand economy. For taxpayers and tax professionals, it isn't always easy to apply traditional tax law to less clear-cut scenarios that arise in the new economy. In Part 1 of this series, we'll explore the gray areas that on-demand drivers and their advisors are navigating. No information in this series should be construed as tax advice. Nothing is certain until the IRS issues definitive guidance. For drivers making money through ride-sharing apps in the on-demand economy, driving is the easy part.

For drivers making money through ride-sharing apps in the on-demand economy, driving is the easy part.

Many would agree, taxes are the hard part.

On-demand drivers and their tax advisors are navigating gray areas where traditional tax law doesn't exactly work with the shifting definitions of work location, commuting, and business-versus-personal time.

Currently, there's no specific IRS guidance targeted at helping taxpayers and tax professionals apply traditional tax law to these emerging situations. Here, we'll explore the ambiguities, and what we can expect from the IRS in the future.

What we know, and what we don't

In June 2016, IRS Commissioner John Koskinen stated the IRS was addressing the "interesting tax situations" that the sharing economy has given rise to. In August 2016, the IRS launched a Sharing Economy Resource Center aimed at helping individuals who drive or rent property using platforms such as Uber, Lyft, Airbnb, and others. The site links to already available IRS resources but doesn't give specific guidance on how to bridge some of the gaps between emerging, unclear tax situations and traditional law.

A few things are clear. First and foremost, drivers can deduct the miles they travel while actually collecting a fare from passengers. Uber, for one, refers to these distances as "on-trip" miles. The company documents each driver's on-trip miles via

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its online platform and year-end statements.

It's also clear that on-demand drivers can follow the existing rules for choosing the standard mileage rate or the actual expense method when they deduct their auto expenses. But, as this article will outline, on-demand drivers should be aware of some limitations of each method that they may not expect.

We don't know as much about business mileage deductions. It can easily be argued that a driver's business mileage deductions shouldn't be limited to the expenses they incur during on-trip miles. While drivers may approach their business mileage deductions in some of the following ways, it's important to remember that nothing is certain until the IRS publishes definitive guidance.

For business mileage deductions, where does the business start and stop?

The majority of the ambiguity that on-demand drivers are grappling with comes down to the interplay between two long-established rules:

- Commuting – that is, the cost of travel between one's residence and a regular work location – is not deductible, regardless of distance.
- On the other hand, the cost of getting from one work location to another is deductible. This is often referred to as the "business stop" rule.

For on-demand drivers, the safest definition of their first business stop would be the point where they pick up their first passenger for the day.

However, while most taxpayers have a fixed work location at a specific address, it's not always clear when on-demand drivers are commuting or at their regular work location. Although there is no guidance on this, drivers may argue that a general area (such as a specific region of a city) could be treated as a regular work location if it is where drivers regularly offer their services.

Example 1: Alex lives in a suburb of Chicago, but drives for an on-demand service in the city's downtown. Otherwise, he has little reason to travel downtown. Alex could view his regular work location as all of downtown Chicago. If he did view it that way, once he arrives downtown and begins seeking fares, he would consider any miles driven there deductible business mileage.

When the app is on, the business may still be off

Another important point is that merely switching on the phone app that drivers use to find passengers will not convert personal travel into deductible business transportation.

Switching on the app is essentially just advertising, especially because drivers don't have to accept rides or fares that are offered. In a sense, this is similar to another long-standing rule regarding the placement of advertising material on one's vehicle. Simply put, attaching display material advertising a taxpayer's business on his or her car doesn't change the otherwise personal use to a business use.

Example 2: Using the facts from Example 1, Alex turns on the app when he leaves his house. On days when he doesn't pick up a passenger, the portion of his trip that normally constitutes his commute won't be deductible, despite advertising that he is available to pick up riders.

The business-stop rule still applies

Under the business-stop rule, if a driver picks up a passenger while driving on his or her normal commute, the travel will convert to being deductible.

Example 3: Same facts as in Example 2, but halfway to his destination, Alex picks up a passenger. While his travel from his

Continued on the following page

residence to the pick-up point remains nondeductible, mileage from that point forward is deductible as long as he continues to conduct business.

The driver must intend to conduct business

Miles are deductible only when drivers actually intend to conduct business. Just because the driver is at his or her regular place of business, if the driver doesn't intend to provide any rides for compensation, all mileage would be nondeductible.

Example 4: On the weekend, Alex travels to downtown Chicago to do some personal shopping. The travel from his residence to downtown is nondeductible, and any miles he drives while downtown are also nondeductible. This is also true if he switches on the app while he's downtown, but does not actually plan on picking up any passengers, and does not do so.

Drivers have two options to calculate their vehicle expenses

For years, the IRS took the stance that "for-hire" drivers, including taxicab operators, could not use the standard mileage rate to calculate their deductible vehicle expenses. This rule was reversed by IRS Rev. Proc. 2010-51, which became effective for business use of automobiles beginning in 2011.

Now, drivers have two options to calculate their vehicle expenses: the actual expense method or the standard mileage method.

The standard mileage method is usually better for most taxpayers, but has limitations

For most taxpayers, including on-demand drivers, the standard mileage method is probably more advantageous for calculating vehicle-related deductions. The standard mileage rate is 54 cents per mile for business miles driven in 2016, and is used in lieu of claiming actual fixed and operating costs of using the auto for business. This means the standard rate includes items such as depreciation, maintenance, repairs, tires, fuel, oil, insurance, and registration fees.

However, taxpayers using the standard mileage method generally can still separately deduct:

- Tolls and parking fees
- Auto loan interest
- Personal property taxes

Limitations

The standard mileage method does have its limits:

- First, to use the standard method, drivers must do so in the first year they use the vehicle for business purposes.
- In later years, drivers with purchased vehicles can choose either method, subject to some limitations.
- On the other hand, drivers using the standard method for a leased vehicle must do so for the entire period of the lease.
- Lastly, if a business owner simultaneously uses five or more vehicles for business, he or she can't use the standard method.

Actual expense method means closely tracking and apportioning expenses

If taxpayers don't use the standard mileage rate, or otherwise don't qualify, they can deduct their actual expenses of operating the car. These expenses include:

- Depreciation
- Lease payments
- Registration fees and licenses
- Insurance
- Gas
- Oil

Continued on the following page

- Repairs
- Garage rent
- Tires
- Tolls and parking fees

Drivers must divide expenses between personal and business uses

If drivers use a car for personal and business purposes, they must divide the expenses between the two uses. The expenses are prorated based on the miles driven for each purpose.

Clearly, the actual expense method is much more cumbersome, because it requires tracking and substantiation of many items, in addition to division of business and personal miles.

On-demand drivers are likely subject to “luxury auto” limitations

Another disadvantage of the actual expense method is the fact that vehicles can be subject to the luxury auto limitations of §280F, which greatly reduce annual depreciation deductions for cars costing more than $15,800 and vans exceeding $17,300 in 2015.

While taxicabs are exempt from these rules, a vehicle used by an on-demand driver may not be. This is because the exemption applies only to vehicles that, because of their design, aren’t likely to be used more than a de minimis amount for personal purposes.

A vehicle used by an on-demand driver is typically an ordinary, personal-use passenger vehicle. In most cases, it’s the driver’s only vehicle. As such, these vehicles remain subject to the luxury auto limitations.

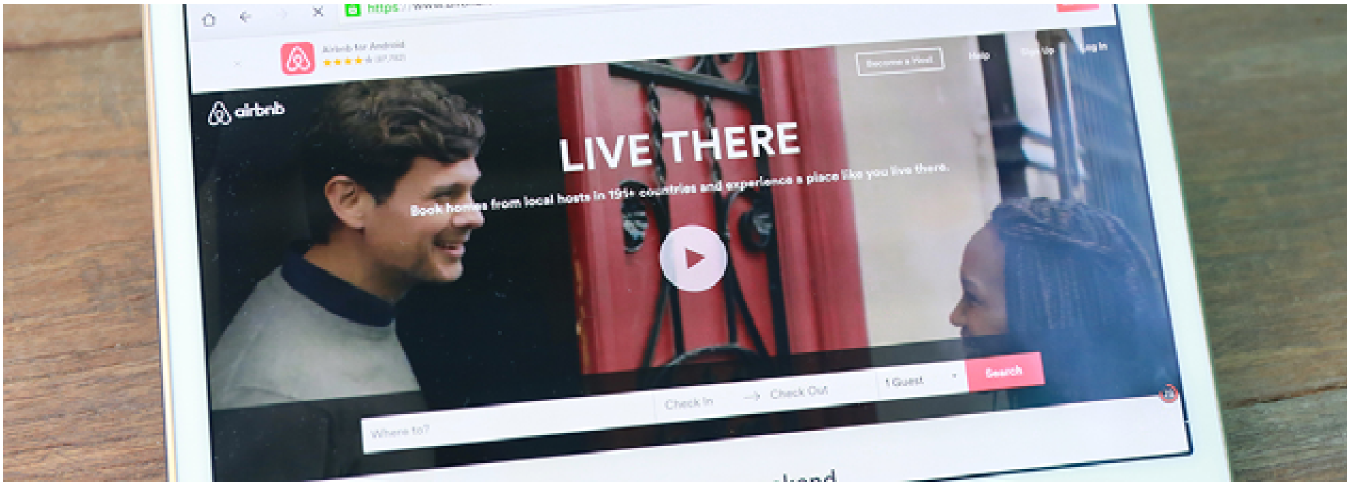
IRS will likely follow up with more guidance

Presumably, the IRS will eventually issue formal guidance on certain situations in the future, similar to the guidance it issued in 2014, in response to uncertainty over the virtual currency Bitcoin. Until then, it’s best for taxpayers and their advisors to navigate the existing rules with common sense and a solid understanding of the existing law.

About the Author:

Mike Slack, JD, EA, is a senior tax research analyst at The Tax Institute. Mike leads research teams focused on business and investment tax issues.

This article originally appeared at www.TheTaxInstitute.com



Taxing the Gig Economy, Part 2:

Nontraditional Home Rentals Aren't Always a Perfect Fit with the Tax Law

Brenda Hochberg

***

Defining an on-demand rental – a spare room on Airbnb – for tax purposes can be difficult – potentially involving rules for small business, vacation homes, and passive activity losses.

The changing definition of work is often referred to as the gig economy, the sharing economy, and the on-demand economy. For taxpayers and tax professionals, it isn't always easy to apply traditional tax law to less clear-cut scenarios that arise in the new economy. In Part 2 of this series, we'll explore the gray areas that sharing-economy landlords and their advisors are navigating. No information in this series should be construed as tax advice. Nothing is certain until the IRS issues definitive guidance.

A homeowner decides to list her spare bedroom on a sharing-economy rental site to lease the space to tourists. She invests in a mini-fridge and single-serve coffee machine for the room. She manages the bookings, helps each guest get settled, and cleans the space herself after each guest. At the end of January, the site sends her a Form 1099-K showing $20,000 in income. How should she file her taxes?

Is she a small-business owner? A vacation-home landlord? What expenses can she claim? The answers aren't easy.

The sharing economy creates new questions and blurred lines

This situation is increasingly common for homeowners who rent out their property, especially on a casual basis in the sharing economy. Using services like Airbnb, homeowners can easily enter into short-term rental agreements for a room in their home or for their entire home, hosting dozens of guests a year.

In addition to local laws and ordinances on short-term rentals, sharing-economy hosts face a complex set of income tax rules. Even the most conscientious filers and tax professionals can be challenged to correctly apply existing tax laws, compared with conventional rentals. Taxpayers and their advisors must delve deeply into IRS forms, instructions, and publications that can leave key questions unanswered.

Here, we'll look at how the sharing economy stretches traditional tax rules for rentals, and examine how sharing-economy hosts and their tax advisors should navigate this emerging area to comply with their tax obligations.

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How traditional rental rules work in the tax code

First, it helps to examine how existing rules work for conventional rentals. That may include landlords who typically rent their properties for longer periods of time, or it could include vacation homeowners who may rent and use their properties.

The Internal Revenue Code includes a web of rules that limit deductible losses for homeowners and investors who rent out residential property. Expenses such as taxes, repairs, maintenance, supplies, vehicle mileage, and depreciation can easily exceed rental income. Without loss-limitation rules, property owners could use residential rental property expenses to offset not only their rental income but also wage, self-employment, and portfolio income.

In addition, because rental expenses aren't always reported to the IRS through third-party information statements, loss-limitation rules rein in unscrupulous taxpayers who inflate their costs to shelter income.

Here are some specific rules to know.

Vacation home rules impact casual rentals

IRC Section 280A, often referred to as the vacation home rules, compares personal and rental use of a dwelling. Here are some key points:

- **Personal use:** If owners use their home too much for personal reasons – that is, more than the greater of 14 days or 10 percent of arms' length rental days per year -- they can deduct rental expenses only up to their rental income. However, they can often claim any nondeductible mortgage interest and real estate taxes as itemized deductions.
- **Apportioning expenses:** Homeowners must apportion their expenses between personal and business use before deducting them from rental income.
- **The silver lining:** Rental income is tax-free if homeowners limit rentals of their residence to 14 days or less per year.

Landlords can't use passive-activity losses to offset some other types of income

IRC Section 469, the passive-activity loss limitation (PAL) rules, prevent many taxpayers from using rental losses to offset portfolio, wage, and self-employment income.

The PAL rules accomplish this by:

- Generally classifying rental income and losses as passive
- Generally classifying portfolio, wage, and self-employment income and losses as non-passive
- Disallowing passive losses that exceed passive income

PAL rules active-participant loss allowance

If a taxpayer's modified adjusted gross income is less than $150,000, the taxpayer can claim rental losses up to $25,000 per year, if the IRS considers the taxpayer to be an active participant in the activity. These dollar amounts are cut in half for married individuals filing separate returns if the couple lived apart.

At-risk rules limit losses in certain situations

The at-risk rules limit losses in an activity to the investment amount considered at-risk. For a residential rental, the at-risk rules primarily affect homeowners carrying a nonrecourse mortgage and tenants who sublet their home.

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Sharing-economy rentals can be hard to define for tax purposes

The advent of the sharing economy presents challenges to administering these traditional rules. Here's where complications often arise.

Is the activity a rental or a small business?

Taxpayers and tax advisors commonly have questions about whether a host's activity is a business that belongs on Schedule C or a rental activity properly reported on Schedule E.

In a traditional rental, the property owner – either personally or using an agent – only occasionally conducts activities such as cleaning, maintenance, collecting rent, paying bills, and booking tenants.

In contrast, an active sharing-economy host is likely involved in the enterprise almost daily, answering prospective occupants' questions, cleaning the home between occupants, and meeting occupants to hand over keys and orient them to the property and the neighborhood.

The IRS takes the position that all rental activities belong on Schedule E, no matter how time-consuming. The only exception is if the taxpayer provides "significant services … such as maid service." The Schedule E instructions don't define maid service or give other examples, so Airbnb hosts can't be sure whether the services they provide when transitioning guests in and out of the property are significant.

If the services are significant, the rental activity belongs on Schedule C. The IRS then considers the taxpayer self-employed. Any net income is likely subject to self-employment tax, and any net loss (unless it's considered passive) will reduce any other income the taxpayer has.

Vacation home rules may apply

On the face of things, sharing-economy hosts have a lot in common with vacation homeowners. Both accept short-term rentals and typically don't need or expect to rent out their property 365 days a year. But the IRS has given inconsistent guidance about whether renting a room or home in the sharing economy is the same as renting a vacation home, when it comes to taxes.

IRS Publication 527, Residential Rental Property, explains that the vacation home rules apply only to a "dwelling unit." A dwelling unit is a property with "basic living accommodations, such as sleeping space, a toilet, and cooking facilities."

Hotels, motels, inns, and similar establishments are not considered dwelling units. An example in the publication explains that a room-rental arrangement is considered a hotel, motel, inn, or similar establishment – and not a dwelling unit – if the room is regularly available for customers and the host has no personal use of the room at any time, including when the room is not currently rented.

This example doesn't clarify situations in which sharing-economy hosts rent out a spare room or less-defined space in any other circumstance, such as when there's an en-suite bathroom and minimal cooking facilities in the room, or if the host has some personal use of the space.

Those willing to wade into proposed regulations and private letter rulings in search of an answer will find that, in those materials, the IRS takes a different position, looking at the property as a whole to decide whether a room rental involves a dwelling unit.

If a room or space in a host's home isn't considered a dwelling for vacation-home rules, the host wouldn't be affected by loss-limitation rules. But, the host also can't take advantage of the 14-days-or-less rental income exclusion.

Is it a rental for the purposes of passive activity losses?

As stated above, the IRS generally considers rental income and losses passive. However, there are several types of rental

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activities that can occur in the sharing economy that the IRS doesn't consider rental activity in the passive-loss sense:

- **Leasing for seven days or less:** The IRS doesn't consider leasing for such short periods of time a rental for PAL purposes.
- **Providing significant services:** If a homeowner provides significant personal services with the rental, it's not considered a rental for PAL purposes, if the average lease length is 30 days or less. This rule is similar to the rule placing certain rentals on Schedule C instead of Schedule E.

Note that in either of these situations, if the taxpayer doesn't materially participate in the activity, the taxpayer can't take advantage of the PAL active-participation loss allowance since the activity isn't considered a rental for PAL purposes. It will be considered a passive trade or business.

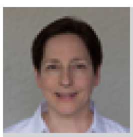
Two special PAL rules

The following PAL rules can apply even if the activity is considered a rental:

- **Vacation home rental:** If a taxpayer's rental expenses are limited by the vacation home rules, the IRS considers the rental activity non-passive.
- **Real estate professional:** This rule applies to taxpayers who spend more than half of their working hours materially participating in real estate businesses, and those hours total more than 750 hours for the year. If these taxpayers materially participate in a rental, the IRS considers their rental activities non-passive.

Best course: Diligently monitor rental activity and keep meticulous records

As laws adapt to disruptive changes in the nature of rental activity, hosts on sharing economy sites like Airbnb need to keep thorough records, and pay close attention to the frequency and duration of their hosting activities and services. Doing so will help them properly report rental activity and avoid taking questionable positions on their return.



About the Author:

Brenda Hochberg, JD, is a principal business analyst with H&R Block. Brenda has been working on H&R Block's consumer tax products for 23 years, translating federal and state personal income tax laws into a step-by-step interview.

This article originally appeared at www.TheTaxInstitute.com

IRS Revenue Code Section 280: A Tax Potpourri

Stuart P. Sobel

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Internal Revenue Code section 280 is a conglomeration, a potpourri, and a mass of all kinds of stuff that the government decided to dump into one place.

Internal Revenue Code Section 280 can be a very confusing subject. Normally, when IRS and Congress prepare code sections, the sections deal with specific subjects. Code section 280 is a conglomeration, a potpourri, a mass of all kinds of stuff that the government decided to dump into one place. The title of IRC Section 280 could have been A Mix of Tax Confusion - Home Office, Commuting Expenses, Golden Parachutes, Luxury Automobiles, Marijuana Sales, Sales of Controlled Substances, and More. This online article covers the different sections of code section 280 that affect a lot of people.

Introduction

Code Section 280 is a mess. An absolute mess. Whoever had the responsibility of writing this code section blew it; blew it horribly. It's kind of like file cabinets. It's kind of like desks. It's kind of like my office. When you don't know where to put stuff, you pile it on here, you throw it in there, and you forget about it. That's what they did with this code section. They just buried all kinds of things in there.

I'm going to be sharing with you both the law and my interpretations of the law. I'm also going to be sharing with you case studies where these different code sections have been applied, and I'm going to specialize and focus on tax planning tools that you can use.

We're dealing with a lot of subsections in 280. I'm going to be going through A, B, C, D, E, F, G, and H. I'm going to be going through different subsections.

The section that has an impact on most people is Section 280A, office in home, the business use of the home. I'm going to be talking about how it is imperative to get every deduction that you are entitled to. I'll be talking about the fact that when I do presentations with accountants and other tax professionals, and I ask them a question, "How many of you encourage your clients to take an office-in-home deduction?" Very few encourage them, and, very erroneously, many practitioners say that if a client takes the office-in-home deduction, they will have a better chance of having their return selected for examination. That's false, absolutely false.

Actually, the government has basically said "Don't worry about the office-in-home deduction." They've given you a streamlined method to use. This article will examine business versus rental use allowances, deductions that you're entitled to. That's part of 280A. We'll look at the fact that this section also deals with daycare, when people use their homes, and that

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there's a little different allocation method. Part of 280A also covers rental of a personal residence to an employee, where you have your own corporation and you rent to your business, or you even rent to an employee. A major corporation who pays you rent for the usage of a portion of your home.

We'll examine personal use of a residence for short-term rentals, where the government has got a break for you. If you rent your personal residence to individuals for less than a specific number of days, you're not allowed to take any expenses, but also, you don't have to include in income the money you receive. That's a significant benefit. Also addressed in 280A is rental to a family member, and the importance of determining a fair market value rent. We'll also look at some other code sections, 267, losses between related parties.

Also dumped into this section is demolition of structures. Why is that buried into a code section that deals with office in home? We'll be talking about when you acquire a structure, demolish it, and build something else on it. What do you do with the cost of the demolition?

280C is an offset section, where you disallow deductions when credits are available. You can't get it both ways.

In some states, people are now allowed to sell marijuana for recreational purposes. For a period of time, marijuana as a medical treatment has been allowable in certain states, but more states are, in fact, coming into the fold. The problem is, as you're going to hear, there's a lack of consistency between the states and the federal government. The states can say, "This is fine," but the federal government says, "This is not fine because marijuana is still labeled as a controlled substance."

Well, let's throw in a little bit more about the automobile. There have got to be limitations for luxury automobiles. The problem is, what the federal government says is a luxury automobile is not a luxury automobile in our eyes. It's a normal, low-priced car, but because of the antiquated tolerances, levels and limitations, you have inconsistencies. I'll also cover, in 280F, limitations on property use for personal purposes when you don't use something at least 50% of the time. There's also a portion of 280F that they've dumped into this subsection — treatment of leases.

So, in Section 280, we've got automobiles. We've got offices, office in home, commuting. Now, let's add golden parachutes. Not parachutes that we see coming down from the sky from airplanes, but golden parachutes that people get money from businesses. And the government has seen that people with the sale of businesses have come out rich, taking it as a business expense, and basically hurting other shareholders. We're going to be talking about what is a golden parachute. Well, let's make it a little bit more complex. You see what I'm saying? Section 280 is a dumping ground.

Code section 280H, limitations on amounts paid by personal service corporations (PSCs) electing alternative taxable years, limitations on amounts that can be paid, where a personal service corporation has made a code section 444 election. And we'll explore making 444 elections and how the government treats them, and the limitations that they apply by tying this into another section, limiting deductions for personal service corporations to what people pay for personal holding companies. Again, this is all 280. It's a mass of confusion. All kinds of stuff. So I'm covering a whole bunch of subjects. Someone says, "All you're doing is a presentation on one code section?" There are probably 15 different code sections here, but they dumped them all into one.

Code section 280E, and the sale of marijuana. Colorado was the first state in the United States to legalize the recreational use of marijuana. California was the first that legalized the medical use of marijuana. After that, Washington, Oregon, Alaska, and Washington, DC followed. We're not done getting locations, getting states. There are close to a dozen additional states that are expected to vote on the issue of legalizing marijuana for recreational use in the next two years. Why? Because people like using it. Because states don't have a problem with it because it raises a lot of money in sales tax and other local taxes.

States are not like the federal government. The federal government can print money. The federal government can operate with deficits, which they've been doing for a long time. The states are broke. The states need money. I live in Indiana, conservative Indiana. We have so many casinos in Indiana, it's amazing. We were one of the first states to have multiple casinos in different towns. Why? It makes money. Marijuana sales make money. "Oh, it's for the people. They want it." Why are the states doing it? Because they see it as a revenue maker. We don't have a lot of states now, but there are going to be more states as we go along.

Although some states recognize recreational marijuana use — they recognize it, and they voted on it — the U.S. government has not budged. The U.S. government says that marijuana is a controlled substance, and controlled substances are illegal. Are they addressing all this? They do address it in many areas, but what they're saying is, "States, you can do what you want. You can tax it. You can allow some deductions, but because the federal government still sees it as a controlled substance, we're not going to allow you to have the same deductions that you could have at the state level." Regardless of how individual states treat it, according to the federal government, selling or possessing the drug is illegal on the federal level. It's illegal.

Code section 280E has specific language that states that there is no deduction allowed for any amount incurred in a business

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that consists of trafficking in a controlled substance. Marijuana is specifically listed in Schedule I of the Controlled Substances Act. The same thing as heroin, cocaine, and other drugs. We have a lot of different code sections that apply in this situation.

The first one is code section 61, which kind of reads like the Sixteenth Amendment to the Constitution. Income is taxable from whatever source derived, even if it is illegal income. If Al Capone would have filed his tax return, and it included all of his income, the IRS wouldn't have had a problem. IRS has a line item on the return for illegal income. It's line 21. The income from the sale of marijuana is includable in income. Illegal businesses must report their revenue. If it's a corporation, on a Form 1120; if it's an individual who's selling it, on a 1040; a partnership, on a 1065; or a sole person LLC, on a 1040. A multiple entity LLC that has not made an election has a default classification as a partnership. They have to report their income and pay the tax liability.

But it's talking about gross income. There are a lot of code sections, like code section 162, that relate to expenses that are ordinary and necessary, incurred in a trade or business, are deductible. But what you're going to see here is income from an illegal activity, the sale of a controlled substance — marijuana — is not deductible in the same manner.

Prior to 1982, illegal businesses were able to reduce their revenue by the normal business expenses, which are the cost of goods sold, the purchases with the adjustments for beginning and ending inventory, and also those other expenses that are ordinary and necessary business expenses—the rent, the marketing, the employee expenses, all of those other expenses that are incurred in a trade or business that are ordinary and necessary under code section 162.

In the landmark case *Edmondson*, the IRS had denied in an illegal business a lot of expenses for lack of substantiation, but the courts in *Edmondson* said the IRS is not really clear, and allowed Edmondson to claim these other expenses, these distasteful expenses that were related to an illegal business, the sale of drugs. In 1982, Congress, with recommendation from the IRS, came up with code section 280E, and again, they didn't want to have a specific drug code section, so they dumped it into 280. Code section 280A has been around for a long time. So they enacted 280E to reverse the decision in *Edmondson*, and what they said was businesses could no longer deduct from their illegal income most of the other expenses that were not cost of goods sold expenses, that were like below the line expenses. They limited the deduction for those amounts. They basically took it away.

Cost of goods sold remains so, basically, the cost of growing the marijuana, or purchasing it from the Colombians, or purchasing it from other individuals, would remain as a deductible expense. In 1996, California became the first state to legalize the sale of medical marijuana. In a court case in 2002, *Californians Helping to Alleviate Medical Problems*, the IRS attacked all these expenses, these ordinary and necessary expenses, the below-the-line expenses, but, in this case, the taxpayer was able to get some of the expenses to be deductible. The court allowed the business to deduct the consulting arm of the business by saying that those expenses belonging to Californians Helping to Alleviate Medical Problems dealt with another arm of the business besides the selling of the product. They also performed other services, and they should be entitled to take expenses. Because they made the interpretation they were not limited under 280E, they were ordinary and necessary under 162.

***Olive v. Commissioner*, a 2011 case.** IRS does another examination, and they disallowed not only the below-the-line and ordinary and necessary business expenses, but they also disallowed cost of goods sold. The reason for it was the taxpayer, Olive, didn't have adequate documentation to prove the expenses. The court listened to the IRS, and saw its position that the taxpayer didn't have specific, written documentation. The problem that is often occurring with the Internal Revenue Service is the revenue agent, the tax examiner, wants to see documentation in writing. Documentation evidence does not necessarily have to be in writing. Code section 274 requires written documentation, but cost of goods sold doesn't necessarily. If you could prove it through something called evidence, specifically circumstantial evidence, corroborating evidence, or oral testimony, you're able to prove.

At court, Olive was able to prove that they had to pay something for the marijuana, and they proved the industry average of 75% of gross revenue, that there was a 25% profit in the sale of marijuana based on what you have to pay. You can only mark it up so much. So, what that was telling taxpayers was, get the expenses out of administrative expenses, ordinary and necessary business expenses, and dump it into cost of goods sold.

Code section 471. Code section 471 deals with methods of accounting. Prior to 1986, a taxpayer determined its inventory, production and purchase costs using code section 471. They said, in basic terms, that a business that has inventory, and where it is a material-producing factor, the business should be on the accrual method, which means that taxpayers would have to capitalize the material costs, the direct labor costs, and specific and direct costs, which meant that a marijuana reseller would capitalize the invoice price of the marijuana purchase, plus the other charges, the freight. Like any type of business does. Those directly related cost of goods sold expenses would go in, and basically, as we know with the cost of goods sold, when you still have the inventory, you have to reduce the inventory. That we have to reduce the cost of goods sold by the ending inventory, but it's basically capitalized until you get rid of it.

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So, 471 came into existence. Well, again, we think, “Well, okay. Let’s throw it into cost of goods sold.” While it might be deferred until we get rid of the inventory, we’re still going to get it. It’s better than not getting it at all, because, normally, it’s going to be disallowed because it’s below the line. But here, move it into the cost of goods sold, and even though it’s sitting there with inventory you’re holding, eventually you’re going to get it, the deduction.

Another code section impacts upon this, code section 263A. Code section 263A basically added additional expenses that are inventoriable compared to code section 471. Code section 263A applies to a lot of different businesses. Homebuilders and developers who incur expenses have to capitalize those costs, and when they finally sell the homes or the buildings or the land; then they’re able to take the deduction. Well, again, 263A says we’ve got to capitalize it. Code section 263Aa, resellers are required to treat a proper share of indirect costs as inventoriable. Both producers and sellers are required to capitalize inventory and a portion of these general administrative costs. So, still, it’s looking at the idea that we’ll eventually get it, even with 471, even with 263A. However, they made modifications.

Expenses capitalized are later deductible, right? Wrong. Because they wrote in 263A2 that for a general and administrative expense, the rent, the promotions, those different expenses, they put a restriction and put into code section 263A saying that any cost, which could not be taken into account in computing taxable income for any taxable year, shall not be treated as a cost described in this paragraph. This is the impact of code section 280E. What it’s basically saying is that this is a controlled substance. Code section 280E says, “You can’t take it.” Code section 263A says, “You have to capitalize it,” but they put the limitation. 263A2 came in later to say, “You can’t take it because it’s not a deductible expense under 280E.” So if 280E doesn’t allow it, you cannot get it on 263A2.

The impact of 280E. In 2015, the Office of Chief Counsel of the Internal Revenue Service came out with the Chief Counsel Memorandum. Chief Counsel Memoranda are written to tell the IRS how to handle issues. The IRS is going to follow these positions. Do you, as a tax payer have to cite this or have to follow this as authority? No. A Chief Counsel Memorandum, a proposed regulation, the government is going to follow, but you do not necessarily have to follow it. However, if the IRS examines you, you know where they’re coming from. You’re going to have to contest it. Chief Counsel Memorandum reiterates the 263A restrictions for the administrative expenses under 280E. However, they did make some relief for cash method tax payers. Nothing changed for cost of goods sold, but the incidental, general, and accounting expenses, IRS has the authority to permit cash basis taxpayers to deduct from gross income the costs that would have been inventoriable had the taxpayer been on the accrual method. But again, this is more of an accounting method change. It still does not give the taxpayer the right to take the administrative expenses.

Tax law is not always fair. What is happening is these businesses are paying a substantial amount in tax. It’s like YOU operating. When you have a practice, you have rent. You have employees. You have promotion expenses. You might have a website. Your gross income is not your net income. You have those expenses. You’ve got to spend money to make money, unquestionably. But, because of the differences in interpretation, 280E is a killer as far as the profitability of marijuana businesses. Will this ever change? I doubt it. I don’t think it’s ever going to happen. That is a look at 280E and the marijuana code section. We’re now going to go back into other parts of 280.

Code section 280A deals with office-in-home deductions. When I’m speaking at a professional society or at a gathering of EAs, enrolled agents, I ask, “How many of you encourage your clients to take the office-in-home deduction?” Very few in the room say they encourage their clients to take this deduction. What are the reasons? The first reason they often tell their clients is, “The IRS is going to examine you,” that the IRS computers automatically kick out returns where the deduction is there. Or they tell the client, “You’re going to have to keep voluminous records, documentation. You have to use a whole room for business, always. A whole room.” And they say, “When you sell your home, you’re going to have to recapture your depreciation and pay tax on that.” Because when you sell your home under code section 121, you get to exclude the first $250,000 if you’re single or the first $500,000 if you’re a married couple.

So what practitioners do is advise clients not to take the office-in-home deduction, but there are many tax payers that do claim the home office deduction. Taxpayers claim more than $7 billion a year in deductions on their tax returns, either as an employee or on Schedule Cs for home offices. Depending on whether you’re self-employed or an employee, you have different limitations. If you’re an employee and this is part of employee business expenses, it goes into Schedule A and is impacted by the 2% limitation. Schedule C, we have a form, and it goes into the computation of Schedule C, which can have an impact on your self-employment tax.

There are some basic rules for office in home. You must use part of your home exclusively and regularly as the principal place of business. It’s not for your convenience. It’s for the convenience of the employer. A realtor who has an office at a real estate office doesn’t like the noise at the real estate office. They can use the internet and realtor.com from their home. They can use the computer from their home. They don’t need to be at the office. They love working from home. They can dress down. They can be more comfortable. That is for the convenience of the realtor. Where a person is offered space and doesn’t use it, it

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must be for the convenience of the employer. It should be a place that you regularly use to meet or deal with clients.

It must be for the convenience of the employer. There was an older case, *Cadwallader*, a tax court memorandum case from 1989. The gentleman, Mr. Cadwallader, was a professor. He loved to grade papers and do his class plans from his dedicated space in his home. Mr. Cadwallader's return won the IRS audit lottery and was selected for examination. The IRS agent said, "You don't need to have this office at home." The court denied the office space to the professor because the university provided adequate office space. He chose to work from home. This is very important to understand. This is broader than just office at home. The concept of ordinary and necessary. An expense could be ordinary to have an office, but is it really necessary?

Let me give you another example tying into the ordinary and necessary type of thing. This one will surprise you. There was a tax professional who loved to go to resort conferences sponsored by his CPE provider to get his CPE credit. And the tax professional limited the conferences that he attended. He went to only international locations in resorts and took the airfare, took the hotel expenses, took all the expenses. This individual got NASBA, National Association of State Boards of Accountancy, approved CPE. Well, his tax return was selected for examination, and the IRS agent looked at the educational expense, which was significant. And the agent made a determination that, yes, CPE expenses are ordinary; however, it was not necessary for you, every single year, to go out of the country for your CPE. Because the same program that you're going out of the country for is being offered in your own town, by the same company in the United States.

So, therefore, while it was ordinary, it wasn't necessary. It's the same concept with an office at home. While it might be ordinary, is it necessary when you already have adequate office space? You've chosen to work from home. There are all kinds of expenses, uses of entertainment expenses. Someone says, "Well, I had to entertain this client." IRS has the right to say, "Well, it's ordinary to entertain the client, but the expenses were lavish and extravagant, and it was not necessary to spend that money to do it." Is the government superimposing their judgement on me? Yes. Do they have a right to do it? The answer is yes.

There is a lot of confusion. A lot of people say, "You have to use a room entirely for business." No, you don't. You have to use the space of a room or the whole room, but not necessarily the complete room. On the other hand, would the government go paranoid if you had a futon in your office, and you had a family member come in there and sleep on it a couple times during the year for a couple days? No. The government is not going to take away the deduction from it. Multiple rooms may qualify. You're going to see a case study I'm going to be discussing, a real case, that in an office in home, you can claim more than one room.

There are exceptions to the exclusive use test. If you're storing inventory or product samples in a room, even though you're using the room, you're going to be able to get the deduction. In a daycare facility, where people are taking care of kids in the home, the kids have to use the bathroom. You have to use the kitchen to prepare the meals. People live in the homes. Is there an exception for daycare facilities? Yes. Now what if a person spent their time doing day trading? They traded like crazy. They used their computer. They bought and sold securities all the time. They had one room dedicated to their investing. That room was not used for anything else. That should be an expense on their return. That at least should be a Schedule A code section 212 expense. You still have to meet the 2% limitation. It's deductible, right? Wrong.

Office in home is only allowable for a business, not for investment purposes. It is not an IRC 212 expense. You can't take a deduction for an office in home used for investment purposes, which is going to be passive income. It must be used for business, either as an employee in a business or for your own business. There is an exception.

Let's look at a case study. Again, I love teaching through storytelling. It bothers me immensely when all people do is recite code sections. I like to share real examples. I've written four books, and a couple of my books are called mistake books. One of them is called *The Top 50 Mistakes Practitioners Make and How to Fix Them: Dealing with the Internal Revenue Service*. I've had this licensed to tax practitioners' societies, to major accounting firms. I love teaching through a case study approach. I've also written another book called *The Top 50 Mistakes Practitioners Make in Nonprofit Taxation and Governance Issues and How to Fix Them*. Again, case studies.

This is a case study titled "Negotiating a Settlement with the IRS" that deals with appeals. This is a true case. I've changed the names, but it's a true story. Also, you're going to get some benefit from this case study because it will help you know how to go to appeals, negotiate settlements, and serve and defend your client. Louis and Ellen Carpenter operated from their home. Again, from home you can do a lot of things. I operate an international business. I have five people who work for me all over the world, and I work from my home. It's amazing what you can do.

Well, Louis and Ellen Carpenter used the same practitioner for years. They have a small office. Basically, a simple practice. The taxpayers have an adjusted gross income, of about $90,000 a year. No exorbitant expenses. They do itemize their return. They do have a home mortgage, and their itemized deductions are relatively conservative. The accountant interviewed the couple to obtain the information, a fairly simplistic return, and gave the information to a paraprofessional working for the firm to prepare the tax return. Most of the expenses were conservative; however, the accountant did ask some questions regarding

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the use of an automobile and the whole office-in-home deduction. The Carpenters assured the accountant that they would never cheat the government, that all of the expenses were proper and reasonable, and that they had documentation if they were ever questioned by the IRS. The accountant had exercised due diligence. The accountant didn't have to examine all of this documentation. They had the right to believe the taxpayer. The accountant prepared the tax return.

In January of 2014, the IRS contacted the Carpenters to tell them that their 2012 tax return had been selected for examination. Lo and behold, the issues that are being questioned by the government are the automobile travel expenses and the office-in-home deduction. The Carpenters asked the accountant if the money they paid the accountant for the preparation of the return also included representing them at an examination. The accountant said, "No. I gave you an engagement letter," which was a very wise decision. I would encourage all of you, when you prepare returns, to tell clients specifically what they're paying for. It does not cover representation at examination. It does not cover an offer in compromise. Very clearly, tell clients they're paying only for preparation of a tax return.

The accountant felt that this would be a fairly easy examination and that it would take about 10 hours. The accountant told them how much they charge per hour. The Carpenters said they can do it themselves. They don't need the accountant. Six months later, the Carpenters contacted the accountant to say they made a big mistake. They made a mistake in representing themselves at the examination. IRS tore it apart, disallowed a substantial portion of the travel expenses, the use of the vehicle, and the entire amount of the office-in-home deduction. When a taxpayer does not agree with the findings, they have a right to appeal. The government issues a 30-day letter, which enables a taxpayer to file a protest and go to appeals. Well, the Carpenters reconsidered and asked the accountant to represent them before the appeals office.

The accountant failed to disclose one important factor. The firm had never represented a client before appeals. They weren't really competent. An interesting point here is Circular 230, the guidelines for practice before the IRS, applies to all tax practitioners, attorneys, enrolled agents, enrolled actuaries, appraisers, and CAAs, certified acceptance agents, individuals who help get TINs for people filing a W-7. Well, they made a change in 2014, and I've included this in my ethics presentation. They put in there that practice consists of being competent to do what you're saying you're representing the client for. They never had this language, declaring competency. In this situation, the accountant didn't disclose they had never gone to appeals. That should have been disclosed. This accountant was a preparer. It's kind of like, I have people who I talk to, and they say they're a tax professional. They've been preparing returns for 30 years. I say, "No. You're a tax practitioner who practices tax preparation."

A tax professional is a person who does things called tax planning, tax preparation, and tax controversy. There are tax practitioners that all they do is tax resolution. They're the ones that wave the magic wand and make the taxes disappear or get the offers in compromise. This person was a preparer. The accountant had only had two examinations in their career. They had dealt with some collection matters. This was their first appeals case. They didn't know how to proceed in this situation.

There was a mistake. A practitioner, especially now with the revisions to Circular 230, should be competent to do the services that they're charging for. There's no shame in being honest with a taxpayer. You should say, "This is the first time." It doesn't mean they can't represent. Maybe someone could help them. Maybe someone could work with them. After the tax pro prepares the protest to the 30-day letter, they will have approximately 60 days before the appeals conference to prepare for the hearing. The tax pro can get copies of the workpapers. IRS can ask for your workpapers, and you can ask for their workpapers under the Freedom of Information Act.

And it is not that formal during an IRS examination when you're sitting across the table from the IRS auditor. When they ask you for your QuickBooks files, you have a right to say, "I would like to see your workpapers." You're able to review the information, see if the IRS auditor made a proper determination. Make sure the auditor is citing the relevant law, the appropriate law, the current law. Make sure the determination is proper.

The practitioner should spend time interviewing the client to determine what substantiation was presented to the examiner. What kind of records did they give to the examiner? If records were missing, work to find them. If there is evidence that could be presented, oral testimony, corroborating evidence, or circumstantial evidence, you can present that. Be prepared at the hearing, at the meeting, to present the information. In this situation with the mileage deduction, try to find documents that prove the odometer readings. Show proof. Now, with the office in home, the next paragraph is significant.

To document the office in home, the tax professional can take photographs of the office area. I personally had a case where a taxpayer contacted me, and the factual situation was as follows. They were examined by the IRS, and the IRS threw out the office in home. The individuals were people who were involved in MLM, multi-level marketing, people who sell Mary Kay, YTB Travel, Noni Juice, Xocai chocolate, all these things. You don't make money from selling a product. You make money by finding other distributors, other people to come into your pyramiding; but, it's still a business. Well, the couple were empty nesters. Their children were gone. They had a home about 2,700 square feet, a nice home. I went to their home. I took a tour of their home. They showed me the office. One of the bedrooms was used as an office. Unquestionably, it was an office.

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And I'm telling them, "There's no reason why you're not entitled to the office-in-home deduction, and we're going to fight for that and get it allowed." So, I started walking through the house, and they had a great room, a family room, where they had a big 50-inch television, where the two of them sat and watched television. Next to the family room was the kitchen. Then I looked over to the kitchen, and I saw these French doors, and I said, "What's behind the French doors?" The couple laughed. They said, "That used to be our living room, but that is now our showroom." I said, "Showroom? What do you mean?" They said, "Well, we sell Noni Juice, which is like a magic elixir, and we try to get people to become distributors for it." And they said, "Let's go into the room."

So they opened up the French doors, and I walked into the room. Visualize a room with two big sofas. Picture a room that's a living room with refrigerators. Picture a room with large plastic bottles of Noni Juice, inflatable Noni Juice bottles, and Noni Juice posters on the wall. And they said to me that they use this room to get people to become distributors. I said, "Why did you not claim this as an office in home?" They said, "Because it's not our office; it's our showroom." I said, "You're allowed to take a deduction for rooms that are used for business." So I pulled out my smartphone with my camera and took a picture of that room and the office. And then I went into appeals and said, "First of all, they're entitled to the deduction that was disallowed. Plus, you're going to give us a refund." And I explained the situation. I explained the business to them. I showed them the pictures. I provided the documentation, and it ended up they got a refund. I also got them the travel expenses reinstated. A picture is worth a thousand words.

So if the IRS is questioning an office in home, don't be afraid to get a picture. Before the meeting, make notes. Be prepared for the hearing. Have an agenda. Present information. It's also very important to prepare an in-depth protest. You don't get a second chance to make a first impression. Explain the misinterpretation. At the conference, start out with an introduction. If the agent made errors, don't hit them cold at the meeting. Give it to them ahead of time with a protest. It will give the appeals officer time to research the issues. The original auditor maybe made a determination, but there's a person who's handling the appeal that can consider hazards of litigation. In the Internal Revenue Manual, it states the following in Part 8, which is the appeals manual. It says, "A settlement may either resolve each issue on the basis of the probable result in litigation or involve mutual concession of issues based on the relative strengths of the opposing positions or the substantial uncertainty of the outcome in litigation." What are they saying? They can settle cases. Again, you're providing them documentation.

The accountant will be negotiating with the IRS. In any negotiation, you want to create a win-win situation. Don't ever say to the IRS: "Why don't we settle on 30 cents on the dollar?" Instead you can say, "I feel my client is entitled to a larger percentage of the deduction." If they're allowed a larger amount of a deduction, they'll pay less tax, but you don't start with the tax. They can't settle on the tax, but they can settle on the amount of the deduction. That would give the appeals officer a basis for making a mutually agreeable settlement. If the appeals officer settles it, you're going to see a Form 870. It's going to take a little while for them to prepare it. And you should be patient, but you're going to receive it. And it's going to follow through with what they've told you orally.

The law or authority. Part 8 of the Internal Revenue Manual, which you can find by researching the Internal Revenue Manual at www.irs.gov/irm. Public information, you should know what to expect. In this situation, the tax professional should have maybe probed a little bit deeper into the deduction plans of the client. The engagement letter should have been very clear. It doesn't cover an examination. And the tax professional should take courses on how to handle appeals hearings.

How to calculate the home office deduction. Any expenses that are directly related to the home office are fully deductible. Indirect expenses, when you pay for the whole house expenses, like depreciation, like utilities, those deductions are based on the percentage of the home used for business. Now, can you take and incur a loss? No. The deduction is limited to the income of the business plus apportioned home mortgage interest and taxes that you allocate for the business portion. You can also do either a pro rata proportion based on the number of rooms used in business, or you can base it on square footage. It's your choice. But you do not have to use a room entirely for business. It's the space in the room that you make the determination.

You first determine the home office deduction limitations, which equals the gross income from the business. Then you deduct in this order. First, the mortgage interest, real estate taxes, and casualty losses, direct expenses such as repairs and supplies directly for the home office, then the depreciation. The 2% limitation applies in Schedule A for employees, not for Schedule C.

Simplified option. Again, IRS does not want to examine these returns. It's a fallacy that they do. They came up with a simplified method. They said, "We'll give you a standard deduction of $5 per square foot of space used for business with a maximum of 300 square feet or $1,500. You'll also be able to get the allowable home-related itemized deductions like the mortgage interest and real estate taxes and a casualty loss. And, also, we'll throw in something else. You do not have to recapture the depreciation for the years the simplified option is used, but if you use the regular method, you're going to have to recapture it under 1245 or section 1250."

What is the government saying? The government is basically saying they don't want to bother with these issues. Honestly,

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I don't understand why a practitioner would tell a client not to take a deduction that they're entitled to, whether you use the simplified method or the regular method. Because a dollar is worth more now. Tax planning is accelerating deductions, deferring income. Yeah, later on when they sell a house, and they don't take the simplified method, they might have to recapture. But at what kind of tax rate? Take the deduction. What the government is basically telling you with this is the same thing they're telling you with the repairs and capitalization regulations.

I was working with a company, and they said this is the biggest issue they have. They said, "Look at the regulation." I said, "Give me a break." What the government is saying is they don't want to mess around with capitalization or repairs because it's a waste of time for them. If you capitalize a repair, they're then going to get depreciation. They might get 179 depreciation, additional first year, taking the whole amount; they don't want to bother with it. It's the same thing here. If someone is entitled to take it, don't worry about it. They created a simplified form for doing it.

You may choose to either use the simplified method or the regular method for any taxable year. You choose a method on a timely filed return. Once you have chosen a method for a taxable year, you cannot later change to the other method for that same year. If you use the simplified method for one year and the regular method for any subsequent year, you must calculate depreciation for the subsequent year using the optional depreciation table. There are limitations in how you compute it. This is true regardless of whether you use an optional depreciation table for the first year the property was used in business.

There are limitations in how you compute it, but, again, the government doesn't care. They don't care about how you're doing it. You can choose the method. This is kind of like when you take the optional mileage method, a portion of that is depreciation. You don't just jump around from the actual to the optional to the actual. There are limitations. It's the same thing here with this depreciation.

Another case study. Let's talk about commuting expenses with an office in home. Here is, I think, one of the biggest mistakes that a representative can make when telling a client not to take an office-in-home deduction. The title of this case study is "Office in home and commuting expenses." Michael is a manufacturer's rep for different clothing accessory manufacturers. He works in a large metropolitan area. He gets 1099-MISCs. He receives income through commissions. Michael has been using the same conservative CPA for years, who is very proud of the fact that in 15 years not one of his clients has ever been examined by the IRS.

Michael works from home, and uses the Internet. He has a room, a bedroom, dedicated to business. Michael asked the accountant if he should take the IRC 280 office-in-home deduction. The accountant advised Michael not to take the deduction because of the following reasons. It could be a red flag. IRS would be selecting returns for examination. It's going to take time to keep records. If Michael sells the residence at a gain, he's going to have to pay taxes on them because not everything is going to be excluded. You have to recapture. Michael believes his accountant and takes his advice.

Well, in 2012, Michael had his return chosen by the Internal Revenue Service. His 2011 1040 was chosen for examination in 2012. He contacted the accountant who says, "Don't worry about it. You're entitled to the expenses. You have documentation that you used the vehicle in business. You were calling on clients." Michael maintained a diary and claimed the optional mileage method. The accountant says, "Don't worry about it."

The auditor immediately approved the contributions. He then analyzed the vehicle and said, "The mileage is correct." However, what the IRS agent did shocked Michael. He said that Michael left his home, where he did not have an office at home, went to see a client, spent the whole day with a client, and drove home. And Michael said, "Yes. That's a business expense." The auditor said, "No, it's not. It is a commuting expense. Since the expenses were incurred from your home and not from your office, you made the expenses personal commuting expenses, and personal commuting expenses are not deductible." The auditor maintained, based on case law, based on rulings and regulations, they were personal commuting expenses. The auditor explained, "If you had claimed an office-in-home deduction, and you had kept records, you didn't leave your personal residence, you left your office."

Well, the examiner is required to pick up related examinations of subsequent and prior years that are open under the statute of limitations. He made this into a three-year examination. Michael got killed on the situation as far as tax. The accountant made a major error in advising Michael not to claim the office-in-home deduction. If he would have claimed the deduction, then those trips would not have been commuting. If the accountant would've researched Revenue Ruling 94-47, he would have seen an explanation as to why the expenses would not be deductible.

The accountant did not consider all the possibilities. He thought it would be a red flag, instead it was a red flag that he didn't claim the office-in-home deduction, because it was easy to see that he worked from home, and, therefore, the return was selected for examination, for the mileage expense and not for the office in home, because the IRS computer was programmed to say, "It's probably going to be commuting expenses." The law—code section 162, code section 280a(c)(1)A, code section 1245. Practitioners need to understand how an office in home can impact the deductibility of travel expenses, uses of vehicle, and

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make it commuting. Don't hesitate to advise clients to take positions that even IRS would scrutinize. Instead, encourage clients to take every deduction to which they're entitled to.

Let's look at another case study, rental to an employee. Andy does management consulting. He too works from home. He set up an S corporation. He was debating where to locate his business. He decided that, while he wanted to have a favorable impression, it would be more economical to have an office at home. The tax practitioner instructed Andy about the requirements for an office at home. He needed a space; expenses should be reasonable. So, he took the office-in-home deduction.

The practitioner also recommended that his own S-corporation pay rent for the use of his personal residence. Andy would pick up the rental income on Schedule E of his tax return. He would then claim the mortgage interest and real estate taxes. The specific business expenses such as utilities and other similar items. Andy liked this idea because he was getting some tax benefits. In 2012 and 2013, Andy paid rent and filed his returns reflecting income expenses on Schedule E. It sounded right.

In 2014, Andy had his returns selected for examination. The tax practitioner said, "No need to worry. The IRS examiner disallowed the depreciation on the rental property." Andy said, "Well, that's not right. I'm picking up the income. I should be entitled to expenses." The tax auditor cited code section 280(c)(A)(6), which states that deductions for depreciation are not allowable for the rental of an employee's personal dwelling to his employer. In this situation, Andy is a shareholder employee. He was not eligible to take the deduction, and it doesn't matter if you rent to IBM. It doesn't matter if you rent to Microsoft. If your employee pays your rent, you cannot take the deductions of Schedule E. You can't take the utilities. Code section 280(c)(A)(6) applies in this situation.

Mistake! The practitioner tried to save Andy money, but they should have researched 280(c)(A)(6). There are some ways that the rent could have been deductible. Could have rented separate space, could have acquired its own office building or condominium. But, they decided to use space in a personal residence. Code section 280(c)(A)(6) applies in this situation. You cannot take the expenses when you're working for an employer. That's part of 280A. The law—code section 280(c)(A)(6). When you're deciding, make it the right decision where it should be. Practitioners should encourage clients to claim the office-in-home deduction, but do it right. Watch the rent that's being paid because it could be a problem.

Code section 280A discusses personal use of a residence and vacation home limits deduction of a taxpayer who is using property as a residence during the year. You must determine if the personal use was excessive. If a taxpayer uses property for even one day of personal use of a residence, you have to make an allocation of what the expenses are. There are no limitations on those other expenses that you're carrying over to the vacation home, the interest taxes and casualty losses. If a taxpayer used the unit for personal purposes for the greater of 14 days or 10% over that amount, the portion that it's being rented at fair market value is being treated as a personal residence. If the taxpayer uses the unit for personal purposes for less than 14 days, it is not considered a residence. It's not considered a residence, but the expenses must be allocated.

Here's a relief provision. If the property is rented for less than 15 days, and you receive rent for it, you're not allowed to take any expenses. But also, you do not have to include any income. There is this thing now, I believe it's called Airbnb, where people are renting out their homes to people who are vacationing. If you rent less than 15 days, you receive rent for it. No expenses, but no inclusion of income. This is a good tax savings for a person who needs some money, who does some traveling. Keep it under the 15 days. This is the de minimis rule under 280A.

Rental to a family member. The code section was changed in 1981. It was permitted the taxpayer will not be treated as using the unit for personal purposes if the unit was rented at fair value to any person for use as a personal residence. You're basing fair market value rental based on comparable rentals, and whether the taxpayer made substantial gifts to family members. So restrictions to family members are included in 280A.

Let's go on to 280B. We're dealing now with demolition. Taxpayers are permitted to take a deduction on the demolition as long as they didn't intend to demolish it when they first purchased it. If they did intend to demolish it, you have to capitalize it, and it is not depreciated. In the court case, *De Cou v. Commissioner,* a court ruled that a taxpayer can take a loss on a building abandoned due to unforeseen obsolescence even though it was later demolished. They didn't know it was obsolete when they acquired it. That is *De Cou v. Commissioner.*

Revenue Ruling 95-27 clarifies this. A refurbished building will not be considered demolished as long as 75% of the external walls are still retained and 75% of the internal walls are maintained. Safe harbor allowed taxpayers to demolish significant portions of buildings, recognize a loss, and not capitalize as long as they maintained the requirements of the 75%.

Code section 280C. Again, a whole bunch of stuff is buried in there. Disallowance of deductions where credits are available. Basically, what this is saying is a deduction in a tax-year for qualified research expenses must be reduced by credits. That makes sense. When expenses are capitalized, the amount capitalized must be reduced by any credit that you've gotten upfront. That's simplistic.

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However, you have an alternative. Reduce the credit instead of reducing depreciation. You make an election with the filing of the return up to the due date of the return. Use a Form 6765. You have a choice. Do you reduce the credit? Or do you reduce the depreciation? Choices. That's why I like the American tax system. We have choices. The government doesn't tell you how to file a return. They tell you to file a tax return. There are a lot of choices in depreciation, net operating losses, use of vehicles, capitalization of expenses. You've got choices.

Next one is 280F, luxury automobiles. If you're driving a car in 2014 that costs more than $15,800, it's a luxury automobile. That's right. It's a luxury automobile. Trucks and vans that qualify as passenger trucks and vans can go up to $17,300. Again, limitations on what they're able to deduct. Another provision of 280F: for property not used more than 50% of the year in business, there are limits on your depreciation. You have to use specific, delineated IRC 168(g) alternative depreciation. Any excess depreciation will have to be recaptured if you claimed excess. Again, limitations where it's not used at least 50% in business.

Golden parachute payments, 280G. What does this have to do with all of the other subjects? Again, they didn't know what to do, so they buried it in this code section 280. In very general terms, golden parachute payments are compensation payments made by a corporation to its employees, officers, or the controlling individuals of an organization, and they are obviously deductible. However, Code Section 280G disallows the deduction for certain types of payments made to disqualified individuals when it is paid pursuant to a change of control, specific changes of control. They label this as an excess parachute payment.

I hate the term "disqualified individuals." I work with nonprofit organizations, and they refer to board members or the executive directors as disqualified persons. I remember once someone contacted me and said they have to resign from the board. I said, "Why do you have to resign from the board of your organization?" They said, "I'm a disqualified person." I said, "That's what a board member is! It's a person in a position of power." Why don't you just call it a person of power position or something, instead of a disqualified person? Well, they didn't know what to call it, so they called it a disqualified person.

Under IRC code section 4999, if an individual receives this payment that is considered a golden parachute payment, an excess parachute payment, the individual who receives it will have to pay a 20% excise tax on the amount. The amount would have been includable in income, so the entity that paid it loses the deduction. When does 280G apply when it's paid to a disqualified individual? When there is a change of control, major change in control, and the amount of the payment equals or exceeds three times the annual average compensation from the corporation or related entities for the five years. So you have to do a computation. It's not just giving them a simple bonus. It's giving them this huge payment, which is greater than three times the average annual compensation that they receive for the five years preceding the change. That could be a lot of money.

Who is a disqualified individual? An officer, a shareholder, when we pay off the shareholders, or a highly compensated individual. What is a highly compensated individual? It's an individual who has an annual salary of at least $115,000. I don't know how they came up with $115,000. They just said, "This is a highly compensated individual." Or it is a person who is a member of a group consisting of the highest paid 1% of the employees of the corporation, or if less, the highest paid 250 employees of the corporation. Limitations…These are disqualified persons that this would apply to.

Payment could include the following: bonuses; severance pay, continuation of fringe benefits, maybe giving them 10 years of fringe benefits; distribution of deferred compensation, stock awards, and a whole bunch more. Huge payments.

Exceptions to this 280G liability where payments are less than three times the base amount. Control. Sale of just a subsidiary is not a change of control. They're selling just one part of it, and if they give a payment, that's not part of the excess benefit. Employee benefit plan exceptions, qualified retirement plans, it doesn't apply to S corporations, and it also does not apply in a situation where 75% of the shareholders approve the compensation. And there are specific guidelines as far as the number of people. So if the shareholders approve it, it's okay. That's 280G, the golden parachute payments.

The last part is 280H, and I don't know why they buried this in here. Amounts paid to employee owners of a PSC, personal service corporation. The general rule is in regard to an election by a corporation under code section 444 to have a fiscal year. For that year, if the corporation does not make the minimum distribution, the deduction as far as the amount of compensation is limited to what it would be with a personal holding company. Now, if the corporation can't deduct all of it, they can have a carryover of non-deductible amounts, but not a carryback. It doesn't create a net operating loss.

Okay, I probably confused you a little bit about code section 444. Code section 444 normally occurs with an S corporation. IRS is not excited when an S corporation has a fiscal year. S corporations can make an election, but they have to follow the guidelines. The last case study will explain a little bit more about code section 444. Let's look at it.

Brumley Incorporated started business as a C corporation in 1994. They had an operating cycle that ended on May 31st. They had operated as a C corporation for 20 years and always filed timely their corporate returns. They never had any difficulties with the IRS. In 2014, Brumley decided to change from being a C corporation to an S corporation. Now, they knew

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there were some problems with making this election under 444, but they wanted to keep their operating cycle. They wanted to keep the same fiscal year. The company filed Form 2553, which is an election by a small business corporation to be an S corporation, and they filed Form 8716 to have a tax year other than the required tax year, complying with the guidelines of section 444. They filed both forms with the appropriate service center. They never heard from the IRS. Never heard regarding it, so their presumption was it was approved.

The company filed Form 1120-S returns for three years, until the IRS took the latest year and said to the taxpayer, "We never approved your fiscal year request under 444. Therefore, you're going to have to refile all of your tax returns on a calendar year basis." They had six shareholders, which meant that all six shareholders' income tax returns would change for each year. The company was very frustrated. They refiled 21 returns. Six shareholder returns and the S corporation return for each year. They thought that the IRS had approved the document, the filing of the 8716 and the 2553.

There was a mistake. IRS has specific guidelines regarding elections under 444. The taxpayer should have followed up. The accountant should have followed up with the IRS and asked, "What's the status?" If the service had denied the application, they would have had the right to request a letter ruling. They didn't know about it. So what should they have done? They should have gone back to the IRS and said, "We made a mistake, but you also made a mistake by not notifying us. We have a right. Can you take us back to where we would have been?" IRS can do whatever they want. So that is what the taxpayer asked, and IRS said, "Okay we'll take you back. We'll deny it." So they denied it. Then the taxpayer requested a letter ruling with the IRS.

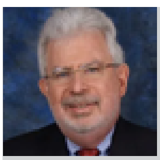
They had to pay a filing fee because it was after a 12-month period where the IRS can rule on the 444 election. And if you get a ruling that's unfavorable, you can request a conference at the IRS Office of Chief Counsel, where you've got an excellent chance of being sustained. You have a much better chance with the IRS National Office than you do with the service center and the other offices. They want to give you the elections.

The law is code section 444. The Treasury Regulations, 301.9100-1 – 3, are very clear describing the situation. Yes, the letter ruling does cost money, but why would you refile all those returns? Why would you do that? Can you charge a client for all of those returns? I don't think so. You can't do it. You're going to have to eat it. Once an IRS error is brought to its attention, IRS should cooperate with the taxpayer to correct the mistake. I find a lot of situations where IRS makes mistakes, and what I do is, in a very diplomatic manner, in an assertive manner, explain to them that they didn't follow their own existing procedures.

I'm an expert in the Internal Revenue Manual, and I realize many of the people that are working for the IRS do not know as much as I do. I worked there for 30 years. I've been teaching it for another 20 years. What I'm going to do is I'm going to explain it to them and get them to understand I'm not being abusive. What I'm doing is being assertive. I'm going to say, "Let's correct the situation. Let's do the right thing."

Summary

The Internal Revenue Code, especially code section 280, is a potpourri of tax confusion. There's no rhyme or reason to understand why they put all this stuff in there, but it's there. There are a lot of tax planning tools that are in this code section. I spent a lot of time on marijuana because a lot of people are very interested in the taxability of marijuana and the deduction for expenses. I hope I have not made this too taxing for you. Again, taxation is fun because it changes. Taxation, to me, is a lot more interesting than cost accounting and other facets of accounting.



About the Author

Stuart P. Sobel passed away unexpectedly in December of 2016 after a long career, dealing with the ever-changing world of taxation for nearly 50 years. He was a prolific author, CPE instructor, and founder of Tax Media Network Incorporated, which will be continued under the direction of his family.

Five Trends for the Modern Accountant in 2017

Sandi Smith Leyva

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What will you focus on in 2017 to make your business better than it is now?
What new skills and tools do you need to make changes?

As accountants, our daily work is full of to-the-penny details that keep us focused on transactions, charts, data, and numbers all day long. We have to be good at the details to be in our industry. But we also need to be able to move from the trees to the forest and see the big picture.

It's such an exciting time to be an accountant. Not only are they making cool movies about us, we are seeing so many exciting and productive changes that we can benefit from. Here are some sweeping trends and how to measure how your firm stacks up.

From Compliance to Advisory

The most exciting change for me is how accountants are making a difference in the lives of owners of small businesses. A study by Intuit showed that when small business owners hire an accountant, their success rate goes up by…drumroll, please…a whopping 89%. Did you realize you had that much impact on your small biz clients? You are truly dream shapers for these entrepreneurs.

As compliance work becomes automated, advisory work will take on a larger role in your business. One measure of how your firm is doing is to calculate the percentage of revenue that comes from compliance work vs. advisory work. The modern accounting firm is generating a growing percentage of advisory work year after year.

From Hourly Billing to Value Pricing

As data entry becomes more and more automated each year, hourly billers are actually giving themselves a demotion year after year by staying with this pricing method. More than half of the profession has switched to fixed or flat fee pricing or a version of that: package pricing. Many are also value pricing which is a better way to price high return-on-investment engagements.

How is your firm doing in this area? What percentage of revenue is being priced by the hour versus flat fee or value pricing? As the mainstream catches on to fixed and value pricing, the hourly pricing method will be less and less common.

I still think hourly pricing is easier when you first get started, but as soon as you have some history, you should move to a better pricing method.

From Operations to Multiple Functions

In the traditional accounting firm partnership and compensation model, the emphasis has been to promote accountants who

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were good technically as well as able to bring in business. This makes for a great service for clients, but often shortchanges development of other corporate functions, such as sales and marketing and human relations. Newer business models are appearing that don't have these deficits, which leads to a more well-rounded corporate business model for accounting firms.

From Desktop to Cloud

Today I just moved my last desktop app, Outlook email, to Google apps email in the cloud. My accounting system, my scheduling system, my to-do list, my payroll system, and a huge number of other vendor apps are all in the cloud now. All of our client delivery is done via the cloud. We are nearly 100% cloud-based.

Measure how your firm fares by calculating the ratio of desktop apps to cloud apps. More and more firms are moving everything to the cloud for better accessibility, security, and collaboration.

From Technician to CEO

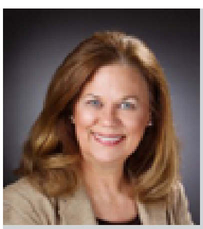
As accountants, almost all of us start out being technicians. We're good at accounting and taxes. As our business grows, our skill set needs to expand from accounting knowledge to CEO-level skills: deal-making, pricing, developing new markets, and managing and growing people, to name a few.

Do you see yourself more as a technician working on client work, or do you see yourself developing your staff, your clients, and your business by adding these skill sets? You can rank yourself based on the amount of time you spend being a technician versus being a CEO.

A Great Start to 2017

This month, we have a chance to reflect on the trends above, assess where our firms stand, and decide on a course of action that will take us where we want to go in 2017. How did your firm rate in each of the above trends? Which trend should you start improving first?

The good news is a growing number of practice consultant are focusing on providing marketing and practice management training and support for the small CPA firm. This means you have easy access to courses and tools that can help you modernize your practice.



About the Author

Sandi Smith Leyva, CPA, CMA, MBA, has helped thousands of accountants grow their practices through her innovative coaching and training services. She was named a 2014 CPA Practice Advisor Top 25 Thought Leader, a "Ones to Watch" in Accounting Today's "Top 100 Most Influential People in Accounting" and "Maverick of the Year" by the 2013 Stevie Women in Business Awards.

Avoid Lapses in Your Professional Liability Coverage

Ronda Jones

Randy Heaster

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It's important to maintain continuous professional liability coverage because most policies are written on a "claims-made" basis. This means coverage is triggered when the claim is made.

Whether you opened your accounting business ten years ago or just last month, there were a lot of decisions to make along the way.

The decision to purchase professional liability insurance is one that should not be revisited.

It's important to maintain continuous professional liability coverage because most policies are written on what is called a "claims-made" basis. This means coverage is triggered when the claim is made, not when the negligent acts, errors or omissions occur.

Under a "claims-made" policy, you may receive coverage for occurrences prior to the policy period. However, in order to take full advantage of this policy feature, often referred to as "prior acts coverage," coverage should be maintained continuously without interruption.

To illustrate the concept of claims-made coverage, consider this example:

An accounting firm purchases an Accountants Professional Liability policy on June 1, 2010, and the insurance company establishes that date as the Retroactive Date on the policy (also called a "Prior Acts Date" on some policies). Every year the firm renews the policy, the Retroactive Date remains the same, so the Prior Acts Coverage period is essentially increasing.

So, for example, in the policy term June 1, 2016-June 1, 2017, coverage will apply to claims made against the insured firm in that policy period for any negligent acts, errors, or omissions that occurred any time after the Retroactive Date of June 1, 2010.

Once the policy is in place, it's important for several reasons to complete applications and provide requested information in a timely manner when applying for renewal coverage.

First, it is standard practice with insurance carriers to require that completed applications and other information necessary to renew a professional liability policy be received well before the renewal expiration date of the policy. This allows the carrier

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time to evaluate the information submitted and provide a renewal quote stipulating the terms of the renewal offer before coverage expires.

In addition, it allows your agent the time to review the quote and coverage contracts to ensure that you are getting the best possible coverage at the most competitive price.

Second, each carrier has different requirements regarding accepting late applications and stipulations to consider backdating coverage. Your agent may or may not be able to obtain a quote after the renewal expiration date on the policy has passed and coverage has expired.

Finally, if coverage is not maintained, what is often referred to as a "gap in coverage" can occur. Consider this next example:

An accounting firm purchases an Accountants Professional Liability policy on June 1, 2010, and the insurance company establishes that date as the Retroactive Date on the policy. The firm renews the policy with the June 1, 2010 Retroactive Date for three years, after which time the firm lets the policy lapse as of June 1, 2014.

After a year's time, on June 1, 2015, the firm reapplies for coverage. Even though the firm has been providing professional accounting services since the first policy was purchased on June 1, 2010, the firm must now start with a new Retroactive Date of June 1, 2015.

Fortunately, there are quick and easy ways to maintain your professional liability coverage without interruption, and your agent is your best resource:

- Need a little reminder? Sign up for automatic reminders.
- Tend to procrastinate? Take advantage of the lead time provided to you when you receive the renewal packet.
- Have questions about the application? Ask for assistance.
- Have there been changes at your firm? Talk with your agent.
- Need options to pay the premium? Ask what payment plans your carrier offers.
- Keep in mind that your agent is your best advocate when it comes to working with insurance carriers to get you the most competitive quotes and a quality insurance policy.

Insurance carriers do consider timely completion and submission of applications and other information an indication of the overall quality and insurability of an accounting firm. Delays in completing and submitting applications for either a new policy or a renewal policy may result in the need for additional paperwork and either slow or stop the process of ensuring you get a quality policy at the best possible price.

Once you receive your renewal quotation, it is equally important to review it, and advise your agent to bind coverage by the policy expiration date, to ensure that your coverage remains safely in place.

So, keep making good decisions by working with your insurance agent to avoid lapses in your Accountants Professional Liability Coverage.

Don't Risk It: File a Claim in a Timely Manner

You get sued by a disgruntled client. (Trust us, it happens.) You plan to fight the complaint in court. What's your next step after contacting your lawyer?

If your answer was to reach out to your insurer that provides professional liability coverage, pat yourself on the back. Although notifying the insurance company about a potential claim seems like a logical step in this scenario, not all policyholders follow through.

And oftentimes, that will be a problem that could leave you stuck with a possible liability bill.

Last year, the New Jersey Supreme Court upheld a lower court ruling that said an insurer could deny coverage if a claim wasn't made promptly, or "as soon as practicable." In this particular case, the policyholder was obligated to notify the insurer as soon as practicable or at least within 30 days of a lawsuit being filed against the insured. The policyholder did not alert the

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insurance company with a filing of a claim until six months into the legal proceeding, prompting the insurer to deny coverage.

That behavior by the insurer was acceptable, according to the higher court, because the policyholder was covered by a **claims-made policy**, which means the incident and the claim must be made during the policy period. In this case, the policy went even further, stipulating that the claim must be made as soon as practicable or within 30 days. Even though the policyholder notified the insurance company while still being covered, it was still too late, according to New Jersey's high court.

This ruling was in a state court and thus applies only to business done in New Jersey. However, it just makes good sense to notify your liability insurer as soon as possible upon being sued. Then there are no worries about whether you acted in a timely manner.

You can find more details on this particular court case here.

About the Authors

Ronda Jones is a Property & Casualty Business Coordinator for Forrest T. Jones & Company (FTJ) which administers NSA's member insurance program. She has 30 years' experience working in professional/E&O coverage lines as an underwriter, broker and in claims administration for a law firm. She has worked with products geared specifically for accountants for 15 years while at FTJ.

Randy Heaster writes about insurance and financial services for Forrest T. Jones & Company. Randy has written about business and consumer issues for more than 20 years.

Highlights of Pertinent 2016 Tax Code Changes

Monica Haven

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As we all know, preparing a tax return is not merely entering a few figures on various schedules and allowing the software to compute the resulting liability.

Instead, the tax prep process involves the proper application of ever-changing regulations, seeking the most favorable treatment of income and expenses to ensure that a taxpayer pays the least amount of tax legally allowable, and that the tax return can withstand the scrutiny of an examiner if selected for audit. To accomplish the task, I spend endless hours familiarizing myself with Treasury Regulations and Revenue Procedures, identifying non-conforming state rules, seeking out tax minimization strategies for low- and high-income earners, culling the mass of information, and finally presenting the most salient points in a usable and understandable format.

Filing Deadlines: The IRS will begin accepting e-filed returns on January 23rd; California's tax season was officially opened January 4th. This year's federal filing deadline will be **Tuesday, April 18th** since Emancipation Day, the anniversary of the abolition of slavery, will be celebrated in D.C. on Monday, April 17th. Normally the holiday is observed on April 16th but because that's a Sunday this year, the holiday has been shifted to the Monday after. And while state and local holidays are not usually honored by the federal government, the IRS nevertheless considers *this* one a federal holiday for tax-filing purposes. With offices closed on Monday, the tax filing day is then automatically shifted to the next business day; in this case Tuesday. Most states, including California, have opted to conform to the federal due date.

New due dates! As per the Surface Transportation and Veterans Health Care Choice Improvement Act, the following due dates for 2016 tax returns now apply:

Form (TY2016)	Due Date (2017) *if fiscal, not calendar year used	Extended Due Date (2017)
1040 (Individual Return)	18-Apr	16-Oct
1065 (Partnership Return)	March 15*	September 15*
1120-S (S-Corp. Return)	March 15*	September 15*
1120 (Corp. Return)	April 18*	September 15*
1041 (Fiduciary Return)	April 18*	October 2*
990 (Non-profit Organization)	May 15*	November 15*

Foreign Account Reporting: Taxpayers who had authority over foreign financial accounts with a combined value in excess of $10,000 at any time during 2016 must e-file FinCEN 114 by April 18th which purposely coincides with the income tax filing deadline; taxpayers who fail to comply receive an automatic 6-month extension. Individual taxpayers, as well as corporations and partnerships beginning with the 2016 tax year, may also be required to file Form 8938 and attach it to their income tax return if the aggregate value of foreign financial assets exceeds $50K. NOTE: CA now conforms to FATCA reporting requirements: Failure to attach the federal Form 8938 to the state return will result in a $10,000 state penalty in addition to any applicable federal penalties.

Free Application for Federal Student Aid (FAFSA): In the past, the online application became available January 1st of each

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year and was generally required to be filed in the spring of the calendar year in which the student intends to enter college; CA schools, for example, mandated filing on or before March 2nd, 2016 for the school year which began with the Fall 2016 term. However, for the 2017/18 academic year, the application has been available as early as October 1st, 2016 and applicants have been allowed to use income information from tax returns that have already been filed in an earlier year; thus, students (parents) may submit 2015 (rather than 2016) tax return information.

Information Returns: In hopes of combating identity theft, the IRS now requires that copies of W-2s issued to employees and 1099s issued to independent contractors be submitted with the accompanying Forms W-3 and 1096 by January 31st [in prior years this deadline was February 28th]. Forms 1098 issued by mortgage companies must now include the outstanding loan balance, in addition to the interest paid.

Local Business Tax: Most cities—including the City of Los Angeles – demand that businesses be registered; the attendant tax may sometimes be waived if registration forms are timely filed (February 28th for Los Angeles). NOTE: In addition to sole proprietors and partners who clearly operate an ongoing enterprise, independent contractors (workers paid via 1099 rather than W-2) are deemed to be "in business" for licensing purposes. TIP: Some localities may require AirBnB and other short-term rental hosts to submit Business Property Statements for the purpose of assessing an annual tax on the value of personal property and fixtures used in the business.

"Permanent" Changes: Protecting Americans from Tax Hikes Act of 2015 (PATH) was enacted in late 2015, making certain Code provisions permanent if, in fact, anything on the Hill could be considered inviolable before the next batch of legislators take control. As a result, taxpayers have been "guaranteed" that the American Opportunity Credit will provide a tax savings of up to $2,500/year for the first 4 years of post-secondary education; that school teachers may claim an above-the-line deduction of as much as $250/year for classroom supplies; that self-employed and business taxpayers may expense (rather than depreciate) up to $500,000/year of newly purchased equipment; that 100% of the gain on sale of §1202 Small Business Stock is excludable; that sales tax may be deducted in lieu of state and local income taxes paid.

Tax Extenders: Some provisions were extended only for another year, others for periods ranging from two to five years. The exclusion of mortgage debt relief was extended through December 2016 [although CA does not conform which means that residents may face a hefty state tax bill even if debt cancellation is exempt from federal taxation!!!]; generous bonus depreciation provisions were extended but will be phased out on a sliding scale between now and 2019; the deduction for qualified tuition expenses and mortgage insurance premiums, as well as energy credits for qualified home improvements, while still valid for the 2016 tax year, have now expired.

Tax Saving Strategies: The following list of suggested tactics may serve to reduce your federal (and sometimes state) tax liability although each strategy may not yield the same result for every taxpayer.

- **Medical Expenses:** Medical insurance premiums are tax-deductible (sometimes). If you are self-employed, you may claim an above-the-line deduction for 100% of the premiums paid, including Medicare premiums withheld from Social Security benefits. Others must file Schedule A and itemize their deductions to obtain a tax benefit; the aggregate of all medical expenses must exceed 10% of Adjusted Gross Income (AGI). Seniors who reached age 65 before year-end 2016 may, this last time, still benefit from the old AGI limit of 7.5%.
- **Qualified Charitable Distribution (QCD):** Seniors over the age of 70½ may elect to make a direct IRA-to-charity transfer, thereby avoiding the inclusion of their Required Minimum Distribution (RMD) in taxable income, minimizing the taxability of Social Security benefits, lowering Adjusted Gross Income (AGI) thresholds for various itemized deductions, and potentially avoiding the Medicare Surtaxes.
- **Qualified Longevity Annuity Contract (QLAC):** Available to allow taxpayers to defer the RMD requirement past the age of 70½, although QLAC distributions must begin no later than age 85. This fixed annuity may be funded with 25% of the taxpayer's IRA up to $125,000 and guarantees a lifetime income stream which may be passed to spousal and other beneficiaries in the event that the plan owner dies before the contract payouts have been fully distributed.
- **College Access Tax Credit (CATC):** A 50% credit against California state taxes for amounts donated to fund Cal Grants for low-income college students. While there is no federal credit, taxpayers may instead claim an itemized deduction on Schedule A. Online contributions for 2017 – the final year – may be made beginning March 2nd.

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- **Home Office Deduction:** Under the optional safe harbor method, taxpayers may claim a deduction equal to $5/ft² (maximum $1,500) in lieu of separately detailing allowable expenses and depreciation presuming, of course, that they have an area in the home that is used regularly and exclusively for business and that such use is for the convenience of the employer.

- **Repair Regulations:** In an attempt to standardize and simplify taxpayer reporting, the IRS introduced new reporting requirements for business and rental property repairs. The general rule now holds that all tangible property purchased for use in a trade or business – except inventory – must be capitalized, except costs for (a) materials and supplies under $200, (b) routine maintenance incurred to keep property in its ordinarily operating condition, (c) de minimis outlays up to $2,500 for which taxpayer makes an affirmative Safe Harbor election, and (d) maintenance and repair of buildings owned by small taxpayers with outlays of less than $10K. If costs are expected to exceed the threshold limits, taxpayers may wish to split multiple projects over two calendar years to avoid the capitalization requirement.

- **Residential Energy Efficient Property Credit:** You may qualify for a non-refundable credit equal to 30% of your total cost if you install certain alternative energy equipment in your home, including solar-powered units that generate electricity or heat water. The full credit is available through the end of 2019, then decreases annually to zero after 2021, and is available only for improvements made to your primary or second residence but not rental properties. NOTE: Leased solar panels and new roofing costs are ineligible for the credit; and if the purchase is financed through a program that allows repayment via property taxes, the allocated portion of such taxes is non-deductible.

Affordable Care Act (ACA): Although the new Congress has threatened to repeal and replace the existing healthcare mandate, nothing concrete has yet been proposed and so "Trumpcare", at least for the moment, remains an enigma. While things are sure to change – maybe even retroactively to the beginning of 2017 – the provisions of the ACA as previously enacted remain in effect for the 2016 tax year. Therefore, affected taxpayers should be aware that they may be subject to two separate penalties:

- **Shared Responsibility Payment:** All individuals and their family members are required to have medical insurance; which must be verified and reported on the taxpayer's income tax return. If you obtained coverage through the Health Insurance Marketplace, you will receive Form 1095-A documenting coverage maintained during each month of the prior year (2016). If you purchased insurance directly from an insurance company, you will receive Form 1095-B; if you were insured through an employer plan, you will receive Form 1095-C. These forms must be provided to you on or before March 2nd. Since verification of Minimum Essential Coverage is crucial, the filing of your tax return may have to be postponed until Form 1095 is received, even if all remaining data is otherwise available. In 2016, failure to obtain coverage may cost you a penalty equal to the greater of $695/adult ($347.50/child) or 2.5% of your yearly household income, limited to a family maximum of $2,085. You can use this calculator to estimate your penalty.

- **Repayment of Premium Tax Credit:** Some taxpayers may be required to refund advance credits received during 2016 to subsidize the cost of monthly premiums for insurance obtained through the Marketplace if actual income reported on the tax return exceeds the amount of income used to determine the premium credit when the insurance was purchased. NOTE: Even taxpayers who otherwise have no filing requirement must file a tax return to reconcile the advance credit.

As part of the ACA, two surtaxes are levied against high-income earners. Although the fate of these taxes now lies in the balance, they are currently in effect:

- **Medicare Surtax:** Wage-earners and self-employed taxpayers with incomes in excess of $200K ($250K if married) are subject to an additional 0.9% FICA tax. TIP: Payroll withholding allowances and/or quarterly estimates should be adjusted to cover the additional liability as taxpayers can otherwise be hit with underpayment penalties.

- **Net Investment Income (NII):** Investment income – including dividends, interest, net capital gains, annuities, royalties and net rents, as well as the gain on sale of a principal residence in excess of the allowable §121 exclusion – greater than $200K ($250K if married) is subject to a Medicare surtax of 3.8%. Income from tax-exempt interest, VA benefits, self-employed income, IRA and pension distributions is not subject to this surtax.

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Collection Issues: In its efforts to increase collections and pursue scofflaws, Congress has enacted various provisions. Let's hope that these do not affect YOU!

- **Private Debt Collectors:** For the third time, Congress has mandated that the IRS use private debt collectors for delinquent tax debts. Both previous attempts – in 1996 and 2006-2009 – were scrapped as failures; nevertheless a new attempt will begin this spring. The IRS will give each taxpayer written notice that the account is being transferred to a private collection agency which will then send a second, separate letter to the taxpayer confirming the transfer. Private agencies may not ask for payment on a prepaid debit card. Instead, taxpayers will be given the option to submit a check payable to the US Treasury or make electronic payments directly to the IRS.
- **Travel Restrictions:** The Fixing America's Surface Transportation Act of 2015 (FAST) grants the IRS the ability to notify the US State Department of taxpayers with "seriously delinquent" tax debts, defined as unpaid federal taxes over $50,000 (including penalties and interest) for which the IRS has filed a tax lien notice or issued a levy/garnishment. The State Department may then revoke that individual's passport. NOTE: A debt is not considered "seriously delinquent" if an individual is making payments to the IRS under an approved payment plan or offer-in-compromise, or if the taxpayer is challenging the tax debt with the IRS through "collection due process" proceedings.

Miscellaneous: Finally, here are a few issues – though only relevant to select clients – which are important to note:

- **Individual Taxpayer Identification Numbers (ITINs):** ITINs are used by people who have tax-filing or payment obligations under US law but are not eligible for a Social Security Number. Any ITIN not used on a tax return at least once in the past three years and any ITIN with middle digits of either 78 or 79 expired automatically on January 1, 2017. To avoid return processing and refund delays, as well as denial of some tax benefits, affected taxpayers should renew their expired ITINs as soon as possible. NOTE: Taxpayers living abroad will discover to their dismay that they may no longer submit their documents to Certifying Acceptance Agents outside of the US, but must now correspond with the IRS Service Center in Austin, TX or visit US-based Taxpayer Assistance Centers.
- **Crowdfunding:** Revenues generated via GoFundMe, Kickstarter and similar web-based platforms are generally considered to be taxable income unless the proceeds represent loan re-payments, capital contributions in exchange for an equity interest in a business entity, or gifts made from "detached generosity" such as those made to help support individuals in need of cancer treatment or victims of a natural disaster. If a campaign creator is seeking to raise funds to develop or market a new product and offers a "reward" in exchange for a contribution, the creator may incur a sales tax liability in all states in which he has a physical presence. NOTE: Some states deem that a nexus is established simply by clicking on a web-link.

About the Author

Monica Haven, E.A., J.D., LL.M. is a nationally recognized speaker who eagerly embraces every opportunity to share her experience and expertise even as she maintains her California-based tax practice which serves clients throughout the nation and abroad. For additional information, published articles and loads of useful tax information, please head for Monica's website at www.mhaven.net including

- Practitioners will find specialty pages dedicated to such topics as Estate & Gift Tax, Small Business, all things Foreign, and even Frauds & Scams
- I maintain a Blog, address client FAQs, and offer a collection of Useful Links
- Published materials on a wide range of topics are available on my Publications page
- And if that's still not enough to entice you to explore, I encourage you to click on the happy face at the top of any page be surprised and enjoy!

TAX SEASON TIME OUTS

James Crawford

* * *

Tax preparers are encountering new measures designed to protect taxpayer information from data breaches including software and application login processes and session timeouts that can reduce efficiency.

The frequency and severity of data breaches, identity theft and other types of electronic fraud, have been increasing at an alarming rate over the past two years. Cyber criminals have become more sophisticated and their attacks continue to expand in scope and adaptability.

Recent studies indicate that financial services, small businesses, and individuals are in substantial danger from data breaches, identity theft, and fraud.

- **Tax ID Theft Is the Most Commonly Reported Type** —Tax or wage related id theft is the most commonly reported type of id theft, accounting for 46% of reported incidents. (AllClearID, March 2016)
- In 2015 the largest segment of personal identity theft (49.2%) targeted government documents or benefits fraud. (http://www.iii.org/fact-statistic/identity-theft-and-cybercrime)
- 99% of computer users are vulnerable to software vulnerabilities. (Heimdal Security)

The Internal Revenue Service has joined with representatives of the software industry, tax preparation firms, payroll and tax financial product processors and state tax administrators to combat identity theft refund fraud to protect the nation's taxpayers.

More info for you here: https://www.irs.gov/uac/security-summit

At the summit, and in the subsequent months, participants discussed, researched, and collaborated to identify solutions to protect the public from cyber criminals. As a result of their work, the IRS and its Security Summit Partners provided new security recommendations for software manufacturers affecting the 2017 filing year.

Recognizing the importance of protecting their users, tax software producers made voluntary changes to their products with their latest updates and new releases. Some software packages and web-based applications introduced new features which have increased the complexity of the login process in order to verify that a user is a flesh-and-blood tax professional.

Tax professionals have been used to logging into their tax software and work throughout the day without interruption. With the new security measures, the tax professional must log in as before, and then respond to a prompt—commonly known as "captcha" —which often involves correctly identifying portions of an image to confirm that the user is not a robot. This is known as "two-factor authentication" and is more time consuming than entering the username and password alone.

In addition to two-factor authentication, many software manufacturers built in another feature: session termination. This security feature makes the program (or application) log out a user if it is unused for thirty minutes, even if the computer is being used for other purposes.

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John Sapp, VP of Strategic Development at Drake Software, likens this to an experience that consumers and preparers have already experienced.

> *"If someone is using online banking, and they've left the window open for some time without doing anything, the website will lock them out, and they'll have to log in again."*

Mr. Sapp also shared the specific implementation of the security feature in both their software and web-based products:

> *"We do an 'in place lockout'. We put up a screen requiring them to enter their login information. Where they were in the software remains visible in the background but inaccessible until they login."*

Drake's system offers no warning of the impending logout on desktop software. Their web-based system departs from that by warning users of the approaching timeout, and in length of the session termination: twenty minutes.

Other tax preparation software providers have created their own variations on enhanced security protocols that differ from Drake's implementation. CCH details their approach on this web page.

Second Vice President Brian Thompson explains Thompson Reuters approach and impact on his workflow.

> *"Thomson Reuters has now created a 'single' login which is used for their suite of software. The single login has made getting access and keeping access to the software a little easier and also does not have (related) programs time out because of inactivity. Unfortunately, when you first open up a program, let's say the Fixed Asset program, where you've already "logged in" to the Ultra Tax program, the Fixed Asset program opens the 'old faithful' login window; it shows up on the desktop for about 4-5 seconds before going away...Thankfully with the single login, the other related programs do not time out as long as you are active in one of the programs associated with the login (is in use). Once I log back in, I'm back exactly where I left off."*

The National Society of Accountants has expressed concern that the session lock and two-factor authentication may adversely affect the workflow of accountants and tax professionals. Responding to the session lock requires more time by virtue of the two-factor authentication, and tax preparers are often working in a number of other applications during the day — spreadsheet, file folders and so on — that draw attention away from their tax software and other applications.

Brian Thompson foresees a similar result:

> *"Workflow will be affected some just because of the extra steps it takes to get access to the software initially, as well as when you have been automatically logged out because of inactivity. We use a suite of software and each individual software requires a separate login. I expect a lot of opportunities to log back in because one of the software pieces has been inactive."*

Considering the statistics and the tremendous damage caused by cyber crimes, fraud and identity theft, there is no doubt that increased security measures are necessary. The National Society of Accountants completely supports efforts protect practitioners and clients alike, but concern over the implementation of the IRS recommendations remains. Tax preparers' workflow could be adversely affected by two-factor login and session timeout and it might impact how clients are served.

The NSA advocates the exploration of alternate security features that may be developed which preserve preparer and client safety, but impact workflow less. Only with further examination can modifications to the session termination feature—addressing security issues and the concerns of tax professionals—be proposed. The NSA intends to bring these topics to the attention of the IRS and IRS Security Summit partners, and work with them to develop effective verification and security recommendations that meet everyone's needs.

About the Author

James Crawford is a Communications Manager with the National Society of Accountants.

Horrible & Hilarious Client Stories

James Crawford

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As an accountant or tax preparer, you're on the front lines with your business and clients and "boring" is the last word you'd use to describe it.

Case in point, a thread on Tax Talk recently shared members' stories about their clients that ranged from silly to sad.

It started with this post...

In a few recent posts, there were a number of stories of which ranged from mildly interesting to downright hilarious. I'd be curious who'd want to share (obviously without identifying info); I'm sure many of you, my colleagues, here on Tax Talk would find it interesting reading.

And the responses came in quickly. Enjoy!

Newspaper carrier, age 17, made half a million dollars selling newspapers. All legitimate. Blew my mind.

I had a married client with one child, each spouse had one W-2 and they took the standard deduction, although I checked their itemized deductions to be sure. I charged them a reasonable fee. The next year, his wife didn't work, so there was only one W-2 but everything else was about the same. When I gave him my bill (same fee as the prior year), he commented that he thought my fee would be only half as much since they had gone from two W-2s down to one! They're still a client so I guess he wasn't too upset.

A long-time client asked if I would also prepare her teen daughter's first tax return. She brought me 4 or 5 W-2 Forms, all from different fast food joints. One was from McDonald's for around $8. I asked the mom about it. What did she do, work there for about an hour? Mom said, Yeah, she quit; it wasn't what she expected. Now what kind of work could McDonald's give her that would be so unexpected?

I've had to roll my eyes a couple of times in past years when I would ask clients if they had made any charitable contributions, and they would respond with "Oh, I don't know. What does IRS allow?" I guess they thought IRS was just giving out deductions for the heck of it!

Single man, client for a long time, brought in his tax info & we went over it quickly. He said "Everything is just the same as last year." A few weeks later his wife came in; they'd been married since October. I guess he forgot.

One young couple were excited to be claiming a deduction this year for their first child. I had to burst their bubble. I told them they were not entitled to claim the deduction just because they were pregnant. I explained the child had to be born.

I have gotten a related question during a pregnancy. Not once, but twice from different clients. My doctor asked when we should schedule our C-Section for tax purposes.

How about advance inheritances – you know, the kind of inheritance some folks receive before the dearly departed are actually departed. The conversation boils

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down to something like this:

Me: So when did your mother die?

Client: Oh Lord, she's not dead! In fact, she's out in the car if you'd like to meet her.

Along the same lines, a NSA member's client became a ghost before she actually died!

We had to do a return on paper for a client about 5 years ago. Client got a letter from IRS to her estate saying they got her return but since she's dead and we didn't fill out the 1310 they don't know who to send refund to. Client was kinda freaked out since she really wasn't dead.

And on a job application:

Once had a lady applicant for an accounting position. The application had a block that said SEX, meaning gender of course. The applicant offered under the SEX question: "Yes, once in Tennessee."

Read the full thread on Tax Talk and add your stories. A laugh, head shake, or reminder that you're not alone, can do wonders for the tax season tension.

• ALL AROUND NSA

• Resources for your business

NSA SCHOLARSHIP FOUNDATION NOW ACCEPTING APPLICATIONS FOR 2017 SCHOLARSHIPS

The 2017 Scholarship Application Window is Now Open - Scholarship applications are due April 3, 2017.

The Foundation awards scholarships to undergraduates who are U.S. or Canadian citizens majoring in accounting at an accredited two- or four-year college or university in the United States. Since it was formed in 1969, the NSA Scholarship Foundation has awarded over $1 million to dedicated students pursuing a career in the accounting profession.

Applicants for awards are judged on the basis of scholastic achievement, demonstrated leadership ability, and financial need. They must have a “B” (3.0 on a 4.0 scale) or better grade point average.

Scholarships typically range from $500 - $2,500.

For eligibility requirements, award details, selection requirements and more, download the: NSA Scholarship Guidelines & FAQs.

Apply Online

Spread the word to tax and accounting students! More information can be found 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® (ABA) credential. No experience is required to take the ACAT Comprehensive Examination that leads to the ABA credential. In addition to passing the exam, two years of college-level accounting and one year of accounting experience are required to earn the credential. Learn more at www.acatcredentials.org.

Accreditation Council
for Accountancy and Taxation

NSA OFFERS ENROLLED AGENT COURSE & ATP REVIEW COURSE/EXAM IN AUGUST 2017 IN RENO, NEVADA

Mark your calendar and save the date. NSA's Annual Meeting and live Enrolled Agent Review & ATP Course Sunday, August 20 – Tuesday, August 22 at the Nugget Casino Resort, Reno, NV

Pass the EA Exam the First Time!

Register Online

Download a Registration Form

The National Society of Accountants (NSA) is offering an intensive NSA Enrolled Agent (EA) Exam Review Course & Accredited Tax Preparer (ATP) Review Course/Exam August 20-22, 2017, at the Nugget Casino Resort in Reno, NV, immediately before the NSA Annual Convention and Expo at that same location.

Designed to give tax professionals the best opportunity to pass the EA exam on the first try, the 3-day course provides in-depth review of all the key components of the exam.

Enrolled Agents are authorized to represent taxpayers before the IRS and tax professionals who hold the EA credential can command higher fees. They must pass a three-part IRS exam covering individual and business tax returns, adhere to ethical standards, and complete 72 hours of continuing education courses every three years.

Enrolled Agent Exam Review Course

NSA's Enrolled Agent Exam Review Course is a comprehensive and intensive—and we mean intensive—review geared toward a single purpose: to help you master tax basics and pass the EA exam.

Detailed study notes will be provided for each topic, including figures and charts that prove the old adage that "…a picture is worth a thousand words." Hundreds of past exam questions from the open-exam era and many more potential questions on newer topics are incorporated and each is reviewed in class so the real exam itself will look like an old friend. Study tips, tricks and shortcuts are a staple of this course.

Included with Your Registration:

- The 3-Volume NSA Enrolled Agent Review Course in online and PDF formats—a $200+ Value! Preview Course Materials
- Detailed handouts, notes, examples, illustrations to follow the course step-by-step. Preview Sample Slides
- 18 (6 per part) detailed study lessons and review questions to help you master each section of the materials.
- Proven exam taking tips, tricks and strategy guides with tips for passing each part of the exam.
- Top 150 questions per part—essential questions on topics that you will absolutely need to master.
- Interactive online review and practice questions with explanations and analysis.
- Final Review Cards super summaries for each part of the exam—the perfect last-minute memory-jogger to review immediately before the exam.
- Weekly study guides with detailed assignments and time allocations.
- Comprehensive study aids that summarize the tax law related to a particular subject. These aids should prove valuable in last-minute reviews prior to the exam.
- Access to an online EA study community to post your questions and comments, respond to other commenters, and interact with the presenters. Added Bonus! Get access to even more sample questions and study tips.
- A complete sample EA exam to help you gauge your progress prior to taking the exam.

Continued on the following page

Earn the Accredited Tax Preparer (ATP) Credential:

The Accredited Tax Preparer (ATP) designation, offered by the Accreditation Council for Accountancy and Taxation (ACAT), is also a leading national credential for tax practitioners who have a thorough knowledge of the existing tax code and the preparation of individual tax returns with an expertise in comprehensive 1040 issues including supporting schedules, self-employed returns, and ethics. **Earning the ATP credential exempts practitioners from taking and passing the Annual Federal Tax Refresher course and exam each year, which are a component of the Internal Revenue Service (IRS) Annual Filing Season Program (AFSP).**

The ATP course package also includes:

- Extra hour on day 1
- The Accredited Tax Preparer digital course materials
- The proctored ATP exam on Tuesday morning (additional fee)

The Accredited Tax Preparer exam is offered by the Accreditation Council for Accountancy and Taxation (ACAT), established in 1973 as a non-profit independent testing, accrediting and monitoring organization. Learn More

Accreditation Council for Accountancy and Taxation

Presenters:

John O. Everett, CPA, Ph.D., is Professor Emeritus of Accounting at VCU in Richmond, VA. John's teaching specialty is federal taxation. He has authored or co-authored over 90 articles in academic and professional journals including the NSA EA Exam Review Course and 1040 101 Course, and is the coauthor of several textbooks, including CCH Practical Guide to Schedule M-3 Compliance, The HBJ Federal Tax Course, Income Tax Fundamentals, and Tax Planning With the Computer.

William A Duncan CPA, Ph.D., is an Associate Professor of Accounting at Arizona State University. Dr. Duncan was formerly a Director with Ernst & Young where he guided tax education for the firm. He is the author or co-author of three textbooks and has published a number of articles on a variety of tax topics in publications ranging from Taxes and The CPA Journal to the Journal of the American Taxation Association. He has taught in the AICPA National Tax Education program for over 20 years.

For more information and to register, visit http://www.nsacct.org/eacourse or contact NSA at 800-966-6679 or members@nsacct.org. Learn more about NSA at www.nsacct.org.

Continued on the following page

Schedule

Sunday, August 20

EA Part 1: Individuals & Accredited Tax Preparer (ATP) Exam Review
8:00am - 5:00pm
ATP course ends at 6:00pm
CPE: 2 Hours/Federal Tax Law Update; 2 Hours/Federal Tax Law; 4 Hours/SEE Exam Preparation

Monday, August 21

EA Part 2: Businesses
8:00am - 5:00pm

ATP Exam

9:00am - 12:00pm

Tuesday, August 22

EA Part 2: Businesses, continued
8:00am - 12:00pm
Total CPE Part 2: 3 Hours/Federal Tax Law Update; 3 Hours/Federal Tax Law; 6 Hours/SEE Exam Preparation

EA Part 3: Representation, Practices & Procedures
1:00pm - 5:00pm
CPE: 2 Hours/Ethics/Regulatory Ethics

Choose Any 1 Part or All 3

More Information

Download a Registration Form

Complete Course (all three parts)
NSA Member Discount: $699
Nonmember: $775

EA Part 1/ATP Course:
NSA Member: $275
Nonmember: $325

ATP Exam Fee: $100

EA Part 2:
NSA Member: $375
Nonmember: $425

EA Part 3:
NSA Member: $200
Nonmember: $250

The fee for the ATP exam is $100.

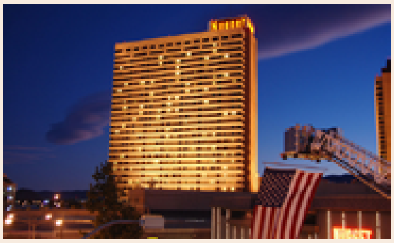
Requests for refunds must be received in writing and will be subject to a $75 cancellation fee. For more information regarding refund, complaint and/or program cancellation policies, please contact our offices at (800) 966-6679.

Program Level: Basic/Intermediate

Prerequisites: Basic knowledge of federal taxation

Advance Preparation: None

Delivery Method: Group Live



Hotel Information

Nugget Casino Resort

1100 Nugget Avenue

Sparks, NV 89431

Room Rate: $69 + $10 resort fee (includes round trip airport transportation, wifi in sleeping room, (2) bottles of water per day, use of pool & fitness center and parking)

Reserve Online

(800) 648-1177

Group Code: GNSA17

Reserve your room by July 25, 2017 to receive the discounted group rate.

Complimentary wifi included. The hotel offers a free airport shuttle departing from the hotel every hour, on the hour from 5:00 a.m. to 11:00 p.m. The airport shuttle picks up at the airport every hour on the half hour from 5:30 a.m. to 11:30 p.m. outside door D of the baggage claim area.

SAVE THE DATE: NSA'S ANNUAL MEETING IN RENO, AUGUST 21-24, 2017

NSA 72nd Annual Meeting

August 21-24, 2017

Nugget Casino Resort

Reno, NV

NSA's 2017 Annual Meeting will be held in Reno this August. We are finalizing the program and more information will be available in the near future. For planning purposes, here is a tentative schedule.

The Annual Meeting will kick off on Monday, August 21st with an opening reception that evening.

Business sessions, elections, the award luncheon and other business related events will be held on Tuesday, August 22nd.

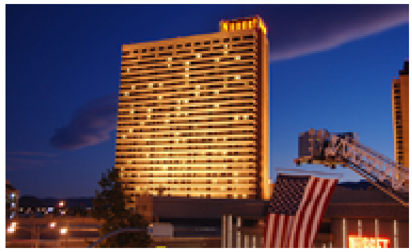
Sixteen hours of continuing education will be offered on Wednesday, August 23rd and Thursday, August 24th. Sessions will include four hours accounting topics accounting fraud cases, fiduciary accounting for 1041, statement of cash flows and unpleasant current trends in Peer Review taught by William Leonard, CPA.

Beanna Whitlock, EA, CSA will present a two-hour ethics class: Ethics – A Tax Professional's Friend which will address the "real world" of tax preparation that many tax professionals frequently are engaged, how to respond and how to use Circular 230, Federal Code of Regulations to respond in difficulty situations.

A new Tax Planning Boot Camp, taught by John Everett, CPA, William Duncan, CPA and Cherie Hennig, CPA covers Individual Tax Planning, Retirement Planning, Gift & Estate Planning and Business Tax Planning.

The Annual Meeting will conclude with the Installation Banquet on Thursday, August 24th.

Hotel Information



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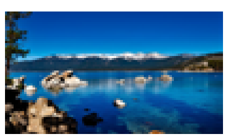
Nugget Casino Resort

The Nugget Casino in Reno/Sparks has been an iconic destination for 60 years. The resort features a full-service casino, 1,400 guest rooms and suites, eight restaurants, a year-round atrium pool, a fitness center and two live entertainment venues. Guests can take advantage of everything the Nugget has to offer, or venture into Reno, "The Biggest Little City in the World" for world-class entertainment, shopping and dining.



Feel like taking a side trip? Lake Tahoe, situated on the border of Nevada and California is just a 40 minute drive away. Tahoe is known around the world for skiing, shopping and dining. Visitors can take advantage of pro-level golf courses, outdoor activities and relaxing in the area's unique natural beauty.

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!

Master Tax Guide: Download the CCH 2017 Master Tax Guide by chapter.

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

NSA AND TAXSPEAKER CO-SPONSOR CPE BY THE SEA

May 17th – May 19th, Hilton Myrtle Beach Resort, SC

Co-Sponsored by TaxSpeaker & The National Society of Accountants (NSA)

Each day includes continental breakfast and (2) 15 minutes breaks. All manuals provided as eBooks in advance to registrants. Registration fees cover up to 18 hours of CPE, course materials, continental breakfast & breaks.

CPE Schedule at a Glance

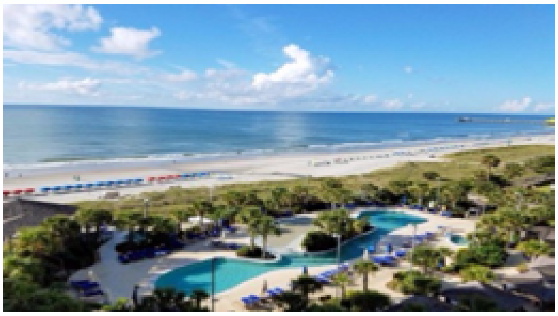
- Wednesday May 17, 2017
  Federal Tax Update
  8:00AM -1:30PM
- Thursday May 18, 2017
  Social Security
  8:00AM – 1:30PM
- Friday May 19, 2017
  Technology/Practice Management
  8:00AM – 1:30PM

Work Hard but Play Harder: Things to do in Myrtle Beach

- Enjoy fun for the whole family at Broadway at the Beach and Barefoot Landing
- Experience the arts at Alabama Theatre, Carolina Opry, and the House of Blues
- Shop at the Coastal Grand Mall and Tanger Outlets
- Catch dinner and a show at Pirates Voyage
- Race away tax season stress at NASCAR Speed Park

Scheduled Outings

- Take a ride with us on a Dolphin Cruise
- Relax and join us for a round of golf at one of the beautiful, nearby courses



Registration

Register early and enjoy a discount (valid until April 17) of just $495 for all three days or $225 for each individual day by itself!

After tax season, registration rates go up to $595 for all 3 days or $250 for each individual day. Click on the links below to sign-up.

Myrtle Beach Package-All 3 Days

Federal Tax Update

Social Security

Technology/Practice Management

Book now and enjoy a $50 discount on your stay using the code "TAS" (valid until April 15th). Click here to book your stay at the Hilton Myrtle Beach Resort!

For more information about the TaxSpeaker/NSA 2017 CPE by the Sea, visit this page.

TaxSpeaker

REGISTRATION OPEN FOR SPRING/SUMMER 2017 ACAT TAX AND ACCOUNTING ACCREDITATION EXAMS

Those passing the exam and earning the ATP and ABA credentials have exempt status for the IRS Annual Filing Season Program.

Registration is now open for the Accreditation Council for Accountancy and Taxation® (ACAT) spring/summer 2017 exams for accountants, tax preparers and students seeking to earn the Accredited Business Accountant/Advisor (ABA), Accredited Tax Preparer (ATP) and Accredited Tax Advisor (ATA) credentials. The Comprehensive Examination for Accreditation in Accountancy (ABA), Accredited Tax Preparer (ATP) exam and the Accredited Tax Advisor (ATA) exam can be taken between June 1 – July 15, 2017 at test sites across the United States.

ACAT Credentials

The ABA is a high-level credential that tests the technical proficiency of accounting and tax professionals in financial accounting, financial reporting, financial statement preparation, taxation, business consulting services, business law and ethics. Emphasis is on a practical approach to public accounting. To become an ABA, candidates must pass the Comprehensive Examination for Accreditation in Accountancy and have three years of related work experience, up to two of which may be satisfied through college credit. In Iowa and Minnesota achieving the ABA designation meets state regulatory requirements to practice public accountancy.

The exam is divided into two parts: Practice 1 and Practice 2. **Practice 1** covers financial accounting and financial statement preparation, presentation and reporting. **Practice 2** covers the taxation, business law, business accounting and ethics.

The ABA is accredited by the National Commission for Certifying Agencies (NCCA), an independent resource recognized as the authority on accreditation standards for professional certification organizations and programs.

The ATP is a leading national credential for tax practitioners who have a thorough knowledge of the existing tax code and the preparation of individual tax returns with an expertise in comprehensive 1040 issues including supporting schedules, self-employed returns, and ethics. To become an Accredited Tax Preparer, candidates must pass the 100-question ATP exam.

Accredited Tax Preparers (ATP) and Accredited Business Accountant/Advisors (ABA) are exempt from taking the Annual Federal Tax Refresher (AFTR) course and exam that is part of the Internal Revenue Service (IRS) voluntary Annual Filing Season Program (AFSP) and automatically qualify for the IRS Annual Filing Season Program Record of Completion.

ATPs and ABAs who are Annual Filing Season Program (AFSP) Record of Completion Holders are included in the IRS public directory of tax return preparers and have limited representation rights, meaning they can represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including the Taxpayer Advocate Service.

The ATA is a premier national tax credential for practitioners who handle sophisticated tax planning issues, including planning for owners of closely held businesses, planning for the highly compensated, choosing qualified retirement plans and performing estate tax planning. Their expertise covers tax returns for individuals, business entities, fiduciaries, trusts and estates, as well as tax planning, tax consulting and ethics. To become an Accredited Tax Advisor, candidates must pass the 100-question ATA examination and have three years of experience in tax preparation, compliance, tax planning and consulting, of which 40 percent must be in tax planning and consulting.

The exam fee for both Practice 1 and Practice 2 of the ABA exam is $400 or $250 for one Practice of the exam. The ATA and ATP exam fees are $250.

ABA and ATA candidates must pass the exams and meet experience requirements to earn the credentials. A blueprint for each exam with more information on topic areas is available at www.acatcredentials.org.

The National Society of Accountants (NSA) offers preparatory course study guides for both the ABA, ATA, and ATP exams and preview exams, which mirror the topics and question format of the ACAT exams.

To learn more about ACAT credentials, click here.

Register Online

NSA MEMBERSHIP DUES INCREASE ON MAY 1, 2017

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.

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. 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.

QUICK LINKS

My Account

My Benefits

Renew Online

2017 LEGISLATIVE STRATEGY & LEADERSHIP NETWORKING CONFERENCE

Motivate...Engage...Lead...Succeed!

The 2017 Legislative Strategy & Leadership Networking Conference will be held July 24 & 25, 2017 at the Embassy Suites Hotel - Phoenix Airport. It will be directly followed by State Director Training on July 26,2017.

Keynote Speaker: Jeffrey A. Kramer

A certified member of The John Maxwell Team as a leadership and personal development coach, trainer and speaker and founder of the Ascension Leadership Group, LLC.

Leadership Topics:

- Motivate and Engage your Membership For Leadership
- Teamwork – Listening for Success
- Succession Planning for your ASO

Legislative Topics:

- Legislative Bill Analysis
- Effective Lobbying
- Emerging Issues

Hotel Information

Embassy Suites by Hilton Phoenix Airport

2333 East Thomas Road

Phoenix, AZ 85016

$85 per night single/double

Reservation cut-off: June 30, 2017

Reserve Online

Or call 602-957-1910 and be sure to ask for the NSA group block.

All suite hotel with complimentary 24-hour airport shuttle service, breakfast and evening receptions included

Registration Fee: $220

Register

Refunds and Cancellations:

Requests for registration fee refunds must be received in writing by July 1, 2017 and are subject to a $50 cancellation fee. No refunds will be granted after July 1.

NSA'S CHOOSE A TAX PRO WEBSITE FOR CONSUMERS

Do you know about NSA's consumer website, www.chooseataxpro.org? This website provides valuable information about hiring a tax professional, tax tips and a link to Find a Professional—NSA's member directory.

Now is a great time to take a few moments to update and refresh your profile on NSA MemberConnect. Here are options available to you for personalizing your profile:

- Add your photo or company logo
- Include your biographical information, such as credentials and education
- Provide firm information and areas of specialization
- Update your profile privacy, choose which parts of your profile show to the public, to other members or to just you

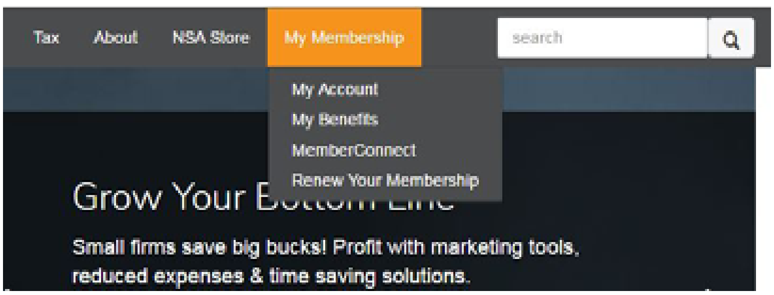
To change your settings and customize your profile, go to your profile page.

My Privacy Settings

Choose which parts of your profile show to the public, to other members or to just you here.

If you have questions about how to update your profile, please contact us.

MY MEMBERSHIP



My Membership Unlocks NSA Member Benefits and Account Information

When you visit NSA's website, all the information you need is available to you in the top navigation under the My Membership button, on the left of the search box. Clicking on My Membership reveals a drop down menu that allows you to access:

- My Account - here you can updater you profile information, view your NSA sales history, change or reset your user name and password, renew online, connect to benefits. Plus just added, you can now **download your Membership ID Card**
- My Benefits - this page includes quick links to all your NSA member benefits. Save time and bookmark this page.
- MemberConnect - this is your online membership community. Here you will see the latest TaxTalk, posts and resource library contributions. You can also update your Profile in MemberConnect where you can add a bio, a photo, honors and awards and change your privacy settings to select what parts of your profile shows to the public.
- Renew Your Membership - renew your membership online anytime. Remember, NSA membership dues increase as of May 1st. *Renew your membership by April 30th to avoid a dues increase.* You can also lock in the current rate for up to three years.

Please note NSA is no longer sending stickers to update your membership certificate. You can now download and print your Member ID Card at any time.

Tax Topics

Tips from the Tax Desk

NSA's tax research team is busy helping members answer the toughest Federal tax questions.

In this issue, we address some topics the Tax Help Desk has encountered, as well as changes in this year's tax season that came from the Surface Transportation and Veterans Health Care Choice Improvements Act of 2015.

Crowdfunding

The Tax Help Desk has recently had several inquiries regarding how to handle money raised using Kickstarter, Indiegogo and GoFundMe. These websites raise initial capital for new start-up companies and entities. Crowdfunding is a very popular form of raising money for new entrepreneurs these days, as it allows the new business owner to seek money without going to traditional banks and financial institutions.

The classification of raised money as capital, a loan, a gift or income is the currently an unanswered question. The IRS has not officially taken a position on this new form of venture capital. But all indications are that, absent some strong proof to the contrary, these raised funds will be considered income

The IRS defined gross income under IRC Sec 61(a) as all income from whatever source derived. So the onus would be on the taxpayer to prove otherwise.

The other possible options would be that the funds are a loan or represent capital, but either one of these arguments would require a more formal agreement between the new owner and the individuals providing the funds. Apparently none of the crowdfunding websites offer this type of arrangement.

The only other option is to argue that the contributed funds are gifts. This would allow for a non-taxable treatment, but might be difficult to defend if the IRS ever looked to challenge a taxpayers' position. There is a particular case called Duberstein from 1960 that defines the gift as "… a transfer of property if made from the detached and disinterested generosity, out of affection, respect, admiration, charity, or like impulses, and isn't made from a moral or legal duty, for anticipated economic benefit, or in return for services rendered".

This would, in most cases, leave the benefactor of a Kickstarter, Indiegogo or like program with income in the eyes of the IRS.

Like-Kind Exchange IRS Sec. 1031

Another tax issue that has been addressed by the Tax Help Desk recently is the general mechanics and timing of the like-kind exchange under IRC Sec 1031.

The problem facing tax practitioners is not the 45-day identification period or the 180-day replacement period but the holding period before the relinquished property is held before it is given-up as part of the exchange in a Sec 1031 deal.

We often receive inquiries as to whether or not a property, a piece of real estate, which is held inside of a partnership can be a part of a like-kind exchange involving the individual partners. This situation will often occur when two or more partners in a partnership holding real estate want to dispose of the property and one or more partners want to cash-out and the other partner(s) want to replace or exchange their interest in the building or real estate with other real estate under IRC Sec 1031.

The problem with this particular tax situation is that the partnership interest in-of-itself cannot be exchanged – so the partnership has to exchange their old property for some new real estate, inside the partnership for the provisions of Sec 1031 to work. This produces a problem for those in the partnership that wish to cash-out of the whole deal.

The solution rests in what is known as a tenants in common (TIC) arrangement whereby the partnership distributes the real estate either in liquidation of the partnership or not, and the partners post-distribution hold the real estate jointly, in common ownership under the tenants in common rules. This individual ownership will then allow the individual partner to either sell their part of their ownership in the property or to enter into a like-kind exchange for their partial interest in the real estate.

NSA Active and Associate members get five federal tax questions researched and answered FREE each year.
For more information and to submit a question, log on and go to Tax Help Desk.

Continued on the following page

Now that the property is owned individually, this split-treatment can be achieved.

The problem, according to the IRS, with these TIC deals is that the partners are not individually holding the relinquished property for the requisite holding period prior to the exchange. Although this holding period is undefined in the IRS Code and Regulations, a taxpayer is supposed to hold and or use the business or income-producing property for a period of time prior to its exchange in order for it to qualify as property eligible for the deferral provisions of IRC Sec 1031.

The TIC and a good like-kind exchange accommodator should be able to help you and your clients work through any partnership or real estate like-kind exchange issues under IRC SEC 1031.

S-Corporations and Health Care Reform

The Tax Help Desk has handled hundreds of requests and inquiries regarding health insurance, the S-Corporation shareholder and health care reform under the Affordable Care Act.

On December 15, 2016, President Obama signed the **21st Century Cures Act**. Within that Act is yet another chapter in the long history of this ever-changing provision. We would encourage those dealing with the issue of reimbursed health insurance premiums for your S-corporation shareholder clients to review Section 18001 of this newly passed Act. Basically, it has extended the provision of IRS Notice 2008-1 through 2016, so that most S-corporation health reimbursement arrangements (HRAs) will not be in violation of health care reform—the ACA—and the penalties associated with IRC Sec 4980.

This change, or extension, also brings with it many compliance issues that will need to be addressed during 2017. There are some dollar caps and limitations as well notification and disclosure issues that the S-Corporation that must be aware if keeping a reimbursement based health insurance benefit in place.

The details are too lengthy to list or go into here, so we would encourage those who are affected by this issue to check out the details of Sec 18001 of the 21st Century Cures Act.

As NSA members, we thought you might appreciate a couple of due date and holiday reminders for this upcoming 2017 tax season.

Saturday, Sunday or legal holiday.

Generally, if a due date for performing any act for tax purposes falls on a Saturday, Sunday, or legal holiday, the act is considered to be performed timely if it is performed no later than the next day that isn't a Saturday, Sunday, or legal holiday. The term legal holiday means any legal holiday in the District of Columbia. An exception to this rule for certain excise taxes is noted later under the Excise Tax Calendar.

In 2017, April 15th falls on a Saturday. The following Monday, April 17th is Emancipation Day, so the filing deadline of Form 1040 has been moved to April 18th.

Note that a couple of traditional tax due dates have changed in 2017 for the filing of 2016 returns. The 2016 Form 1065 which was traditionally due on April 15th is now due on March 15th. The C-Corporation tax return, the Form 1120, along with Form 1040, which was due on March 15th, will now be due on April 15th, or in the case of 2017, April 18th. The S-Corporation tax return and Form 1120-S will continue to be due on March 15th.

The traditional deadlines have been in place for a very long time and this changes how we, as practitioners, approach and plan our tax season. The loss of one month for filing partnership returns and the additional month gained for filing C-Corporation return will change some of our planning during the tax season this year.

Another due date that has recently been changed is for the Report of Foreign Bank and Financial Accounts, the FinCEN Form 114. This form previously had a due date of June 30th with no extension period. This form is now due by April 18th but does have a 6-month extension available.

For more information about 2017 filing deadlines, review this IRS publication.

Legislative Link

John Ams
Executive
Vice President

IRS Updates ACA Questions and Answers

Although the incoming Trump Administration has said it will move swiftly to repeal some or all of the Affordable Care Act (ACA), it is unclear what effect this may have on the current tax provisions. In any event, tax professionals need to be concerned with current filing requirements for 2016 returns.

To assist in that effort, The IRS has updated three sets of Questions and Answers related to information reporting requirements and shared responsibility provisions for employers. They are now posted on the Affordable Care Act Tax Provisions Questions and Answers page on IRS.gov.

- Information Reporting by Employers on Form 1094-C and Form 1095-C – These Q&As provide additional information about completing Form 1094-C and Form 1095-C for calendar year 2016 that are to be filed in 2017. The Q&As may be used in conjunction with the Instructions for Forms 1094-C and 1095-C, which provide detailed information about completing the forms.

- Reporting of Offers of Health Insurance Coverage by Employers – Certain employers are required to report to the IRS information about whether they offered health coverage to their employees and if so, information about the coverage offered. This information also must be provided to employees. These Q&As address these reporting requirements.

Employer Shared Responsibility Provisions Under the Affordable Care Act – The Affordable Care Act added the employer shared responsibility provisions under section 4980H of the Internal Revenue Code. These updated Q&As provide information about the employer shared responsibility provisions.

The ACA, at this time, has yet to be repealed or replaced. The current filing requirements are still the law of the land.