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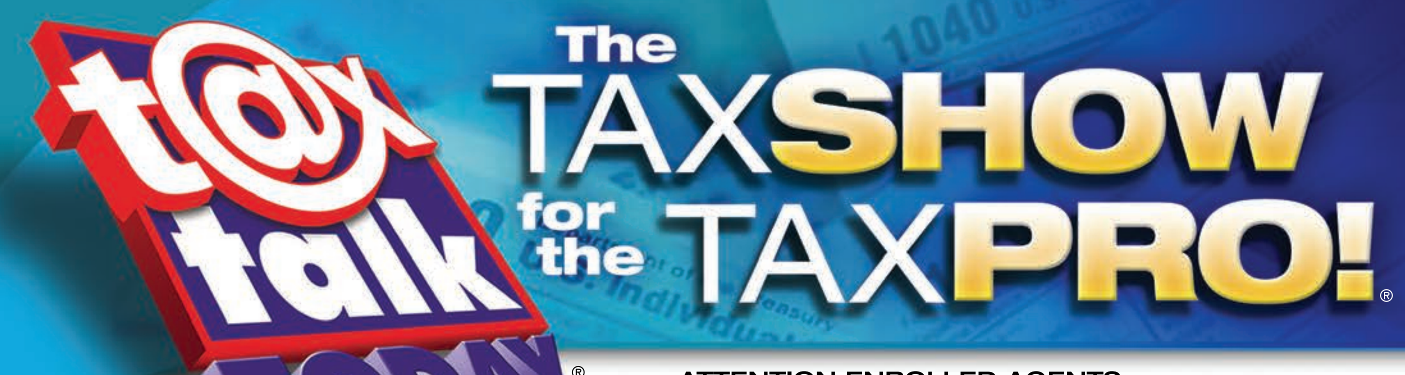

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It's About Membership

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Many members have noticed a renewed emphasis on membership recently. This is not by accident. Although membership is goal #4 of our strategic plan, it is at the heart of everything we do. In executing the strategic plan, NAEA is correctly focused on recognition of our members and profession, advocacy to enhance the perception and influence of our members, and education to assist our members and increase the number of EAs. To achieve these goals, we must be organizationally stable and financially sound, and continuously working to increase the number of members.

In order to increase our membership, a number of strategies will have to be employed. Increased membership has two components: new members and retention of existing members. We must excel at both of these in order to significantly increase our membership. In the past several years we have seen over 1,000 new members join NAEA; but due to attrition for a variety of reasons, our overall increase has not been meaningful. A new membership marketing plan has been developed to provide new tools for affiliates to manage their membership recruiting and retention efforts. The plan calls for an increase of 1,000 members in the 2014–2015 fiscal year and total membership of 15,000 by the end of 2017. I have personally called for a total membership goal of 20,000 by 2020.

The Affiliate Council sponsors an annual challenge to encourage affiliates to increase membership. A new recruiting campaign was started this year called "I Get Members." This is a grassroots program directed at getting members to recruit new members. The goal is not only to increase membership, but also to encourage peer-to-peer connections in member recruitment, which will hopefully lead to better member retention.

The newest program in our pursuit of increased membership is "Educating America." Educating America is a program, in partnership with Gleim, to bring the EA profession to U.S. colleges. The primary goal of the program is to elevate the recognition of enrolled agents by developing a standard tax curriculum that includes SEE prep classes. The initial phase will be to introduce a noncredit certificate SEE prep course to community colleges. This is already being done in several states. The second phase is to package an accredited SEE prep course as part of an associate degree. Phase III will be to package a series of tax courses that comprise an associate degree with an emphasis in taxation. NAEA benefits from this program through the exposure of the EA profession and brand to millions of students—not only those who take the classes, but also to everyone who reads the course catalog. The eventual goal is more enrolled agents and potential members of NAEA.

These programs offer all of us—members, affiliates, and NAEA—an opportunity to contribute to the growth and success of our Association. Let's take control of our destiny and see NAEA become the organization of choice for all enrolled agents. **EA**

CAPITOL CORNER

Please, Do Not Do Any More Good

By Robert Kerr

On June 26, IRS, in its infinite wisdom (sarcasm intended), rolled out its voluntary return preparer oversight program via press conference. On June 30, the agency followed with Rev. Proc. 2014-42. Public comment throughout the expedited process: zip, zero, zilch, null, the empty set.

IRS states in the background section of Rev. Proc. 2014-42:

> *"Basic competency for paid tax return preparers is essential to accurate return preparation, improved tax compliance, effective tax administration, and protecting taxpayers from preparer errors."*

Amen. Absolutely. We've been fighting this fight for years and years.

But then, IRS pulls the old bait and switch. It claims to create a program that will, like the registered tax return preparer (RTRP) program, provide taxpayers with an assurance that their preparers are at least minimally competent; however, it then removes the very piece of the RTRP program that provides this assurance.

Of course, it gets worse. IRS goes on to state:

> *"An unenrolled tax return preparer who successfully completes continuing education courses related to federal tax law will generally have a better understanding of the tax law necessary to represent a taxpayer before the IRS during an examination than an unenrolled individual who has not taken any continuing education courses related to federal tax law."*

By this tortured logic, the person who completed an online biology course would be more qualified to remove someone's gall bladder than someone who has not. We suspect the American Medical Association would not accept this conclusion. We wonder why IRS insists on this charade.

The upshot is that Rev. Proc. 2014-42 formally grants limited practice rights to this new group, those who hold IRS' Annual Filing Season Program Record of Completion, and removes that right from all other unenrolled preparers. The agency got only half of that exercise right. Readers will recall NAEA has, for roughly the past ten years, argued that limited practice rights should be rescinded (with exceptions for *pro se* representation) precisely because the mere fact that someone prepared a return in no way makes that person competent to represent the taxpayer on that return.

Because of its bizarre obsession with maintaining momentum on its return preparer program, IRS has abandoned requirements to demonstrate competency, either with respect to tax prep or with respect to representation.

At least the agency is consistently undermining the return preparer space.

****

The announcement came in spite of NAEA's strong opposition, as well as in spite of the strong opposition from our brethren (and sisteren, if that's even a word) at AICPA. (See the letter on the following pages.) We will continue our public opposition to the program. We will continue to lobby Congress on this issue. We will continue to ask difficult questions. We will continue to insist that the agency makes a clear distinction between the

About the Author

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

qualifications of legacy Circular 230 practitioners and the "qualifications" of the new Annual Filing Season Program participants. We will continue to advocate for the interests of taxpayers and of the profession.

The obvious question then becomes what can individual NAEA members do?

On the upside, legacy Circular 230 practitioners are exempted from this nonsense, so first things first: Don't panic. Next, it makes sense to understand the broad contours of the program:

1) Program participation is voluntary.
2) Participants must complete a certain number of hours of CE (either eighteen or fifteen), prorated in the first year.
3) Some participants must take a CE provider-created quiz after a six-hour annual filing season refresher course. (IRS terms this a comprehensive test, but that's a manifestation of the agency's wishful thinking.)
4) Participants must possess a valid PTIN.
5) Participants must pinkie swear they will adhere to the Circular 230 subpart B and Sec. 10.51 duties and restrictions relating to practice before IRS (we say "pinkie swear" because IRS can't revoke PTINs, and therefore has very little recourse if the participant fails to uphold his/her end of the deal).
6) Those who complete the CE (and quiz, if required), pinkie swear, and hold a valid PTIN are granted:
   a) a certificate
   b) limited practice rights
   c) the opportunity to be included in an IRS online database of return preparers

Here's the really helpful thing members can do: Remind unenrolled return preparers that the agency is all over the place with its requirements—sometimes mandatory, sometimes voluntary, usually confusing. Moreover, those who in good faith became RTRPs (and in many cases spent non-trivial amounts of time and money to do so) find themselves thrown under the bus (because let's face it, being exempt from three of six hours of annual CE and the 100-question quiz is no substitute for a defunct credential).

If someone wants to stop worrying about what IRS is going to do next, he or she should become an enrolled agent. Regardless of gyrations, bobbles, and head feints from the agency, those who become enrolled agents are essentially in a safe harbor, free from worry about what new idea IRS is going to propose.

At the same time, it makes sense to become a truth teller. Ask the unenrolled preparers you know why on earth would they jump through the hoops to participate in a program that does not provide a credential. Ask them why they would go to the trouble for a program that will be impossible to explain truthfully and that may or may not exist next year. Above all, let those who work for you know that you do not support the program.

****

When the British Empire was at its zenith, a citizen of one of its far-flung colonies once addressed a group of Londoners and begged them: "Please, do not do any more good in my country. We have suffered too much already from all the good you have done."

The agency is in dire straits, and its response to nearly all complaints is that it lacks resources to execute programs competently. Yet it takes somewhere between fifty and 100 staff years and devotes them to a program that cannot provide the results the agency believes it will. At the same time, enrolled agents and taxpayers calling for assistance routinely face interminably long hold times; audit coverage rates are falling through the floor; and, according to a GAO audit, IRS is misleading taxpayers by providing unrealistic timeframes in which it expects to respond to correspondence audits.

Clearly, the agency has done all the good we can afford. **EA**

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Letter to the IRS Commissioner Regarding Proposed Temporary, Voluntary Annual Filing Season Certification

The following was sent on May 23, 2014.

The National Association of Enrolled Agents (NAEA) appreciates the opportunity to comment on the Internal Revenue Service (IRS) proposal to create a new, temporary, voluntary return preparer program for the 2015 filing season. NAEA is the only organization solely representing the interests of 49,000 enrolled agents (EAs), America's tax experts. We are committed to increasing the professionalism of our industry, increasing the integrity of the nation's tax administration system, and protecting the representation rights of taxpayers.

According to documents provided by the Return Preparer Office, the proposed program "promote[s] return preparer education and allows preparers to differentiate themselves in the marketplace." Further, the proposed program "maintains the momentum for positive engagement of unregulated return preparers that has built up over the last five years." We understand the salient proposal requirements include a valid PTIN; fifteen hours of continuing education (CE) annually (including a three-hour filing season refresher course and "knowledge-based comprehension test"); and consent to Circular 230, subpart B. In return, IRS will provide limited practice rights, a certificate, and a listing in a public database of "qualified preparers."[1]

NAEA has supported efforts—legislative, administrative, or both—to provide oversight to the widely unregulated tax preparer community. We are therefore predisposed to support efforts in this domain.[2] Nonetheless, we are troubled by the proposal, which we believe raises significant policy questions, as well as significant administrative issues, and believe the agency should retract it.

Policy Observations

We respectfully offer these policy issues for your consideration:

- **Program integrity:** Our fundamental position on preparer oversight is that any program supported by the agency must make a significant contribution to the professionalism of the industry. A *sine qua non* of a meaningful program is a valid initial basic competency test combined with an annual CE requirement. If IRS adopts the proposal in question, we will still live in a world in which dog groomers and manicurists will be required to demonstrate competency and tax return preparers will not.

  When created and administered in a legitimate, controlled environment, the initial basic competency test—as the agency itself realized in the registered tax return preparer (RTRP) program—screens out those who cannot demonstrate mastery of even the most fundamental tax preparation issues. For those who clear the initial (and fairly low) hurdle, the CE requirement provides some assurance that the preparer is attempting to remain current with an evolving tax law.

  While the proposal retains an education requirement, it eliminates the initial basic competency test and replaces it with a fifty-question "knowledge-based comprehension test" to be created by individual CE providers. The "knowledge-based comprehension test" appears to be an inconsistent, virtually uncontrolled, and invalid instrument indistinguishable from what is commonly thought of as a quiz. The initial basic competency test and the fifty-question "quiz" are not interchangeable, and we are concerned taxpayers will mistakenly assume that participation in this voluntary program guarantees a high level of competence.

  The tax code is complex and enrolled agents could not provide their clients with competent tax advice without many hours of CE. While encouraging preparers to educate themselves is meritorious, the fact that CE is laudable does not change the fundamental math: Education is a necessary, yet not sufficient, condition for a serious oversight program.

  CE by itself, even in combination with a "knowledge-based comprehension test," fails to provide a taxpayer with any assurance that the person preparing his or her return is even minimally competent to do so. And isn't that what we set out to do in the first place?

- **The "something-is-better-than-nothing" trap:** We see two significant problems with the presumption that something is better than nothing, an assertion we have heard from agency officials.

  First, the agency is far from starting with nothing. IRS had in place, pre-*Loving*, a voluntary return preparer program. It has had such a program, which acknowledges legacy Circular 230 practitioners, in place for years. The program is in place and ready to go right now.

  Setting aside the fact that the suggestion "something is better than nothing" is faulty, the other problem is that the theoretical "something" IRS is proposing is in fact much worse than the actual "nothing" of the *status quo ante*.

  In exchange for taking some CE (and possibly a fifty-question "quiz" created by one of potentially hundreds of CE providers), the agency blesses the participant

with the accoutrements of legitimacy: a title, certificate, limited rights to practice, inclusion in an IRS-recognized preparer database, and so forth. Seems like a great deal for the would-be participant who will be free to promote to the world that he or she has received IRS's "gold star." We see this as a terrible trade on the agency's part, because the agency will have given away its blessing in return for nothing of value.

- **Unsafe at any speed:** Even if we weren't opposed to the proposal under consideration, we would still be troubled by the speed with which IRS is moving. Given the legislative environment, taxpayers, tax preparers, and IRS may be forced to live for years with the consequences of a hastily conceived program. Among the questions that beg for answers are:
  - What do program participants call themselves?
  - How does the agency justify awarding limited rights to practice to program volunteers?
  - How will IRS discipline the program participants?
  - Once Congress grants approval for a broad oversight program, how would IRS manage the current volunteers?

The answer to the question of what these new volunteers call themselves is not trivial—in fact, it is of great concern to a number of stakeholders who are concerned about marketplace confusion, particularly in an environment in which IRS has blessed a group of people for doing little more than taking a quiz and a few hours of CE.

Legacy Circular 230 practitioners are subject to discipline up to and including revocation of their licenses to practice. We have too much invested in our licenses to practice to risk them by engaging in questionable behavior. Participants in the proposed program, on the other hand, have nothing to lose. In the wake of *Loving*, IRS cannot revoke PTINs, and the cost of entry is next to nothing. What prevents them from returning their certificates once IRS begins to ask questions?

Treasury in 2006 proposed eliminating limited rights to practice[3] because limited practice is inconsistent with the Circular 230 requirement that *all* individuals permitted to practice demonstrate their qualifications to do so. The proposed program lacks any competency testing and any CE requirements. We are troubled the agency views limited practice simply as a carrot, casually removing the right from one group and handing it to another when neither of these groups has earned the right in the first place. While we appreciate removing limited practice rights from those who have not demonstrated their qualifications, practice is not a carrot. The only policy change with respect to limited practice that demonstrates without a doubt the agency takes practice seriously would be to dispense with it altogether.

IRS proposes creating yet another return preparer program, but no one knows how it would integrate program participants into an RTRP (or RTRP-like) program once Congress grants the agency approval to do so. The agency would face pressure to recognize an entire class of volunteers who have not demonstrated baseline competency. Such a move would completely undermine any legitimacy the new mandatory program may offer.

Administrative Concerns

As we said in our opening, we have both policy and administration concerns. A number of our state affiliates, who are also CE providers, have offered detailed questions. As a result, we offer only high-level observations here:

1. CE providers who participate in the annual tax refresher course would be committing time and money to develop a course for a temporary program. To the best of NAEA's knowledge, however, IRS has not offered any projections on annual volume on which CE providers may base their decisions to create the course.
2. We note that although the annual tax refresher course appears on its face to be concerned with the most basic issues (*e.g.*, claiming the standard deduction, determination of filing status, and claiming someone as a dependent), it also includes a number of complex concepts, including the Net Investment Income Tax and the shared responsibility payment (www.healthcare.gov provides no fewer than fourteen hardship exemptions for the latter). Yet covering all items in the course outline is required. We are hard-pressed to see how a CE provider could cover such a wide range of material in three class hours and hard-pressed to see how a CE provider could price, market, and sell a longer course under the three-hour CE cap envisioned.
3. IRS has asked CE providers to create and administer a "knowledge-based comprehension test" at the end of the annual tax refresher course, yet it has provided no guidance on item writing, weighting, or distribution, and has failed to indicate what, if any, level of review it plans to offer.
4. Agency officials inform us they have no plans to charge participants. We believe OMB Circular A25[4] provides relevant guidance on user fees and note that assessing user fees is not discretionary. At the same time we understand the agency also has no plans to recalculate PTIN user fees, which were originally at least partially based on a CE management program no longer applicable to PTIN holders. Given that the agency shouldn't be using PTIN funds to support this program, we wonder how it proposes to fund a redundant voluntary program, particularly in an environment in which the agency is pleading with Capitol Hill for resources and expects the FY14 level of phone service to drop well below 70 percent.

Solutions

A statement to taxpayers, tax professionals, and Congress that the agency plans to support aggressively its original pre-*Loving* return preparer oversight program is perfectly defensible. It acknowledges that IRS has in fact been doing something in this space for a long time. This approach does not dilute and is ready to go right now.

We know that some of the roughly 350,000 unenrolled preparers would be unable to pass the EA exam, but pumping up numbers is not—nor should it be—the goal here. At the same time, the agency has never tried to promote vigorously the credential, and our suggestion that the agency consider this approach is not unreasonable. At the very least, while we wait for congressional action, we would be certain that IRS wasn't undermining the very program it needs to protect taxpayers (and the fisc).

In the alternative, IRS should consider a voluntary RTRP program. That program has been vetted thoroughly and has industry buy-in and the minimum level of rigor necessary to pass muster. If IRS announced this move shortly, it could claim victory and it could maintain momentum—one of its stated goals—by using the RTRP program.

In order to re-establish the minimal competency test, IRS would need to launch it in the 2016 filing season; but this much more reasonable timeframe allows for an orderly transition. The Service could trumpet the existing program in the short term (which limits the downside risk that some may criticize the agency for inaction), give preparers and stakeholders plenty of time to gear up for the new program, and signal clearly to the marketplace the direction in which the agency will turn when Congress provides the authority to run a full-bore program.

Both approaches—or a hybrid—create inevitability, certainty, and merit.

Conclusion

We understand that the annual filing season creates long cycles, but we do not believe that letting dates drive policy decisions leads to desirable outcomes. IRS has not demonstrated a compelling need to create a new program in time for the 2015 filing season, and stakeholders should not have to live with the fallout from such a precipitous decision.

We ask that you withdraw the proposal. If we are trying to protect taxpayers, elevate the profession, and improve tax administration, we cannot sacrifice program integrity on the altar of expediency.

NAEA appreciates the opportunity to respond in writing to IRS's proposed, voluntary annual filing season certificate program. We look forward to ongoing conversations centered on building a strong framework for return preparer oversight.

ENDNOTES

[1] The database would also include legacy Circular 230 practitioners.

[2] Our attached Statement for the Record for an April 2014 Senate Finance Committee hearing outlines our longstanding support for meaningful return preparer oversight.

[3] NAEA has opposed limited practice for years. Please refer to pages 3 and 4 of our response to a 2006 Circular 230 Notice of Proposed Rulemaking for details.

[4] See www.whitehouse.gov/omb/circulars_a025

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2013	Original	MFJ	10/15/14		No		$10,657.58	$12,113.66	7/10/2013
2012	Amended	HOH			No	06/14/13	$16,975.95	$18,523.26	7/10/2013
2011	SFR	S	10/15/12	12/21/12	08/23/13	Closed	$7,568.22	$7,975.44	7/10/2013

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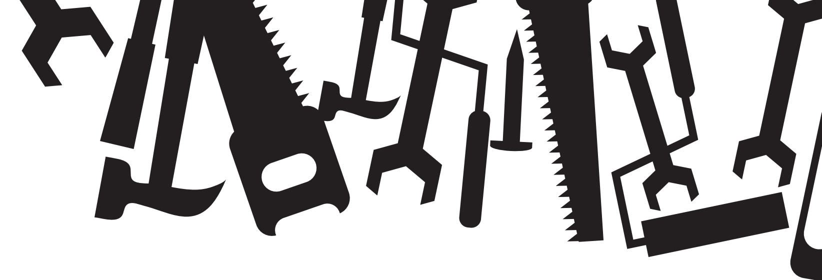
REPAIR REGULATION UPDATE

Julie Jacobson, CPA, and Terri Klug, EA, with Eide Bailly LLP



New regulations are in effect for tax years beginning on or after January 1, 2014, that provide significant changes relating to the life cycle of tangible property, including modifications as to what costs should be included as part of the asset when acquiring, what constitutes a material or supply, what constitutes a repair and maintenance expense, what constitutes a capital improvement, and what to do upon the disposition of either a portion of an asset or the full asset. These regulations affect any taxpayer who has personal or real property, and careful thought should be given to these regulations now to ensure compliance and to ease burdens for the upcoming filing season.

How to Comply

The final regulations generally provide that a change to comply with them is a change in method of accounting to which the provisions of Sections 446 and 481 and their accompanying regulations apply. Officials from the IRS and Treasury have indicated they expect Form 3115 (Application to Change in Accounting Method) to accompany the majority of returns filed for the tax year 2014. To omit a Form 3115 could pose additional scrutiny by IRS agents.

To assist taxpayers in determining how to properly comply with the regulations, the IRS published two companion revenue procedures: Rev. Proc. 2014-16 and Rev. Proc. 2014-17. These two revenue procedures temporarily remove certain scope limitations for using the automatic consent procedures for filing a change in accounting method. This means there is a temporary window (tax years beginning before January 1, 2015) for some taxpayers to adopt the regulations without having to pay a fee and endure the more onerous requirements of the manual consent process. In addition, these scope waivers allow taxpayers to file a method change within a five-year period if prior method changes relating to these items had been filed previously.

The regulations indicate that adopting some of the rules requires the filing of Form 3115, some are elected by simply doing, and some require the filing of an election statement with the timely filed return (including extensions).

Some items requiring Form 3115:

- Adopting a unit of property definition and the improvement standards (change number 184)
- Adopting the materials and supplies definition (change number 186 for nonincidental and change number 187 for incidental materials and supplies)

Some items elected by doing:

- Current-year full dispositions
- Current-year partial dispositions

Items requiring election statements:

- De minimis election: This election allows the taxpayer to use his or her financial statement capitalization policy with either the maximum threshold of $500 for taxpayers with nonapplicable financial statements or $5,000 for taxpayers with applicable financial statements for the tax year elected.
- Election to capitalize repair and maintenance items taxpayer capitalized on his or her financial statements: This election applies to all expenditures for repairs and maintenance for the year elected.
- Small taxpayers with qualifying property: The election allows small taxpayers with real property with an unadjusted basis of $1,000,000 or less to treat all expenditures to the building for the year as a current expense if the aggregate expenses for the building do not exceed the lower of 2 percent of the unadjusted basis of the building or $10,000.

How to File Form 3115 and Compute a Sec. 481(a) Adjustment

Materials and Supplies

For the first time, the regulations now clearly define what constitutes materials and supplies. To recognize and conform to these changes, the transition guidance indicates that a taxpayer needs to file Form 3115 to adopt the definition of materials and supplies as something that costs no more than $200 or does not last more than twelve months in the taxpayer's business.

In order to determine the significance of the change to a taxpayer, the tax return preparer needs to analyze the materials and supplies account. However, these rules are effective for costs incurred on or after January 1, 2014; and, therefore, if a taxpayer adopts these rules in 2014, there is generally no Sec. 481(a) adjustment.

Unit of Property

Adopting the unit of property standards for improvements also requires filing Form 3115. In order to properly determine whether or not an expenditure results in a capital improvement or if the taxpayer can take a disposition deduction, a taxpayer must adopt the unit-of-property concept (determining the comparison for the expenditure). Thought should be given by the taxpayer to these items to ensure that the proper definition of a unit of property is accurately documented within Form 3115. Adopting the regulations may require specific details

when a taxpayer defines the unit of property on Form 3115. It will be imperative to ensure that the wording is both thorough but yet does not create undue burdens or unwanted results in the future.

Dispositions

Contrary to the detailed rules in the regulations on defining a unit of property for improvements, the regulations determine the unit of property for dispositions on a facts-and-circumstances basis. For example, if a building and any improvements are separate assets with different placed-in-service dates on a depreciation schedule, the building as a whole would not be the unit of property for disposition purposes. Each portion of the building with the same placed-in-service date may be the unit of property. This could create a trap for the unwary if improvements are not appropriately tracked.

Generally, a taxpayer must recognize a disposition in the year the taxpayer disposes of the unit of property or portion of the unit of property. At the time of the writing of this article, the transition guidance allows a limited time frame (taxable years beginning before January 1, 2014) to recognize past dispositions and may be the only opportunity to "clean up" depreciation schedules that may contain prior dispositions. Should taxpayers omit this analysis and a full disposition occurred in the past, an IRS agent could disallow any depreciation related to that disposition. In that event, the taxpayer's only recourse would be to amend the return, assuming the statute of limitation for that year has not closed.

The IRS has indicated it will update Rev. Proc. 2014-17 to reflect tweaks made to the disposition rules in 2014. It is expected the superseded guidance will provide additional clarification on the computation of the basis of a disposition, as well as provide for an opportunity to recognize prior dispositions for the 2014 tax year. Some caution is being expressed among preparers regarding the computation of full disposition deductions under Rev. Proc. 2014-17 for tax years beginning before January 1, 2014, and that the modifications expected could warrant the filing of another Form 3115 for early adopters.

Computing the Sec. 481(a) Adjustment

The Sec. 481(a) adjustment is a crucial component of Form 3115 filing, and it is the difference between the current method of computing depreciation and the proposed method based on the accumulated depreciation as of the beginning of the year of change. In essence, the adjustment causes the taxpayer to apply these rules retroactively.

A good-faith attempt must be made at computing a Sec. 481(a) adjustment on Form 3115. Although the regulations are potentially ripe for beneficial treatment by the taxpayer, it is important to not only analyze and attempt to compute a negative (or taxpayer favorable) Sec. 481(a) adjustment, but also to analyze areas on the taxpayer's books and records where more advantageous expense treatments may have previously been taken by the taxpayer than the newly issued guidance allows.

In order to make a good-faith attempt to calculate the Sec. 481(a) adjustment, documentation should be present in determining whether or not any modifications or adjustments may be computed. If documentation is not available, the ability to accurately compute a Sec. 481(a) adjustment becomes more challenging.

If documentation is available and the computed Sec. 481(a) adjustment results in additional deductions for the taxpayer, it is shown as a negative adjustment on Form 3115. If the adjustment results in additional income required to be recognized by the taxpayer, then it is reflected as a positive adjustment on Form 3115, and it is typically recognized over four years. If adjustments are found for the taxpayer to include both positive and negative adjustments, the adjustments should be netted.

Completing Form 3115

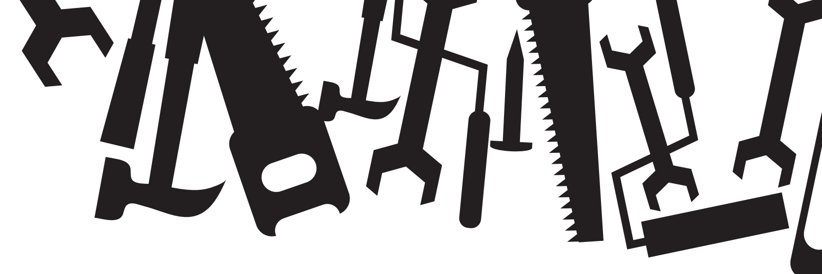
If the taxpayer is able to locate documentation and it results in an adjustment in the treatment based on the analysis of the new regulations, the taxpayer must include a detailed description of the unit(s) of property, building structure(s), or building system(s) used under the taxpayer's present method of accounting and a detailed description of the unit(s) of property, building structure(s), and building system(s) under the taxpayer's proposed method of accounting, together with a citation to the paragraph of the final regulation or temporary regulation under which the unit of property is permitted on Form 3115. The greater the detail, with appropriate examples, the better off a taxpayer will be on exam.

The adjustment is then entered as an additional expense on the current-year tax return titled "Sec. 481(a) Adjustment" under the "Other Expenses" section. The Sec. 481(a) adjustment is not reported as a depreciation expense.

If upon review of the taxpayer's fixed asset schedule and prior improvements the taxpayer did not find any expenditures that would have been treated differently between the present and proposed method of accounting or documentation was not available to support making a modification, then a Sec. 481(a) adjustment of zero may be placed on Form 3115. For materials and supplies, a change in accounting method for the 2014 tax year is done on the cut-off method and does not result in a Sec. 481(a) adjustment.

How to Minimize Book-Tax Differences

With the new regulations, there are opportunities to minimize book-tax differences that may be of interest to some taxpayers. These opportunities primarily lie in the capitalization policies used for book purposes. Under the de minimis election, a taxpayer can substitute his or her book threshold for expensing tangible property for tax purposes up to $500 per invoice or per item if the taxpayer does not have applicable financial statements, or $5,000 per invoice or per item if the taxpayer qualifies as having applicable financial statements.



Should the book-capitalization policy exceed the $500 or the $5,000 thresholds, the taxpayer must capitalize the standalone assets exceeding the thresholds, creating additional book-tax differences. A taxpayer should consider a book-capitalization policy that does not exceed the tax thresholds provided under the de minimis election to minimize these book-tax differences.

There is also an option to elect to capitalize repair and maintenance amounts that the taxpayer capitalizes on his or her financial statements. This is an election statement that is simply filed with the return as indicated above.

Closing Thoughts

As with all changes in legislation, there are challenges in applying these new rules and implementing them correctly. It will be crucial to educate both ourselves and our clients on how the new rules impact the treatment of fixed asset expenditures and materials and supplies going forward.

In the instance that clients are resistant to compliance, one must consider potential preparer penalties. If there is a Sec. 481(a) adjustment that is not taken on Form 3115 (especially if the adjustment would include an increase in taxable income) or a good-faith effort is not completed, then the return preparer may have challenges signing the return due to the fact that the return preparer would know the taxpayer has no reasonable basis for not complying with the regulations. It will be important to have these discussions with all your clients prior to the beginning of filing season to ensure adequate time is available to put in the good-faith effort of computing the Sec. 481(a) adjustment, completing Form 3115, and ensuring compliance with the regulations. **EA**

About the Authors:

Julie Jacobson, CPA, has over six years of experience, including significant expertise in capitalization and repair and maintenance. She has in-depth knowledge of the new tangible property regulations.

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A CLOSER LOOK INSIDE
Publication 17
BEYOND THE BASICS

By James Roberson, Jr., EA

On the surface, Publication 17, *Your Federal Income Tax for Individuals*, is the standard "go-to" guide in preparing tax returns for individuals. Yet mixed within its 335,582 words on 288 pages lies a wealth of not-so-ordinary information enrolled agents can use to deal with even the most unusual tax returns. Not only does Publication 17 cover the basics of filing status, income filing requirements, and identification of which tax form to use, but it is also a treasure trove of surprises. This article unveils some of these hidden gems.

Ordinary Income …

A great place to start is wages. It is a simple fact that employers are required to issue Form W-2 to employees by January 31 of each year. However, some employees never receive a W-2 and the reasons why vary greatly, *e.g.*, some companies close or the employee may have moved and failed to provide a forwarding address. Even when W-2s are provided, wages can be reported incorrectly. Publication 17 provides answers in these situations. After February 14, your client can contact the IRS to determine if his wages were reported, and if so, request a copy of a wage and income transcript. If the issue with the employer is not resolved, Form 4852 (Substitute for Form W-2, Wage and Tax Statement) or Form 1099R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's Insurance Contracts, Etc.) may be filed. Clients may not use their own version of the tax form unless it meets IRS requirements.

In addition to wages, other sources of income are addressed. If the employer gives your client a nominal gift, such as a turkey or ham during the holidays, the value is not included as income. However, if the employer gives cash or a gift card, the value of the item should be included as income, regardless of the amount (p. 48).

If your client receives one or more achievement awards for a job well done, the amount that can be excluded is limited to the employer's total cost, up to $1,600 under a qualified plan. However, any dollar amount over this is considered income. For example, if your client receives numerous awards during the tax year for safety or length of service totaling $1,800, the client must declare $200 as income (p. 46).

As a host of a party (think makeup or jewelry home parties), if your client receives a gift for hosting the event, its fair market value must be included as income. If your client barters for a good or service in exchange for hosting the same party, the client must include the fair market value of the good or service in income (p. 89).

No occupation is exempt from similar issues. As a member of the clergy, offerings and fees received for marriages, baptisms, and funerals are to be included as income, along with the clergy's regular salary (p. 50).

… And Not So Ordinary Income

Perhaps your client did his civic duty and called a hotline to report criminal activity. Based on the tip, the criminal is apprehended and your client receives a cash reward. The reward becomes taxable.

Perhaps your client enjoys game shows like *Wheel of Fortune, Jeopardy*, or *The Price is Right*. If your client appears on such a show and wins a prize package, including cash, she must include the winnings as income. The same applies for winning a prize in a local radio call-in contest. The only exception is if the client refuses to accept a prize, then the value would not be included as income. Note that the prizes and awards in goods or services must be included as income at their fair market value as determined by the contest promoter.

Perhaps your client received a prestigious award such as the Nobel Peace Prize or a Pulitzer? The fair market value of the prize must generally be included as income. (See Publication 525, *Taxable and Nontaxable Income*, for exceptions.) Note: If your client transfers the award directly to a tax-exempt charitable organization before physically receiving the award, it becomes nontaxable (p. 96).

Other "Income"

On the darker side, suppose your client receives a bribe. It should also be included as income.

Suppose your client is running for public office and receives campaign contributions. If properly used for campaigning, contributions are not taxable. However, if *any* funds—no matter how much or how little—are diverted for personal use, they become taxable income.

If your client received damages for emotional distress due to physical injury or sickness, that award is not taxable. However, if your client received damages due to nonphysical injuries (employment discrimination or injury to reputation) your client's award becomes taxable (p. 94).

As well, if your client receives income from illegal activities, such as dealing drugs, sell-

ing stolen property, embezzlement, etc., the income should be reported on line 21 of Form 1040 or Schedule C if it is from self-employment. If your client receives a kickback for a business deal, it should be included as income as well on line 21 of Form 1040 or Schedule C if the client is self-employed (p. 96).

If your client is a criminal and steals property, the fair market value of the property must be included as income in the year it was stolen. However, if the property is returned to its rightful owner in the same year, income is not reported (p. 97).

magazine that is above the cost of a regular printed edition.
- Breast pumps.
- Capital expenses for improvement to your client's home needed for medical care, including grading the ground for access to the residence and adding handrails and grab bars anywhere in the home, not just in a bathroom.
- Guide-dog expenses, including the original purchase, food, grooming, and veterinary services.
- Lead-based paint removal (p. 147).

Not all answers in preparing your clients' tax returns are black and white. There are gray areas which require a little more research.

Itemized Deductions

Are your clients looking for ways to increase itemizing? Remind them they can make a "contribution" (gift) to help reduce the public debt. The contribution may be made by making a check payable to "Bureau of Public Debit" or by going online to www.publicdebt.treas.gov. If your client is able to itemize the following year, he may be able to deduct this contribution. The check may be mailed to the address listed in Publication 17 or included as a separate check with the tax return (p. 15).

If your client has numerous out-of-pocket medical expenses for the year, not only can the mileage to and from a medical facility and meals potentially be claimed (p. 146), but there are also a few other items that may be included as medical expenses. Here are some examples:

- Braille books. Your client may deduct the part of the cost of a braille book or

For more information on deductible medical expenses, see IRS Publication 502, *Medical and Dental Expenses.*

To Deduct or Not to Deduct?

Often clients come to enrolled agents with preconceived notions about itemized deductions because they were told that certain items could be written off. This information usually comes from "tax experts" like a family friend or a coworker.

One common misguided tax tip is that all work-related clothing is deductible. Wrong! Shorts purchased by a lawn care professional as work attire? Not deductible. A hostess at an upscale restaurant purchases the required attire—dark pants and a white shirt? Not deductible (p. 199). Nor can your client deduct the cost of a wristwatch, even if the job requires the employee to know what time it is to perform his duties (p. 203).

Publication 17 cautions:

> *It is not enough that you wear distinctive clothing. The clothing must be specifically required by your employer. Nor is it enough that you do not, in fact, wear your work clothes away from work. The clothing must not be suitable for taking the place of your regular clothing.*

Note the clothing cannot be suitable for everyday wear. Examples of workers able to deduct clothing and upkeep are professional athletes and firefighters. Their uniforms are not suitable for everyday wear. Musicians and entertainers can also deduct the cost of theatrical clothing and accessories for items that are not suitable for everyday wear. (Think of the pop group Abba's recent disclosure that they chose their outrageous stage attire to avoid paying taxes.)

A painter's white-bibbed overalls? Sorry. Not distinctive enough. Blue work clothes for a welder? No deduction either. However, protective clothing, such as certain safety shoes or boots, safety glasses, hard hats, and certain work gloves, may potentially be a deduction (p. 199) if your client has the ability to itemize and exceeds the 2 percent limits for employee job expenses.

Other nondeductible expenses include illegal bribes and kickbacks and the "mere disappearance" of cash or property your client "misplaced." The value of wages your client may have worked for but never received is also a nondeductible expense (p. 202).

Client Reminders

A word of caution from the IRS:

> *File only one federal income tax return for the year regardless of how many jobs you had, how many Forms W-2 you received, or how many states you lived in during the year. Do not file more than one original return for the same year, even if you have not gotten your refund or have not heard from the IRS since you filed (p. 5).*

If your client is due a refund, it cannot

be issued unless the tax return has been signed (p. 13). If that refund is less than $1, it will not be sent unless your client asks for it in writing. The good news is that your client is not required to pay if the balance is below $1. However, if your client's balance due is $1 or more and a bad check is received for payment, your client will be charged a penalty of $25 or 2 percent of the check, whichever is more (p. 14).

As a final reminder (p. 4), if your client chooses a frivolous position on a tax issue, remind him that as an enrolled agent, you are not allowed to prepare and file the return in accordance with Circular 230. And if the client chooses to go to another preparer or prepare the return himself, remind him that the IRS will charge the client a $5,000 penalty for filing a frivolous tax return.

In Closing

Not all answers in preparing your clients' tax returns are black and white. There are gray areas which require a little more research. Rarely are clients' tax situations the same. As enrolled agents, we are required to perform due diligence in accordance with Circular 230 when preparing all tax returns. Some clients think they have all the answers when they arrive in our offices because of the (mis)information they may have gained from a friend, coworker, or from their own attempt to research a tax issue.

However, as enrolled agents, we are expected to provide up-to-date information and ensure accuracy of all tax returns on behalf of our clients. We can take no frivolous positions, nor take client paperwork at face value. We question. We notate in client files.

We should never be afraid to say, "I don't know," to our clients—especially on tricky issues. Research. Read. Read again. You never know what information you may come across, especially between the covers of Publication 17.

Happy researching! **EA**

About the Author:

James (Robbie) Roberson, Jr., EA, has been in practice for nineteen years. He currently sits on the board of the Mississippi Society of Enrolled Agents. "Like" him at www.facebook.com/robbierobersontaxservice or e-mail him at taxdad@hotmail.com.

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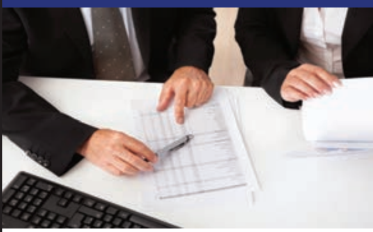

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PROCESSING AN AMENDED JOINT RETURN WITH A SINGLE SIGNATURE

A TRIBUTE TO NETWORKING AND RESEARCH

BY KENNETH L. BAILEY, EA

WILL THE IRS PROCESS A JOINT RETURN WITH ONLY ONE SIGNATURE?

No, it won't. According to Publication 17, *Your Federal Income Tax for Individuals*, "For a return to be considered a joint return, both spouses generally must sign the return." There are only a few circumstances where one spouse is allowed to sign for the other:

- spouse died before signing
- injury or disease prevents signing
- signing as guardian of spouse
- spouse is in combat zone
- spouse is absent from the U.S. more than sixty days
- spouse has a valid power of attorney

In each of these circumstances, one spouse is signing on behalf of the other. The Internal Revenue Code does not allow for a married filing joint return to be processed with only a single signature. This applies for both original and amended returns.

A Bit of Practical Experience

In April 2010, a client went to a national franchise to get his and his wife's 2009 taxes prepared. Later in 2010, he and his wife were divorced. I will call them Brad and Jennifer for the purpose of this article. The following tax season Brad went to a CPA to get his 2010 tax return prepared, but now he was filing as single. He ended up with a balance due, but didn't think too much of it because of the change in filing status.

Fast-forward to February 2013. Brad walks into our office and wants us to amend the 2010 return after finding some errors on it. After looking over the 2010 and 2009 returns, we discovered a much bigger error than he ever imagined. There was a significant NOL in 2009 which the preparer at the national franchise did not carry back, nor did the preparer make the Sec. 172(b)(3) election to only carry it forward.

Statute of Limitation for NOL Carryback Claims

IRC Sec. 6511(b) states that a taxpayer has until the later of either three years after the due date of the return (including extension) or two years after the tax was paid to file an amended return and claim a refund. However, if the claim for credit or refund relates to an overpayment attributable to an NOL carryback or a capital loss carryback, this statute is modified by Sec. 6511(d)(2), which allows you until three years after the return is due for the taxable year of the net operating loss or net capital loss which results in such carryback.

For the 2009 return, the deadline to amend and carry back the loss was April 15, 2013. Brad was right up against the deadline to file the amendment to carry the loss to his 2007 tax return. We prepared the amendment and thought we were done. We did not know, however, that Jennifer would refuse to sign the joint amended return. How much was this going to cost Brad? The refund on the amended 2007 return came to $48,000.

What Brad Did Next

After pleading with Jennifer to no avail, Brad sent in the amendment with only his signature. The IRS responded with a letter alerting him that her signature was missing and it was needed to process the return. He tried again to get her to sign the return, offering her half the refund when he got it.

According to him, Jennifer refused to sign out of spite for whatever misdeeds he had done. He sent the reply with only his signature and a brief explanation of the situation. The IRS sent him another letter, this time saying they could not process the return.

So … End of Story, Right?

He responded to the IRS yet again, this time with the help of another professional, and sent in logs of text messages and other documentation to support the fact that he was trying to get her signature but she had refused. The IRS directed the letter to their Appeals department.

Brad came back to our office in February 2014 and asked for our help with Appeals. That is where I came into this story. I advised him then that it was likely a losing battle, but that I would do everything I could to make the best argument possible.

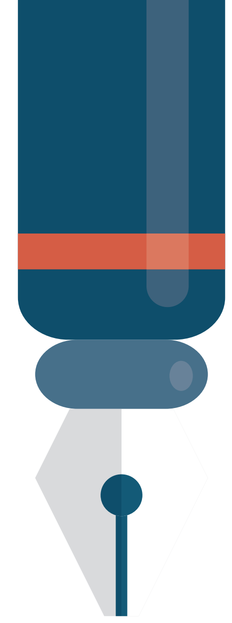
I do quite a bit of networking, and threw a wide net trying to look for anyone who had experience winning a case like this. I received one of two responses:

- Good luck, but he doesn't have a chance. It is very clear a joint return has to be signed by both individuals.
- The IRS should accept the return based on the fact that it is correct, and it is the right thing to do; but I don't have anything to back me up on that.

After a week or so of this, I received a response from someone who mentioned Rev. Rul. 1980-8. I finally had a trail to follow, and I was able to trace a number of revenue rulings, Treasury regulations, and code sections to get the answer I was looking for.

Revenue Ruling 1980-8: Joint Return; Amend; Overpayment; Single Signature

(1) The Service will accept a claim for credit or refund filed by a divorced taxpayer on a Form 1040X with respect to a jointly filed



individual income tax return if the Form 1040X is signed by only one of the taxpayers, and the Service will issue a refund check in the name of the taxpayer that filed the Form 1040X.

(2) The amount of the taxpayer's individual refund will be determined by recomputing the taxpayer's share of the joint liability and subtracting that amount from the taxpayer's contribution toward the joint liability. The amount of the overpayment refunded to the taxpayer will be limited to the amount of the joint overpayment."

Revenue Ruling 1980-7:
Joint Return; Overpayment; Credit Against Separate Tax Liability

Each spouse's contribution will be determined in accordance with the formula in section 1.6015(b)-1(b) of the Income Tax Regulations …

If the spouses file a joint return showing an overpayment, then the amount that may be credited to one spouse's separate liability is computed by subtracting the spouse's share of the joint liability, determined in accordance with the separate tax formula, from the spouse's contribution toward the joint liability. The amount credited cannot exceed the amount of the joint overpayment.

Treasury Regulations, Subchapter A, Sec. 1.6015(b)-1 Joint Declaration by husband and wife. (b) Application to separate returns

In the event the husband and wife fail to agree to a division, such payments shall be allocated between them in accordance with the following rule. The portion of such payments to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 (other than by section 56) shown on the separate return of the taxpayer (plus, for taxable years beginning after December 31, 1966, the amount of tax imposed by chapter 2 shown on the return of the taxpayer) bears to the sum of the taxes imposed by chapter 1 (other than by section 56) shown on the separate returns of the taxpayer and his spouse (plus, for taxable years beginning after December 31, 1966, the sum of the taxes imposed by chapter 2 shown on the returns of the taxpayer and his spouse).

Title 26 CFR 1.172-7 - NOL Joint return by husband and wife. (d) From joint to separate return.

If a husband and wife making separate returns for a taxable year made a joint return for any, or all, of the taxable years involved in the computation of a net operating loss carryover or net operating loss carryback to such taxable year, the separate net operating loss carryover or separate net operating loss carryback of each spouse to the taxable year is computed in the manner set forth in Sec. 1.172-4 but with the following modifications:

(1) The net operating loss of each spouse for a taxable year for which a joint return was made shall be deemed to be that portion of the joint net operating loss (computed in accordance with paragraph (d) of Sec. 1.172-3) which is attributable to the gross income and deductions of such spouse, gross income and deductions being taken into account to the same extent that they are taken into account in computing the joint net operating loss.

What Does All This Mean for Brad?

Brad's refund was allowable, despite only having one signature. The IRS has the authority to file or correct returns on behalf of a taxpayer without the taxpayer's signature (the same authority that they rely on to conduct an audit, issue a notice of delinquency, or file a substitute return). IRS can use this authority to process a joint amendment with one signature, but knowing how to ask is the key.

I wrote a letter with these findings to the Appeals officer. When it came to the hearing, it was one of the shortest I have ever had. After the formalities, the Appeals officer told me he agreed with my findings and he just needed a couple of things, such as a separate computation, to make his job easier.

BRAD'S PATIENCE AND PERSEVERANCE REALLY PAID OFF, ALL THANKS TO A LOT OF NETWORKING AND RESEARCH.

Computing a Separate Refund

The IRS will issue a refund only to the taxpayer who signed the amendment. To do so, IRS first has to conduct a separate assessment, also known as mirroring the account. This process takes the joint information and copies it identically to both individual accounts so that they are separately liable for the entire return. The IRS then amends only the account of the taxpayer who signed the return.

That alone doesn't mean Brad gets the whole refund, though. The refund is calculated based on what his income, deductions, credits, tax, and amount he paid in was versus how much belonged to Jennifer. Then, only his portion of the refund is issued, and her portion of the refund would be absorbed by the IRS, never to be seen again.

In Brad's case, however, he was the only source of income for the family in 2007, and it was his business that created the NOL in 2009. The only thing he would lose in the separate computation is the exemption for Jennifer. Due to the size of the NOL, the exemption made no difference, and he was entitled to the entire $48,000 refund, plus interest from the date he originally sent in the amendment.

What Is the Conclusion?

Brad's patience and perseverance really paid off, all thanks to a lot of networking and research. As for Jennifer, she lost out on her opportunity at getting half the refund, which she would have received if she would have just signed the return.

How to Apply Rev. Rul. 1980-8

Even though there is no clear guidance on the matter, there is a much easier way to get a joint amendment processed with only one signature. Through discussions with the Appeals officer and other IRS employees, it was determined that the best way to submit an amendment with only one signature is to write "Process Under Rev. Ruling 1980-8" on the top of the 1040X. For good measure, I would advise writing a letter explaining the circumstances and quoting the ruling to send in with the amendment to make sure it is processed.

Please note that Rev. Rul.1980-8 does not apply to original MFJ returns, only amendments. Additionally, you should always advise your client to try getting his or her former spouse to sign the amended return first and not use the revenue ruling as a way around getting the ex-spouse to sign it. Just keep in mind that the ruling is there to fall back on if your client needs it. **EA**

About the Author:

Kenneth Bailey, EA, has been practicing since 2010 and specializes in representing clients before the IRS and state taxing authorities. After working at a few of the national representation companies, he recently joined his family's tax practice in Vero Beach, Florida. Kenneth holds a bachelor's in Business Administration: Management from Warner University.

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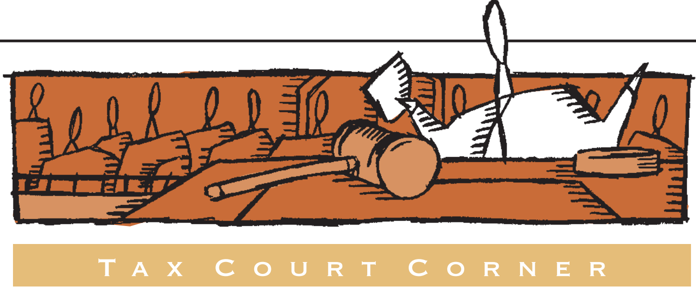

TAX COURT CORNER

When Is an IRS Appeals Officer Not Considered Impartial in a Collection Due Process Hearing?

Patricia A. Moosally, Petitioner
v.
Commissioner of Internal Revenue, Respondent
142 T.C. No. 10

By Steven R. Diamond, CPA

If a taxpayer requests a hearing in response to a notice of federal tax lien (NFTL) filing, the hearing must be conducted by an impartial officer or employee of the Appeals office. An impartial officer or employee is one who has not had any prior involvement with respect to the underlying tax prior to the first hearing.

FACTS

In November 2001, Patricia Moosally (petitioner) signed Form 2751 (Proposed Assessment of Trust Fund Recovery Penalty) and consented to the assessment and collection of trust fund recovery penalties (TFRP) for the period ended March 31, 2000, in an amount in excess of $22,000; and for the period ended September 30, 2000, in an amount in excess of $14,000. Also, with respect to petitioner's 2008 tax year, the Commissioner sent her Notice CP2000 which proposed an increase in petitioner's federal income tax of $2,150. Petitioner filed an amended U.S. income tax return, previously reporting the undeclared income for 2008, and the Commissioner assessed the $2,150 in March 2010.

In June 2010, petitioner submitted an offer in compromise (OIC), along with Form 433-A (Collection Information Statement for Wage Earners and Self-Employed Individuals), which proposed to compromise for $200 her total unpaid liabilities due to the TFRPs assessed against her for the March 31 and September 30, 2000, tax periods. Petitioner requested that the OIC be accepted due to "doubt as to collectibility" and claimed she had insufficient assets to pay the full amount owed.

The IRS Centralized OIC Unit (COIC Unit) confirmed receipt of her OIC in March 2011. Between March and May 2011, petitioner was requested to, and submitted, additional information, substantiation, and explanations for various representations listed in her OIC and Form 433-A. At some point during this period, the COIC Unit and petitioner discussed the unpaid income tax liability from the 2008 tax year and included that amount along with the other amounts petitioner was requesting to settle through her OIC. In late May 2011, the COIC Unit rejected the petitioner's OIC because they calculated her reasonable collection potential to be well in excess of the amount offered. The COIC Unit also recommended that the Commissioner file an NFTL with respect to the unpaid tax liabilities.

In June 2011, petitioner appealed the rejection of her OIC and listed her 2008

About the Author

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

income tax liability, as well as the March 31, 2000, and September 30, 2000, TFRPs as the liabilities and tax periods involved. Petitioner also sent Appeals additional documentation to support her OIC and informed Appeals that she had lost her job. Appeals confirmed receipt of her appeal and assigned Settlement Officer Barbara Smeck to her case.

In July 2011, the Commissioner filed an NFTL for the periods in issue and mailed petitioner notice that she had a right to a collection due process hearing (CDP) which had to be requested by August 18, 2011. Petitioner timely filed for the CDP hearing and requested that Appeals discuss collection alternatives and withdraw the NFTL. Settlement Officer Donna Kane was assigned to her case.

In August 2011, Smeck sent petitioner a request for additional information and substantiation, as well as an updated 433-A. Petitioner timely responded to the request.

In September 2011, Kane informed petitioner that her CDP case was being reassigned because there was already an OIC under consideration. The case was transferred from Settlement Officer Kane to Settlement Officer Smeck, who was already reviewing the rejected OIC.

In February 2012, the Commissioner issued two determination letters, one with respect to petitioner's 2008 income tax liability and the other with respect to the TFRPs for March 31 and September 30, 2000. The notices of determination sustained the filing of the NFTL and the rejection of the OIC for the periods at issue. Petitioner timely petitioned the Tax Court for review of the determination letters.

OPINION

IRC Sec. 6321 gives the federal government a lien against all property and rights to property, whether real or personal, on any person liable for federal tax upon demand for payment and failure to pay. However, the Commissioner is required to give the taxpayer a written notice of the filing of the federal tax lien upon the taxpayer's property, and must inform the taxpayer of the right to request a hearing in the Commissioner's Appeals office.

If the taxpayer requests a hearing in response to the NFTL, the hearing must be conducted by an impartial officer or employee of Appeals, which means the officer or employee cannot have had prior involvement with respect to the unpaid tax prior to the hearing. The regulations provide that "prior involvement by an appeals officer or employee includes participation or involvement in a matter (other than a CDP hearing held under IRC Sec. 6320 or IRC Sec. 6330) the taxpayer may have had with respect to the tax and tax period shown on the CDP notice."[1]

In this case, petitioner contends that Smeck was not an impartial officer because she reviewed petitioner's appeal of the rejected OIC for the period in issue before conducting the CDP hearing for the same periods in issue. Petitioner's position was that the CDP hearing was improper, and she requested that her case be remanded to Appeals to properly consider the NFTL and collection alternatives. The position of the Commissioner was that Smeck was impartial because she had not yet issued a determination, and, therefore, there is no prior involvement when a reviewing officer has not made any determination with respect to a previously rejected OIC. Furthermore, the Commissioner believed that a simultaneous review of all issues related to collections during a CDP hearing benefits taxpayers.

In the *Cox*[2] case, which was a case with a somewhat similar fact pattern, the Tax Court ruled that there is no violation of the impartial officer requirement because (1) the officer's prior involvement was only peripheral to, and not the subject of, a proceeding before the Tax Court, and (2) there was no greater or different harm where both the officers' prior involvement and current consideration were in the context of a CDP hearing. However, in the current case, Smeck reviewed the same periods in issue for both the OIC appeal and the CDP hearing, whereas in Cox, the officer's prior involvement occurred during the review of a different tax period. Furthermore, Smeck's prior involvement took place during her handling of an OIC appeal, not a previous CDP hearing.

Continuing its reasoning, the Tax Court noted that Smeck reviewed petitioner's appeal of her rejected OIC for the periods in issue almost three months before petitioner's CDP hearing for the same periods was transferred to her. During that time span, Smeck requested and evaluated various documents, forms, and other financial information in order to determine the reasonable collection potential and evaluate the rejected OIC. Therefore, through her review of the rejected OIC, Smeck had prior involvement with petitioner's unpaid tax liabilities for the periods at issue prior to her being assigned to handle the petitioner's CDP hearing for the same taxes and periods at issue.

The Commissioner's position was that Smeck was an impartial officer because she had not yet issued a determination regarding petitioner's rejected OIC and that, while there was current involvement, there was no prior involvement because a determination had not been made. The Tax Court noted that the regulations plainly prohibit prior involvement and do not specify that the involvement must result in the issuance of any type of determination. Therefore, the Tax Court concluded that Settlement Officer Smeck's participation in petitioner's OIC appeal constituted prior involvement even though no determination had been issued before handling petitioner's CDP hearing.

Consequently, the Tax Court ruled that Smeck was not an impartial officer pursuant to IRC Sec. 6320(b)(3), the Commissioner did not fulfill his statutory duty to provide petitioner with a "fair" CDP hearing, and petitioner was entitled to a new CDP hearing before an impartial officer.

The case was remanded back to Appeals for a new hearing. **EA**

ENDNOTES

[1] Sec. 301.6320-1(d)(2)

[2] *Cox v. Commissioner,* 126 T.C. 237

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3.	A ☐	B ☐	C ☐	D ☐	**23.**	A ☐	B ☐	C ☐	D ☐
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9.	A ☐	B ☐	C ☐	D ☐	**29.**	A ☐	B ☐	C ☐	D ☐
10.	A ☐	B ☐	C ☐	D ☐	**30.**	A ☐	B ☐	C ☐	D ☐
11.	A ☐	B ☐	C ☐	D ☐	**31.**	A ☐	B ☐	C ☐	D ☐
12.	A ☐	B ☐	C ☐	D ☐	**32.**	A ☐	B ☐	C ☐	D ☐
13.	A ☐	B ☐	C ☐	D ☐	**33.**	A ☐	B ☐	C ☐	D ☐
14.	A ☐	B ☐	C ☐	D ☐	**34.**	A ☐	B ☐	C ☐	D ☐
15.	A ☐	B ☐	C ☐	D ☐	**35.**	A ☐	B ☐	C ☐	D ☐
16.	A ☐	B ☐	C ☐	D ☐	**36.**	A ☐	B ☐	C ☐	D ☐
17.	A ☐	B ☐	C ☐	D ☐	**37.**	A ☐	B ☐	C ☐	D ☐
18.	A ☐	B ☐	C ☐	D ☐	**38.**	A ☐	B ☐	C ☐	D ☐
19.	A ☐	B ☐	C ☐	D ☐	**39.**	A ☐	B ☐	C ☐	D ☐
20.	A ☐	B ☐	C ☐	D ☐	**40.**	A ☐	B ☐	C ☐	D ☐

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REPAIR REGULATIONS

1. A construction company uses ladders on all its jobs. Due to regulatory requirements, the company must replace the ladder for every job. Each ladder costs $1,250, and each job lasts less than nine months. The company has a capitalization policy that indicates they expense everything under $350. How is this item treated for tax purposes under the new regulations?
A. Capitalized as a fixed asset
B. Deductible as a material or supply
C. Deductible as a repair and maintenance expense
D. Deductible under the de minimis rules

2. A taxpayer without audited financial statements is choosing to follow her book-capitalization policy of expensing everything under $500 for the 2014 tax year. In order to properly comply with the regulations and be able to follow this policy, she should:
A. File a Form 3115 with her 2014 tax return, adopting the unit of property standards
B. File a Form 3115 with her 2014 tax return, adopting the materials and supplies definition
C. File an election statement with her 2014 tax return indicating that she has elected de minimis for the year
D. Compute a 481(a) adjustment that shows what she would have capitalized if she was not following book methods

3. Form 3115 is required to accompany the 2014 tax return to properly adopt which of the following:
A. The unit of property definition
B. The materials and supplies definition
C. A and B
D. None of the above

4. A 481(a) adjustment is computed based on the taxpayer's:
A. Accumulated depreciation as of the beginning of the year of change
B. Accumulated depreciation as of the end of the year of change
C. Prior-year depreciation expense
D. Current-year income

5. The 481(a) adjustment is recorded on the tax return in the:
A. Depreciation expense line
B. Repair and maintenance line
C. Other expenses section
D. None of the above

6. A disposition:
A. Removes an asset that no longer exists from the depreciation schedule
B. Should be taken in the year it occurs
C. Is determined on a facts-and-circumstances basis
D. All of the above

7. Book-tax differences can be mitigated by:
A. Not complying with the regulations
B. Setting the book-capitalization threshold to not exceed the tax thresholds
C. Deducting everything
D. There is no way to mitigate book-tax difference with regard to the new regulations

PUBLICATION 17

8. The IRS will not issue a refund to a client if the return is not signed.
A. True
B. False

9. Which type of clothing would be considered a tax deduction?
A. Painter's white-bibbed overalls
B. Any clothing you purchase for work
C. Safety glasses
D. Shorts purchased by a lawn-care professional

10. What portion of Braille books can be considered a medical expense when itemizing?
A. The total cost, including sales tax and shipping
B. The part of the cost that is above the cost of a regular printed edition
C. Total cost of only Braille books
D. Total cost of only Braille magazines

11. The form used to report substitute wages when a client has not received a W-2 is:
A. Form 4137
B. Form 4562
C. Form 4684
D. Form 4852

12. Your client wins cash and a prize package totaling $65,000 (determined by the promoter) on a television game show. How much is reported as income?
A. An amount only up to her earned income
B. All $65,000, even if she refuses to claim the prize
C. The fair market value of the prize package as determined by the contest promoter
D. Nothing, if she donates it all to charity after receiving her winnings

13. Which of the following would not be included as income?
A. $75 reward for reporting a criminal activity
B. $75 of campaign funds used to buy new tires for a politician's car
C. $75 embezzled from an employer
D. All of the above

14. Which damages from a court settlement are taxable?
A. Employment discrimination
B. Physical injury
C. Emotional distress
D. Both B and C

AMENDED JOINT RETURN

15. Will the IRS process an original joint return with only one signature?
A. Yes
B. No

16. What is the statute of limitations to claim a refund in IRC Sec. 6511(b)?
A. Two years after the due date of the return or one year after the tax was paid
B. Three years after the due date of the return or two years after the tax was paid
C. Two years after the due date of the return
D. One year after the tax was paid

17. How do you submit an amended return with only one signature?
A. Mail the return to your local IRS office for special processing
B. Mail the return to Appeals for special processing
C. Write "Process Under Title 26 CFR 1.172-7(d)"on the top of the 1040X
D. Write "Process Under Rev. Ruling 1980-8" on the top of the 1040X

18. How does the IRS issue a refund when only one taxpayer signs the amendment?
A. The taxpayer who signed the return gets the entire refund
B. The refund is split evenly between the taxpayer and ex-spouse
C. The taxpayer who signed the amendment is issued a refund based on which portions of the return are attributed to him or her
D. The IRS splits the refund based on what the divorced couple agrees upon when filing the return

TAX COURT CORNER

19. In the *Cox* case, the Tax Court ruled that there was no violation of the impartial officer requirement because:
A. The Appeals officer's prior involvement was only peripheral to, and not the subject of, a proceeding before the Tax Court; and the Appeals officer was a friend of the taxpayer
B. The Appeals officer's prior involvement was only peripheral to, and not the subject of, a proceeding before the Tax Court; and the revenue officer was diligent in his dealings with the taxpayer
C. The Appeals officer's prior involvement was only peripheral to, and not the subject of, a proceeding before the Tax Court; and the Appeals officer's prior involvement occurred during the same tax period
D. None of the above

20. If a taxpayer requests a hearing in response to an NFTL, the hearing must be conducted by an impartial officer or employee of the Appeals office:
A. Which means the officer or employee may have had no more than one prior involvement with respect to the unpaid tax prior to the hearing
B. Which means the officer or employee cannot have had prior involvement with respect to the unpaid tax prior to the hearing
C. Which means the officer or employee cannot have been working in the Audit Division of IRS prior to being transferred to Appeals
D. Which means the officer or employee must have had prior involvement with respect to the unpaid tax prior to the hearing

CORRECTION TO THE ARTICLE, "THE MODERN FAMILY AND ITS TAX IMPLICATIONS" BY DAVID DU VAL, EA, WHICH APPEARED IN THE JUL/AUG 2014 EAJ

On p. 14 of the article it says:

Sara's only choice currently is to file MFS since she and her husband will not agree to file jointly. With the MFS status she loses the ability to claim the credits that go along with the HOH filing status, such as the Child Tax Credit and Earned Income Tax Credit, since these are not permitted to MFS taxpayers. All she is allowed to claim is the exemption for her grandson Theodore.

This is incorrect. Instead of "Child Tax Credit" it should be "Child and Dependent Care Credit."

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