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Navigating Form 1040NR • 2015 Tax Law Wrap-Up • The Expatriation Tax

VOL. 33 No. 6

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# EA JOURNAL

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THE NATIONAL ASSOCIATION OF ENROLLED AGENTS

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A CURRENCY FOR THE DIGITAL AGE



NAEA 2016-2017 Election • Tax Appointment Worksheet  
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Page 5-9



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## 16 Bitcoin: A Currency for the Digital Age

By Beth Logan, EA, and John Dundon, EA

## 20 Curveballs: Navigating Form 1040NR Step-by-Step

By Jean Mammen, EA

## 26 It's Taxing to Say Goodbye: The Expatriation Tax

By Monica Haven, EA, JD

## 32 2015 Tax Law Wrap-Up

By David Mellem, EA



## Inside This Issue

- |   |  |  |
|---|--|--|
| <p><b>3</b>    <b>President's Message: Cast Your Vote</b><br/>By Terry Durkin, EA</p> <p><b>4</b>    <b>2015 Nominating Committee Report</b><br/>By Lonnie Gary, EA, USTCP</p> <p><b>7</b>    <b>2016-2017 Nominating Slate</b></p> | <p><b>14</b>    <b>Capitol Corner: Things Which Matter Most</b><br/>By Robert Kerr</p> <p><b>35</b>    <b>Tax Appointment Worksheet</b><br/>By Mary Mellem, EA</p> <p><b>37</b>    <b>Tax Court Corner</b><br/>By Steven R. Diamond, CPA</p> | <p><b>39</b>    <b>Four-Hour Home CE Test</b></p> <p><b>44</b>    <b>National Conference Highlights</b></p> <p><b>47</b>    <b>The Often-Overlooked Benefits of NAEA Membership</b><br/>By Gigi Thompson Jarvis, CAE</p> |
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# Cast Your Vote



Terry Durkin, EA

*"That we have the vote means nothing. That we use it in the right way means everything." – Lou Henry Hoover*

**F**or those of you who are unfamiliar with Lou Henry Hoover, she was the wife of Herbert Hoover and First Lady from 1929-1933. She was also the first First Lady to make regular nationwide radio broadcasts. Voting was not taken for granted by women in that time period—especially since the 19th amendment granting women the right to vote wasn't ratified until 1920. Mrs. Hoover's message is still relevant today. Simply having the opportunity to vote is not enough. We must all be informed and ready to make the best decisions on the ballot.

As NAEA members\*, we will be voting in the NAEA election as well as voting on two proposed bylaw changes in December. For the election, we have a choice to make for each position: President-Elect, Secretary/Treasurer, and the six Director seats. Please read the nominating committee report to understand the process, and carefully read the biographies of all the nominees and candidates.

In addition, the Bylaws Committee has worked hard to prepare the pros, cons and wording for two bylaw changes coming before members. One bylaw change addresses the process of dealing with proposed bylaw amendments. The second bylaw change addresses splitting the officer position of Secretary/Treasurer into two officer positions. Read the available information for these two bylaw changes so that you can make an informed decision when voting. If you have questions, ask fellow members, members of the Bylaws Committee, or any of us on the Board of Directors.

As Franklin D. Roosevelt said, "Democracy cannot succeed unless those who express their choice are prepared to choose wisely." Let's be prepared to vote and choose wisely. I'd like to see a strong NAEA voting turnout this year. I am counting on you to exercise your right to vote.

Speaking of a strong NAEA, we are coming off a successful season at the IRS Tax Forums. Thanks to all the NAEA instructors, volunteers, and staff that worked together to promote NAEA and enrolled agents at each of the venues. I had the opportunity to see this in action at the Tax Forum in Denver, and I look forward to seeing increased membership numbers.

In this season of thanksgiving, I thank you all for what you do to make NAEA stronger. I am proud to be a part of this community and proud to be an enrolled agent. It sure is a great day to be an EA.

\*Remember: Associates do not qualify to vote. **EA**

# 2015 NOMINATING COMMITTEE REPORT



By Lonnie Gary, EA, USTCP (Chair); Jean Canoose, EA; Gina Jones, EA; Paul Ketcham, EA; Twila Midwood, EA; Angela Radic, EA; David Tolleth, EA, Ph.D.

The Nominating Committee sought to nominate the best qualified leaders for the positions to be filled. NAEA bylaws directed us to select one person, but not more than two persons, for each open officer or director position. We were required to select one nominee for President-Elect, one nominee for Secretary/Treasurer, and six nominees for director, but we could have selected a total of sixteen nominees. In the end, we selected eight leaders whom we believed were the best qualified—one nominee for each position.

A call for nominations went out in the *EA Journal* and the *E@lert*, and both national and state affiliate leaders were asked to nominate members with leadership abilities. This year, we had twenty-four people nominated for the two officer positions and the six director positions that will be voted upon beginning in late November. Each member nominated received a Leadership Profile Questionnaire (LPQ) to complete and a job description of the positions for which that individual was nominated. The LPQ is a ten-page document designed to determine an individual's qualifications for the position(s) desired and his or her views on issues of importance to NAEA and the profession.

The Nominating Committee conducted interviews August 1 through August 4 in conjunction with the 2015 National Conference, held at the Cosmopolitan Hotel in Las Vegas, NV. The Committee considered many factors during the interview and deliberation phases, including the future leadership needs of the NAEA Board. Every member interviewed by the Committee possessed a unique set of strengths that made our decisions difficult, yet rewarding.

After hours of conference calls, email communications, interviews and extensive deliberation, the Nominating Committee is proud to present the following slate:

#### **PRESIDENT-ELECT**

James (Jim) Adelman, EA

#### **SECRETARY/TREASURER**

Timothy Dilworth, EA, CPA

#### **DIRECTOR**

Michael Fioritto, EA, CPA

Jerry Gaddis, EA

Patricia Kappen, EA

Melissa Longmuir, EA

Jean Nelsen, EA

Jeffrey Schneider, EA

Pursuant to NAEA policy, any person who completed an LPQ and was interviewed by the committee for a position, but was not selected as a nominee, is eligible to declare himself or herself as a candidate for that position, or "run from the floor." Accordingly, the following individuals have chosen to do so:

#### **PRESIDENT-ELECT**

Laurie Ziegler, EA

#### **SECRETARY-TREASURER**

Nancy Lyman, EA

#### **DIRECTOR**

Stephen Banner, EA

This report completes the work of the 2015 Nominating Committee, but the ultimate decision will rest with you, the members. Each nominee or candidate is required to present to you a biography, statement of goals, and the answer to a common question: What is the greatest challenge to NAEA in the next two years? I urge you to read these statements carefully. Consider the abilities presented by each person. Contact one or more of them if you have questions. Then, exercise your right to vote.

NAEA is using the services of a professional election company for this process. Eligible members (those in good standing with NAEA as of November 1, 2015) will be able to cast their vote electronically. There are no longer any paper ballots. All members will receive an awareness message in early November. On November 30, members will receive a message giving a unique identification number and URL for accessing the electronic ballot. The biographies, statements of goals, and answer to the common question found on the following pages will also be accessible via the electronic ballot.

It was my honor to chair this group of outstanding professionals who were willing to donate many hours of their time, not only in Las Vegas, but also prior to that for several phone conferences. Thank you all for your time and effort. If you have any questions about the voting process, please contact NAEA Interim Executive Vice President John Fiegel, CAE, at [jfiegel@naea.org](mailto:jfiegel@naea.org) or at 202-822-6232 x 101. Please contact Survey and Ballot Systems if you have any problems voting or do not receive a ballot at [support@directvote.net](mailto:support@directvote.net) or 866-909-3549.



## National Association of Enrolled Agents 2016-2017 Election

To cast a vote:

- Check the box next to a nominee/candidate name.
- To change your vote, click the box again and the mark will be removed.
- To review candidate information, click the "View Bio" button next to each candidate.
- To review your selections, click the "Go to Ballot Confirmation" button.
- You may save your ballot and return later by clicking the "Logout" link.

[View 2015 Nominating Committee Report](#)

[View All Biographies](#)

### President-Elect

Select 1 from below.

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- |   |                          |
|---|--------------------------|
| <input type="checkbox"/> James R. (Jim) Adelman, EA - Nominee | <a href="#">View Bio</a> |
| <input type="checkbox"/> Laurie Ziegler, EA - Candidate       | <a href="#">View Bio</a> |

### Secretary/Treasurer

Select 1 from below.

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- |  |                          |
|--|--------------------------|
| <input type="checkbox"/> Timothy Dilworth, EA, CPA - Nominee | <a href="#">View Bio</a> |
| <input type="checkbox"/> Nancy E. Lyman, EA - Candidate      | <a href="#">View Bio</a> |

### Directors

Select up to 6 from below.

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- |   |                          |
|---|--------------------------|
| <input type="checkbox"/> Michael A. Fioritto, EA, CPA - Nominee | <a href="#">View Bio</a> |
| <input type="checkbox"/> Jerry Gaddis, EA - Nominee             | <a href="#">View Bio</a> |
| <input type="checkbox"/> Patricia Kappen, EA - Nominee          | <a href="#">View Bio</a> |
| <input type="checkbox"/> Melissa Longmuir, EA - Nominee         | <a href="#">View Bio</a> |
| <input type="checkbox"/> Jean Nelsen, EA - Nominee              | <a href="#">View Bio</a> |

**SAMPLE**

Jeffrey Schneider, EA - Nominee

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Steve Banner, EA - Candidate

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

Select 1 from below.

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Yes

No

**Amend Bylaws Article XVI**

Select 1 from below.

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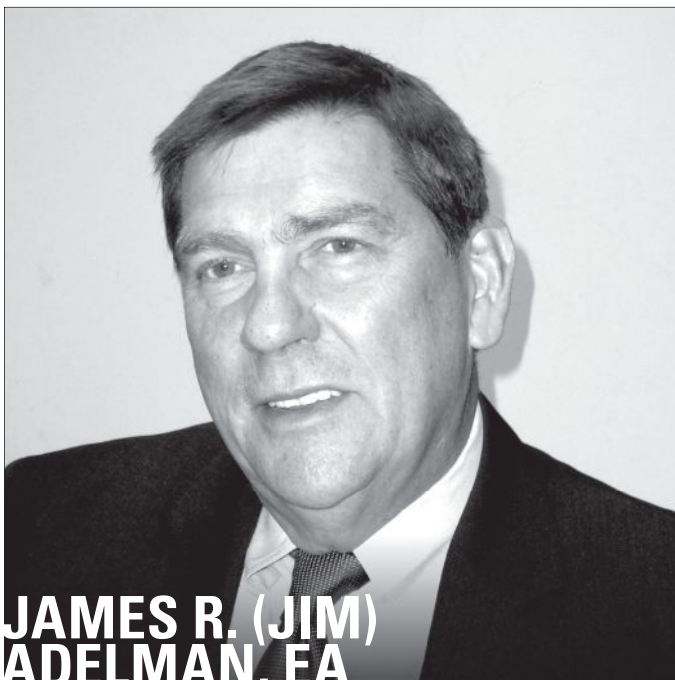
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**JAMES R. (JIM)  
ADELMAN, EA**  
NOMINEE FOR PRESIDENT-ELECT

**BIOGRAPHY**

I have been a practicing enrolled agent since 2001 and a member of NAEA for about the same time. I am an NTPF Fellow and have a degree in accounting. For twenty-two years, I was employed by the law firm of Frasier, Frasier & Hickman, LLP of Tulsa, Oklahoma and handled a fairly large amount of tax representation cases with the firm. In January of 2015, I formed my own firm, Tax & Financial Services, LLP. I have served as President of the Oklahoma Society of Enrolled Agents. I have also served as Chairman of the Relocation Task Force and served for two terms on the Affiliate Council, the Governance Committee, the Nominating Committee, the Board of Directors, and as the at-large member of the Executive Committee.

**STATEMENT OF GOALS**

My goals for NAEA are simple: Do whatever I and the Association can do to fulfill our 2015-2018 Strategic Plan.

I see NAEA pushing harder for recognition of the credential through increased cooperation with the IRS, AICPA, ABA, and other trade organizations that impact our profession. Education is the key to all of our goals. If we educate the public, we increase recognition of enrolled agents. If we educate non-members about NAEA services, we will be able to increase membership. If we educate the public, IRS, and members of Congress, we advocate for our profession.

How do we do that? We pull together. We are stronger together than as individuals. We must park our egos at the door, be ready to roll up our sleeves, and work together. Our profession must become more attractive as a first occupation.

**THE GREATEST CHALLENGE TO NAEA  
IN THE NEXT TWO YEARS**

The first major challenge facing NAEA is the selection and integration of a new dynamic EVP who can propel the organization to higher and better levels. NAEA will expect and demand high performance from our selection and we must stand ready to assist the EVP in his/her endeavors to move us forward. The second major challenge is to implement Educating America in the most productive way possible. Fully committing to Educating America will enable us to make tremendous strides toward accomplishing our strategic goals. Education is the key. Getting Educating America in colleges raises the recognition of enrolled agents. Internships and mentoring programs increase our member and affiliate services. Additionally, the increased awareness of Educating America increases our advocacy. All of these things will increase membership and will result in an improvement in our education programs that will increase financial security.



**LAURIE ZIEGLER, EA**  
CANDIDATE FOR PRESIDENT-ELECT

**BIOGRAPHY**

As managing member of Sass Accounting, LLC since 1993, I serve over 700 clients (including 200 small businesses), offering business consultation, education and support in addition to our regular tax preparation and representation services. I am also a Certified QuickBooks Pro Advisor.

I have six years of service at NAEA, including two terms as Secretary/ Treasurer, Director, Reserves Task Force member, Planning Task Force member, Affiliate Council member, Young Professionals Task Force Review Group member, and a member of the Government Relations Committee. I'm a past president of WSEA and have also served as their Treasurer and Director.

Becoming an EA and member of NAEA in 2004, I achieved the NTPF Fellow designation in 2007. I am a graduate of Lakeland College (1992) where I earned a BS in Accounting and Business Administration.

**STATEMENT OF GOALS**

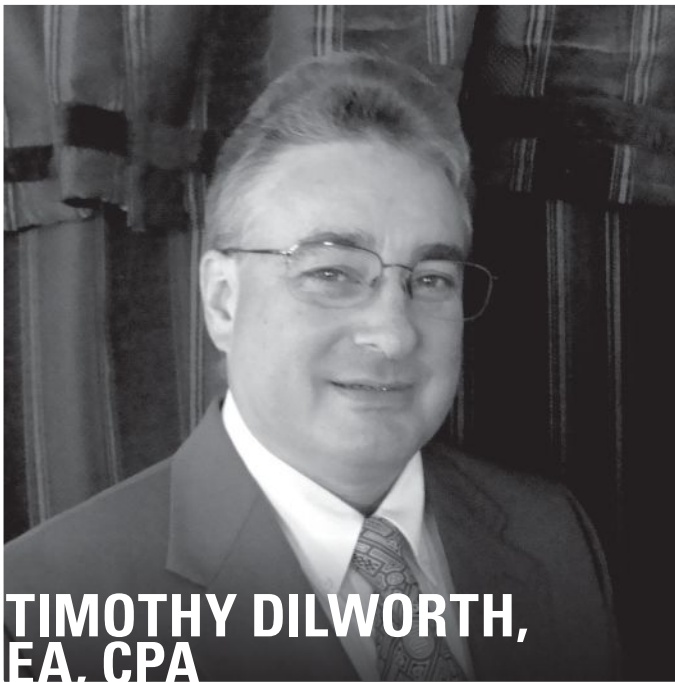
The difference between ordinary and extraordinary... is the Extra! I feel strongly about being an enrolled agent and am equally passionate about NAEA. My involvement with the association on both the state and national levels has been very rewarding. I look forward to the opportunity to continue to serve my fellow members as President-Elect.

Educating the public about the enrolled agent designation is very important. It is the "payback" to our members. In light of the Loving decision, recognition of EAs and public awareness is more important than ever. The taxpaying public must be aware of our unlimited representation rights before the Internal Revenue Service. EA needs to become a household name.

Affiliates play an important role as well. New members and associates need to feel connected to their state affiliate and local chapter. Through the APEX meetings, affiliates are being strengthened and supported by their peers. By enabling the connection between members and affiliates, we engage them so they realize first-hand what NAEA has to offer. Supporting affiliates plays a vital role in membership growth and retention.

**THE GREATEST CHALLENGE TO NAEA  
IN THE NEXT TWO YEARS**

Our present financial difficulties are being addressed and will soon be resolved. Therefore, lack of growth in our membership is the greatest current challenge to NAEA. We need to focus on retention and recruitment of non-member EAs, academic associates and other associates in order to grow our membership. Our presence at the IRS forums gives us a great opportunity to recruit new members. Capitalizing on the Educating America and our NTPF programs can assist in growing our academic and Circular 230 associates. Students, Attorneys, and CPAs practicing in the field of taxation benefit from our advocacy as well as our educational offerings. Membership is critical—the more members, the louder our voice becomes to give us the Extra needed to become ExtraOrdinary!



**TIMOTHY DILWORTH,  
EA, CPA**

**NOMINEE FOR SECRETARY/TREASURER**

**BIOGRAPHY**

I believe my financial and accounting background make me especially suited to this position. I have a Bachelor's Degree in Finance from the University of Utah and a Masters in Accounting and Financial Management from DeVry University. After spending the past eight years as tax manager of a mid-sized CPA firm in Michigan, I opened my own practice in Kalispell, MT in January 2015. My extensive experience preparing and reviewing attested financial statements for business clients gives me the tools I need as Treasurer. I appreciate the Nominating Committee's hard work and their confidence in me as the best one for the job. I am currently on the Board of the Great West Society of Enrolled agents. I have served NAEA on the Board of Directors (two years), Audit Committee (currently), Reserves Task Force, and NTPI Planning Committee. I served on the Michigan Society of Enrolled agents BOD for six years, including two years as president.

**STATEMENT OF GOALS**

As Secretary/Treasurer, my goals would be twofold. My main focus as Treasurer would be ensuring that NAEA is on solid financial footing. We are in a time of great flux with a change in executive leadership in the works. We have moved our main office location, installed a new database software system, and experienced stagnant member numbers. These events present singular financial challenges to NAEA, which will require great diligence and oversight to ensure a secure financial future. As one of the architects of the current strategic plan, I support it completely. Our number one goal should always be increased enrolled agent recognition. We all want EA to be a household term and the first thing anyone thinks of when it comes to taxes. Our second priority is membership. There's an old saying that if you're not growing, you're dying. It is vital that we keep growing as an organization. We need to continue to fuel growth by supporting initiatives such as Educating America, our plan to bring the EA profession to America's colleges. This is a great program that will increase the number of EAs while also making the term more recognized among those who see the program in their schools. Part of supporting membership is doing all we can to make things easier for the affiliates. I believe it is crucial to have a strong relationship between the Board and the affiliates.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

Our biggest challenge is growth. Our membership hasn't increased appreciably in 10 years. We need to embrace initiatives, such as Educating America, that promise to create new enrolled agents and convince them that they need to join the only organization that exists solely for the benefit of enrolled agents.



**NANCY E. LYMAN, EA**

**CANDIDATE FOR SECRETARY/TREASURER**

**BIOGRAPHY**

For the past twenty-nine years, I've worked in a professional CPA firm which has allowed me to gain extensive tax and financial statement experience working in the GAAP world. The firm encouraged me to become an enrolled agent and join NAEA in 1995. They then supported my advancement in becoming a Fellow (in 2007) of the National Tax Practice Institute™. Since becoming an EA, I've served the NNESEA in various elected positions, currently as the Immediate Past President. During my tenure as NNESEA Membership Chair, we achieved recognition for our membership retention percentage. Currently I am serving a second term as NAEA director. I've served as chair of the Affiliate Council, the Public Relations Committee and was a two-year member of the Governance Committee. We created "A Guide to Effective Public Relations for NAEA Affiliates," which is now included in the SSLA handbook. I am a 2011 graduate of the Schuldiner/Smollen Leadership Academy.

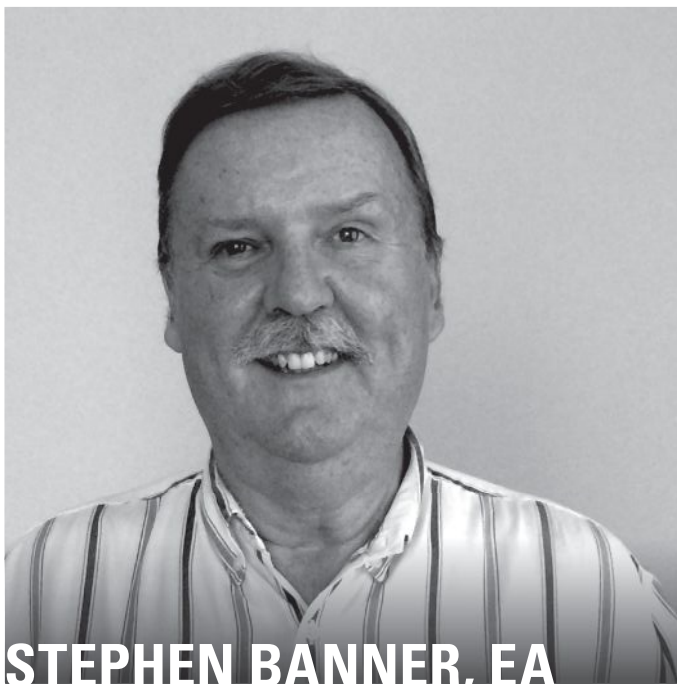
**STATEMENT OF GOALS**

Use your voice, make the cLEAR choice... As Secretary, I will provide timely and accurate recordings of all business meetings to ensure effective administration of NAEA records. This is essential to increase transparency and keep NAEA leaders and members informed of our decisions. As Treasurer, my primary concern is to safeguard the soundness of our budgeting and financial reporting procedures by confirming internal controls are maintained and ensuring expenditures are aligned with our strategic plan. My continuing board service and participation in the creation of our new Strategic Plan have strengthened my desire to serve the membership. The preparation and participation in Board meetings is an essential part of representing the member's interests. I take this challenge seriously. Our members must be encouraged and empowered to promote themselves. The Affiliate Council is an excellent resource to meet this member need. The connections between NAEA and its Affiliates are paramount to attracting new members. When connections are strengthened between the national and state levels, achieving our goals as a tEAm will be realized.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

The current financial trends of NAEA are the greatest challenge within the next two years. As a membership organization, finances and membership are solidly linked. We must attract new members through consistent and aggressive marketing techniques, extensive public relations, traditional and social media outreach and taxpayer/practitioner advocacy. Additionally, we need to explore new ways to expand our non-dues revenue. Having been a board member through these trying times, I have extensive knowledge of the challenges NAEA's next Secretary/Treasurer will need to address. I believe in what NAEA can do for its members. I want to continue to be your voice on the board!





**STEPHEN BANNER, EA**  
CANDIDATE FOR DIRECTOR

**BIOGRAPHY**

I began my income tax career in 1977 and have since gathered business experience in a variety of countries and cultures. In addition to the United States, I have lived and worked for extended periods in Australia, Saudi Arabia, Canada, and Sweden. Along the way, I studied Adult Education and earned a Bachelor's Degree in Education, a Masters of Educational Administration, and an MBA. This lifelong combination of interests in taxes and adult education is what ultimately led me to sell my tax practice four years ago and take a position as Senior Tax Editor with the online continuing education provider APlusCPE. I am currently Secretary of TXSEA and First Vice President of the Dallas-Fort Worth chapter of TXSEA.

**STATEMENT OF GOALS**

My primary goal is to continue to enhance and communicate the benefits of NAEA membership for enrolled agents, with the aim of increasing the number of NAEA members by at least twenty percent each year. In order to achieve this goal, we must improve the continuing education services currently offered by NAEA. NAEA's annual thirty credit hours requirement represents an excellent opportunity to enhance the perceived value of membership while at the same time providing useful and timely information for members.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

I believe the greatest challenge to NAEA during these next two years is to grow its membership. In the past few years, I have seen NAEA achieve very favorable results through its Fly-In Day and Educating America programs, as well as through the many membership benefits offered to members. Even more can be achieved with an increased number of members and an increase in influence and budget that would allow us to create new programs and expand those we already have in place.

Selling the proposition of membership is not a difficult one because there is no doubt that enrolled agents who join NAEA can receive outstanding value at both local and national levels in return for their membership fees. We need to reach out to enrolled agents across the country and expand the number of local chapters. We could begin by contacting prospective members and offering them the opportunity to take a series of online CPE courses through naea.org, free of charge. Remotely-located members could use distance learning technologies to participate in chapter meetings and further continuing education seminars or self-study courses. I would like NAEA to become the first place EAs look for CPE.



**MICHAEL FIORITTO, EA, CPA**  
NOMINEE FOR DIRECTOR

**BIOGRAPHY**

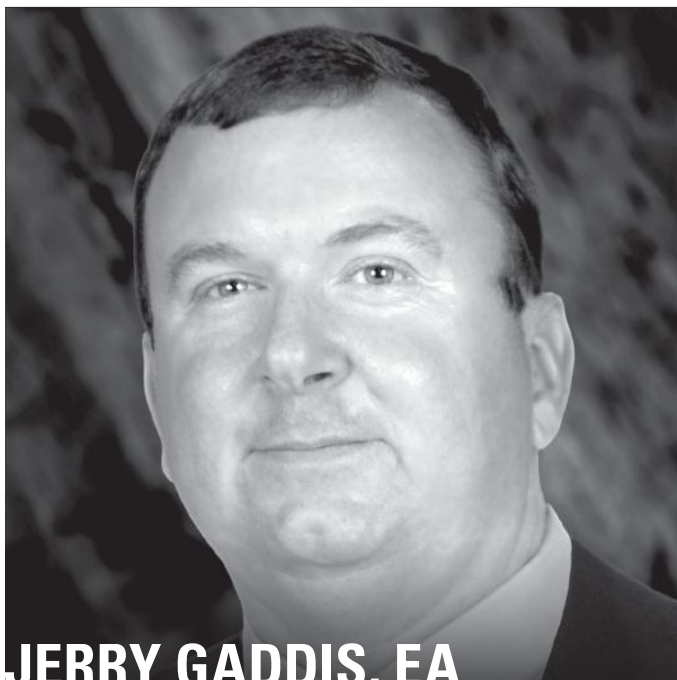
I am in my thirty-first year as owner of Fioritto's Accounting and Tax Service located in Oregon, Ohio. My practice consists of providing accounting services to small businesses as well as business and individual tax preparation/representation. I graduated from the University of Toledo and hold a Bachelor's Degree in Accounting. I became an enrolled agent in 1986 and became a Certified Public Accountant in 1994. I have been an active member of the Ohio Society since 1987 holding the positions of Chapter Rep, Treasurer, Vice President and President. I recently completed my term as Immediate Past President of Ohio. I am a recipient of the OSEA Carl Storm Founders Award (1999). My other activities and achievements include: NAEA Fly-in Day Participant (2013-2015), Schuldiner/Smollan Leadership Academy Graduate (2011), NAEA Nominating Committee (2012), NAEA Governance Committee (2013-2015) Chairperson (2014-2015), NAEA Planning Task Force (2013), NAEA Educating America Task Force (2014), APEX Participant (2011-2013), PAC Supporter (2010-2015), Ohio Society of CPAs Member (2001-2015), Ohio/IRS Tax Liaison Forum Representative (2005-Present), NAEA Board of Directors (2014-Present), NAEA EVP Search Committee (Present), and NTPI Fellow Graduate (2014).

**STATEMENT OF GOALS**

The first and long term goal is the recognition of the enrolled agent name and the status of the credential. This is stated in the NAEA Strategic Plan, which I totally support. One of the items in the Strategic Plan that moved up in priority is membership and member services. Priority should be given to maintaining and reaching out to new members. We are a membership organization that provides quality education that is always excellent. I will focus my efforts on membership and continue to support further enhancement of education programs.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

The greatest challenge to NAEA within the next two years is membership. We have seen a plateau in our membership numbers. I believe that the recent membership procedures that have been established in the office are taking us in the right direction. Educating America is the next initiative to focus our efforts on. It will bring in more members and make the Enrolled Agent designation recognized.



**JERRY GADDIS, EA**  
NOMINEE FOR DIRECTOR

**BIOGRAPHY**

Jerry Gaddis is Founder/CEO of Tropical Tax Solutions, a full-service firm in the Florida Keys. He has a BS in Business Administration (Marketing) from the University of Florida and an MBA (Finance) from the Crummer Graduate School of Business at Rollins College. Gaddis began his tax career in 2004 as a volunteer with VITA/TCE. From 2005-2009, he was owner/operator of the local H&R Block franchise which was consistently recognized as one of the area's best tax/accounting firms. In 2009 he passed the SEE and joined NAEA, dedicating himself to the profession and the industry. Gaddis has served on the NAEA Board of Directors since May of 2013. He is an NTPI Fellow, a graduate of the Schuldiner/Smollan Leadership Academy, and a Fly-in Day participant. Community service is also important to Gaddis who has held leadership positions with non-profits including Rotary, Habitat for Humanity, and United Way. He has been a Director on the local board of the Tourist Development Council for ten years, helping brand and market the Florida Keys and Key West.

**STATEMENT OF GOALS**

I have enjoyed serving as a Director for the last two years and am honored to be nominated for a second term. I will continue to practice knowledge-based governance and work tirelessly for the interests of all enrolled agents and the enrolled agent credential. As one of the creators of the current strategic plan, I endorse it whole-heartedly. Recognition of enrolled agents and member/affiliate services must continue to be our primary concerns. We must work together and utilize every resource at our disposal to make the term "enrolled agent" a household name. In addition, I am consistently impressed with the educational curriculum offered by NAEA. The Education Committee does an outstanding job and deserves our continued support and encouragement. I also believe in our Government Relations efforts. Politicians write the tax laws so they must know who we are and the value we bring to the tax system. We must continue to engage with them and grow the size of our PAC to increase our influence on Capitol Hill.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

NAEA's biggest challenge continues to be raising enrolled agent awareness. In 2011, eighty-seven percent of taxpayers had never heard the term "enrolled agent." We must commission another study to quantify our success in decreasing that number and set new goals for raising awareness going forward.



**PATRICIA KAPPEN, EA**  
NOMINEE FOR DIRECTOR

**BIOGRAPHY**

In June 2015, I started my twentieth year in my tax practice, San Juan Financial, where we do Individual and Business taxes, Representation, Bookkeeping, and Financial Advising. I became an Enrolled Agent in 2002 and completed NTPI in 2006. I am active in my local chapter of the California Society of Enrolled Agents as a Past President and current Director serving on the Membership Committee. I am Immediate-Past President of the California Society of Enrolled Agents (two terms), have served as Board Director and Committee Chair at both local and state levels, and serve on NAEA's Membership Committee. I completed the Schuldiner/Smollan Leadership Academy in September 2014 and recently completed my project. I created a Strategic Plan for my local chapter modeled after CSEA's plan, which was created under my leadership as CSEA First Vice President. I hold a Bachelor of Science in Business from the University of Phoenix, a Series 7 Financial Advisor License, and a California Insurance License. I am also a partner in a small flower shop in Long Island, NY.

**STATEMENT OF GOALS**

I am a very passionate and dedicated member of our association. I am in full support of NAEA's Strategic Plan and was especially pleased to see membership move up to the #2 goal as I believe strong membership is the key to our success and sustainability. As Immediate-Past President of the California Society of Enrolled Agents, I believe I can bring some very valuable experience to NAEA and I am committed to creating greater collaboration and synergy between NAEA, the Affiliates, and local chapters. I firmly believe that if members understood the value of having both national and state membership, we would have more participation and support for Strategic Plan goals and create richer member experiences. I would like to help increase awareness of enrolled agents nationally by encouraging NAEA to promote a National Tax Help Day similar to California's state-wide program. This effort not only helps taxpayers but creates awareness of enrolled agents, America's tax experts.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

I believe the greatest challenge is the inability to recruit/retain members as needed to support long term sustainability. I think NAEA should support the Membership Committee's plan to reach out to Affiliates, assisting them in contacting members/potential members personally, establishing relationships and inviting them to renew, participate, or join NAEA.



**MELISSA LONGMUIR, EA**  
NOMINEE FOR DIRECTOR

**BIOGRAPHY**

I have an MBA in Information Systems, and a BS in Biology and Psychology. While working on my MBA, I completed an internship with the American Red Cross. I am a volunteer with ARC serving in leadership roles both locally and nationally as a supervisor in Financial and Statistical Information. I instructed business and computer courses as an adjunct professor at Washington State colleges. I started my tax career with a course with an international company. I was hired and began preparing tax returns. I became a supervisor of various tax offices, then was promoted to the position of Director of a premium office. After leaving that company, I opened Centinel Tax Consulting, Inc.

I became an EA, joined NAEA and WSSEA, then became an NTPF Fellow. I am currently NAEA Chair of the EA Exam Subcommittee and a member of the IT Task Force. I was also a member of the Alaska Task Force. I am a Schuldiner/Smollan Leadership Academy graduate. I'm a past member of the Affiliate Council and have attended APEX and Board meetings, Fly-In Days, and am a PAC Supporter. As a member of WSSEA I was Director, Vice President, President-Elect, President, and Past-President. As WSSEA President-Elect, I was involved with the issue of preserving the right of EAs to work with clients in preparing estate and trust tax returns in Washington State. Our right was preserved and signed by the Governor of the State of Washington!

**STATEMENT OF GOALS**

We need to enhance EA publicity, educate the public, and increase membership. By enhancing publicity we can obtain the interest of the public and educate them. What does an EA do? How can an EA help me? Where can I find one? The result of this is that potential members will realize how valuable NAEA is to them, so membership will increase and current members will be encouraged to renew their membership.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

We need to increase diversity in our membership by growing student, associate, and EA memberships. Potential members can be found in colleges, high schools, and unemployment offices. If we increase EA Exam training and education for credentialed/non-credentialed preparers, NAEA and state affiliates will increase the opportunity for more participants.

I would appreciate your vote. Thank You!



**JEAN NELSEN, EA**  
NOMINEE FOR DIRECTOR

**BIOGRAPHY**

I became an enrolled agent in 1983. I am active with both the National Association of Enrolled Agents and California Society of Enrolled Agents. I served as president of CSEA in 2011-2012 and my local chapter from 2005-2006. I served two terms as president of the CSEA Education Foundation. At NAEA, I am currently a director. I am also in my second term as Chair of the Educating America Task Force and the current Chair of the Executive Vice President Search Committee. My past involvement with NAEA includes two terms as Chair of the Ethics and Professional Conduct Committee, member of the Nominating Committee, and prior Executive Vice President of the Search Committee. During my tenure as Chair of the E&PC Committee, we changed its focus from investigating ethical violations to becoming a resource of ethical education. We produced the investigator training manual as a resource for affiliates. I also served as a trustee of the NAEA Education Foundation. I am the 2014 NAEA Excellence in Public Awareness co-awardee.

**STATEMENT OF GOALS**

I am pleased to be nominated for the position of NAEA Director. I feel that it is essential that we increase NAEA membership to 15,000 members of diverse ages. I will also collaborate with the academic community through the Educating America Task Force to implement an Associate in Taxation degree that would include passing the EA exam. Finally, we should increase scholarships for EAs and potential EAs giving them the tools to achieve higher levels of education in taxation.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

Our greatest challenge is increasing our membership. The largest single source of money for NAEA is our dues revenue. The strength of our organization is in our numbers.

We meet that challenge by reaching out to potential Enrolled Agents through the Educating America Task Force. This is essential to achieving a membership that is diverse in age. We also need to focus on member retention and recruitment. Offering advanced education and other member benefits will ensure NAEA maintains a high percentage of current members while enticing non-member EAs to join.





**JEFFREY SCHNEIDER, EA**  
NOMINEE FOR DIRECTOR

**BIOGRAPHY**

I currently serve as a member of the NAEA Board of Directors (2014-2016), NAEA Educating America Task Force (2013-2016), NTPI Planning Committee (2015-2016) and chair of the FSEA Education Committee (2014-2016). I am the Principal of SFS Tax & Accounting Services (1999-present). Other highlights include: FSEA President (2013-2014); recipient of the NAEA (2014) and FSEA (2015) Excellence in Education awards; FSEA Mentor of the Year (2013) Award; FSEA President-Elect; chairing several committees; two-term member of the NAEA Government Relations Committee; participant in the Leadership Academy (2012); NTPI Fellow (2010); Treasure Coast (2014) and Palm Beach Chapter President; and Member of the FSEA Board of Directors (2009-2011).

**STATEMENT OF GOALS**

As a participant in the development of the current strategic plan, we determined that our number one goal is the recognition of our designation. As such, I participated in several of the past Fly-Ins to ensure that government officials are aware of who we are and to explain why the codification of the enrolled agent designation has no party affiliation or direct financial ramifications. As a national director, I will continue to work alongside my fellow national, state affiliate and local leaders and staff to promote public awareness of the credential, not only to the general public but to other professionals, as well. A positive result of all this is the growth of our organization, which will benefit all of us.

**THE GREATEST CHALLENGE TO NAEA IN THE NEXT TWO YEARS**

The absolute greatest challenge is the codification of the designation, which is the number one goal of the strategic plan for 2015-2017. After that, I believe all else will fall into place. NAEA needs to continue its focus on this goal as we continue to move forward. We need to look at additional avenues to promote ourselves and work closely with our Government Relations team members, the Educating America Task Force, the Membership and Public Relations Committees and others. The Board of Directors and affiliate leaders cannot do it alone. We are a tEAm and we need to work as a tEAm in order to achieve our goals.

**2016-2017  
ELECTION**

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Laurie Ziegler, EA – Candidate



**Secretary/Treasurer**

Timothy Dilworth, EA, CPA – Nominee  
Nancy Lyman, EA – Candidate



**Director**

Stephen Banner, EA – Candidate  
Michael Fioritto, EA, CPA – Nominee  
Jerry Gaddis, EA – Nominee  
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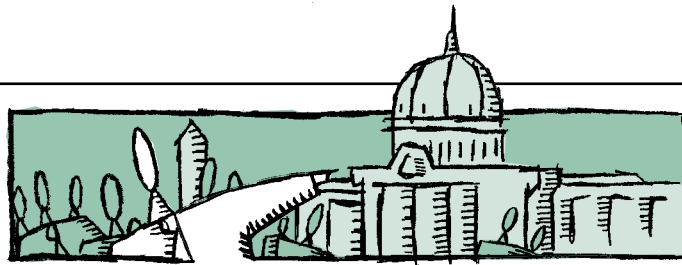
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# Things Which Matter Most

By Robert Kerr

**A**s we make a run at the last two months of 2015, it seems to be a good time to write about priorities, and more specifically NAEA's legislative priorities. Regular readers are well aware of our priorities, but for those of you recently joining us I'll list them:

1. EA credential protection
2. Return preparer oversight
3. Tax code stability/tax reform

Let's take these one at a time.

First, remember that no one would describe the first session of the 114th Congress as productive. While this sounds a bit like a cop-out, the overall environment is important as advocacy does not exist in a vacuum.

That said, we are at a high water mark with respect to the EA credential bill. The Senate Finance Committee in February marked up a dozen or so non-controversial tax bills, including S. 422, which is the EA credential protection bill. We are simply awaiting a floor vote (or, more likely, for this bill to be rolled into another tax bill that will get a full Senate vote). We've never been this far on the Senate side.

On the other side of the Hill, we have roughly two dozen cosponsors for HR 828,

which is the companion to S. 422. At the end of the 113th Congress, we had seventeen cosponsors on similar legislation. What this means is that in 2015 we also made it to a high water mark in the House.

Given our progress on the Senate side, we have been focusing our efforts on the House and in securing cosponsors, particularly from tax writers. We will probably be reaching out to the full membership before the end of the year (if we haven't done so already), so please be on the lookout for an e-mail message asking you to take action.

Moving on to return preparer oversight, which brings to mind the myth of Sisyphus (if you missed that class, not to worry—you're not alone—he was the king who in Greek mythology was punished by being forced to endlessly roll a boulder up a hill,

only to see it roll back down again). NAEA has been pushing for real return preparer oversight for more than ten years now and notwithstanding IRS' initial success with its registered tax return preparer program, we've spent a lot of time pushing that boulder back up the proverbial hill.

For years, we have included return preparer oversight in our Fly-In Day agenda—and speaking of Fly-In, mark your calendars for our 2016 event (scheduled for May 4, 2016). When our lobbyist, Jeff Trinca, and I take Hill meetings, we are careful to weave into our conversation the need for a cop on the beat, the need for a level playing field, and the need to prevent a race to the bottom.

You'll recall IRS has a *Loving* problem. More specifically, IRS in early 2012 came out on the losing side in *Loving v. IRS*, in which the DC Circuit (and the DC Circuit Court of Appeals) concluded IRS did not have the authority to require return preparers to demonstrate basic competency or to take continuing education. As a result, all roads to return preparer oversight run through Congress. IRS needs express authority for a return preparer program.

Interestingly, we've started to see significant interest in both chambers on this issue. Better yet, the interest is in the tax writing committees. We are engaged with Senate Finance Committee leadership as well as members (bipartisan) of the House Ways and Means Committee. We are also actively engaged with other major industry stakeholders.

The legislative environment is challenging, particularly when it comes to IRS, which hasn't exactly covered itself

## 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.



in glory in the past few years (the Lois Lerner quandary is still playing out and the damage to the agency is much larger than anyone would have imagined two years ago). Nevertheless, I am encouraged by our recent conversations with respect to return preparer oversight and we continue to present enrolled agent concerns. For instance, any oversight program must include initial, standardized competency testing and annual continuing education.

And finally we are left with tax code stability/tax reform. I regaled you in our last issue with my thoughts on tax reform (briefly put: tax reform is incredibly difficult politically and I'm not optimistic that we'll see anything before 2017 at earliest), so we'll not plow that field again, or at least not so swiftly return to it.

The issue of stability remains an enormous challenge. As we went to press, the most likely solution to the extenders problem (some fifty or so temporary tax provisions that expired on December 31, 2014) is an end-of-year "fix." I've been suggesting for the better part of the last year that this was the probable end game, but at the same time suggesting to tax writers in both chambers (and I've seen dozens of them

this year) that the way Congress was handling extenders was disgraceful (well, maybe I didn't use the word disgraceful but...).

I have a possible silver lining for you—two of them, actually. The first is that I've been hearing that this year's extenders package may include some permanent fixes. The House already this year passed bills that would make permanent both bonus depreciations, the deduction for state and local sales taxes, and the above-the-line deduction of qualified educator expenses for primary and secondary school teachers. Permanent fixes, even if not for all fifty or so of the temporary provisions, are welcome.

The second silver lining is that the temporary provisions will be extended through the end of 2016. I know, I know... that doesn't sound worthy of striking up the band to play "Happy Days are Here Again," but we'll take good news where we can.

\*\*\*\*\*

In all candor, I wish I had better news for you. I will return briefly to tax reform and leave you with this thought, though. Readers know I'm not optimistic about real, comprehensive tax reform (or even

about slicing off international tax issues to deal with inversions and the like), but as the presidential campaign slogs on we will (or should) see more and more tax reform proposals. I love tax reform proposals. I love good ones. I even love bad ones. Why? Because proposals cause people to think about what is good, what is bad, what is desirable, what is possible. All of these things are good and necessary.

If you have a chance, take a peek at the proposals (and if you'd like, consider some of my thoughts in the September-October issue). See what you think. And see what your clients think, too.

Oh, and for those who asked, I did actually head to the beach with my copy of *Showdown at Gucci Gulch*, the definitive history of the machinations behind the Tax Reform Act of 1986. Even though I thought it would be drier than toast, it was not. I recommend it for those of you who are at all interested in what worked last time.

Goethe once said that things which matter most must never be at the mercy of things which matter least. We continue to focus on the things that matter most to enrolled agents and to your clients. **EA**

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# BITCOIN

A CURRENCY FOR THE DIGITAL AGE

BY BETH LOGAN, EA, AND JOHN DUNDON, EA







Early 2014 was a fantastic time for Bitcoin proponents. The Sacramento Kings basketball team began accepting bitcoin at their arena. Through donations, the MIT Bitcoin Club gave \$100 worth of bitcoin to every incoming undergraduate at MIT. Microsoft and PayPal began accepting it as payment. Recently, the crisis in Greece gave Bitcoin new life. While the country's banks closed—leaving Greeks little access to euros—bitcoin was still accessible and tradable.

Put simply, digital currency is a virtual representation of perceived value. The economics of supply/demand aside, a currency's value (digital or otherwise) is reflective of our collective trust in its capacity to safely and efficiently serve as a catalyst in facilitating business transactions—like the tulip bulb in 16th Century Holland. Currencies are subject to random fluctuations and even complete collapse. In fact, history shows us that the weakening of a currency's value can indeed rapidly erode in detrimental fashion with seemingly innocuous tipping points.

Outside of the digital currency community, there is still a belief that it is a fad. Whether or not Bitcoin survives is not the issue—digital currency is here to stay in some form. Like all currencies, bitcoin is likely to have future ups and downs. As more people engage in business transactions using digital currencies, tax practitioners will need to remember a basic principle: Digital currency's valuation for income and capital reporting is based on the transaction date in which goods & services were exchanged.

### What Are Digital Currencies?

Before explaining the tax implications, it is important to understand some basics about digital currencies. Currencies like the US dollar, the British pound, the euro, and the Russian ruble are government controlled centralized currencies. These can be traded electronically through banks and other financial institutions or traded via paper and coin currency. Digital/Virtual currencies (also called crypto-currencies) are only traded

electronically. According to mapofcoins.com, nearly seven hundred decentralized digital currencies have been created including Dogecoin and Litecoin. These are often referred to as Altcoins, short for “alternate Bitcoins.” Many Altcoins have gone defunct, but over 200 still exist. In fact, thirty-two new currencies were created in the first four months of 2015. Of these currencies, some have a central control and regulations while others do not.

In March of 2013, the Financial Crimes Enforcement Network (FinCEN) of the US Treasury issued FIN-2013-G001 discussing how regulations are to be applied when taxpayers use digital currencies. According to this guidance, “real” currency is defined as “the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance.”

“Digital” currency, by definition, operates like paper currency in many environments, but differs in that it does not technically have legal tender status under any jurisdiction. It is not backed by any legal authority other than merely the trust of the people using it. “Convertible” digital currency is a type of digital currency that either has an equivalent value in real currency like US dollars, or acts as a substitute for real currency. Bitcoin falls under this final category.

Bitcoin is decentralized. This means there is no government or organization regulating it. The rules were established when it was initially created and are set in stone. There is actually no person or group that has the power to change it. The rules include using a complicated mathematical function along with public and private keys (passwords) for computer encryption to transact, hence the term “cryptocurrency.”<sup>11</sup>

### What Does Mining Bitcoin Mean?

Digital decentralized currencies require computations to verify the transactions. Since there is no centralized site or organization to handle the computations, a

system of “mining” is established when the currency is formed. “Miners” are owners of computing systems that calculate the mathematical functions in exchange for small payments in the currency. To ensure accuracy and prevent fraud, other miners verify the computations.

### How is the Money Held?

Decentralized digital currencies can be held in “paper wallets,” exchanges, or e-wallets. The latter two are essentially held by a third party for the owner just like a bank holds an account. However, in this case, the owner does not provide his or her name, address, date of birth, or other private information. The owner has a QR code or a long alphanumeric string that represents all the account information. A “paper wallet” is usually the QR code stored on a smartphone. Many Bitcoin experts recommend keeping a paper copy in case something happens to the phone. Without a centralized organization, there is no way to retrieve the money if the QR is lost or damaged. And yes—that means securing a high-tech currency with a low-tech piece of paper.

### What are the Tax Implications?

On March 25, 2014, the IRS released Notice 2014-21 explaining the taxation of bitcoin and other digital currencies. For US federal taxation, digital currencies are treated like property.

Just as income paid in stock is taxable, income paid in digital currency is taxable and subject to withholding and payroll tax. Some miners work for “mining companies.” The companies will have to provide a W-2 to each US employee whether the employee is paid in bitcoin, US dollars, or other property.

If the miner is a contractor to a company, then the company must file a 1099-MISC for all payments over \$600 of bitcoin based on the value at the time of payment. For independent miners, there is no central organization to send a 1099-MISC. The income is still taxable and must be reported.

In addition to earning digital currency



through mining, an individual or company can buy the currencies. There are bitcoin ATMs (called BTMs) on every continent but Antarctica. Currencies can also be purchased online through trading companies.

The purchasing of property can trigger sales tax but the purchasing of stock or currency does not. Wisconsin,<sup>2</sup> Missouri,<sup>3</sup> and New York<sup>4</sup> do not charge sales tax for the purchase of bitcoin. As of this article's deadline, no other states have ruled on the tax implications of purchasing bitcoin.

Digital currency was designed to be easy to use—until you have to file taxes. Notice 2014-21 states that digital currency must be treated as property. Therefore, each transaction is really a property sale. The taxpayer needs to track the basis at the time of purchase and the date of purchase. The basis at the time of sale is the value in US dollars.

**Example:**

If the seller is trading bitcoin for an Xbox, then the basis could be the cost of the Xbox in US dollars. Assume an Xbox costs \$250 and the current exchange rate for Bitcoin is \$250. Therefore, Microsoft should be accepting one Bitcoin for the Xbox. If the Microsoft shopping site does not update as quickly as other exchanges, the site could read one Bitcoin for the Xbox valued at \$250 while other exchange site claim the value has risen to \$260.

Transaction fees should also be considered just as they are with stock sales. One of the advantages of digital currencies is the reduced transaction fees compared to credit cards and bank transactions. However, there are fees. Some exchanges even have their own fees added to the currency's fees.

The taxpayer has now tracked all purchases and sales of the digital currency. The next step is to calculate gains and determine if they are short or long term. To date, there has been no discussion about the currency's

inventory. Should the taxpayer use FIFO, LIFO, or specific share identification? Considering some discussions in Congress about removal of LIFO and the volatility of digital currencies, it might be best to avoid LIFO. Tracking digital currency is difficult enough without having to time-stamp transactions and assign specific "lots" which do not really exist. The IRS has not spoken but, for the reasons mentioned, most digital currency experts recommend FIFO.

**Example:**

- Chris buys two Bitcoin for \$250/each.
- Chris goes five mornings in a row to a café and purchases a \$2.50 coffee using 0.01 bitcoin. That is five transactions with no gain.
- The next week, Bitcoin is worth \$200. Therefore, each coffee purchase costs 0.0125 bitcoin. Each transaction is a short-term capital loss of \$0.625.
- Chris decides to stop using Bitcoin for coffee. Thirteen months later, Bitcoin rises to \$300. Chris sells the remaining 1.8875 bitcoins for \$566.25 plus a \$2.25 transaction fee. This transaction is a long-term gain of  $((1.8875 * 300) - 2.25) - (1.8875 * 250) = \$92.125$ .

What about wash sales? Bitcoin is not currently considered stock or security and therefore, wash rules should not apply. The IRS could use the non-economic substance transaction rules, which are similar to wash rules. Given the secret nature of digital currency, it is very difficult for the IRS to find and track purchases and sales. Even if they found the transactions, the IRS would have to argue that they were not economic in nature. The taxpayer would also have to be buying the currency as opposed to earning it via mining, payroll, or through product sales.

This issue is similar for centralized digital currencies such as the currency used for online gambling. These are currencies managed and tracked by the company operating

the computer game and are therefore centrally controlled. Active players are earning and spending online "money" each time they play. The money stays in the game until the player cashes part (or all) of the money. These transactions are likely to be less frequent than Bitcoin. For both centralized and decentralized digital currencies, there are currently no concerns about the wash rule and little concern about non-economic substance transaction rules.

What if the taxpayer decides to abandon Bitcoin for Dogecoin? The digital currency community has stated that each digital currency has different rights and characteristics, thus preventing like-kind exchanges. While the community is not a formal group, one would expect the IRS to use community online discussion against the taxpayer. Community members at the MIT Expo on Bitcoin in September of 2014 were strongly in favor of changing the IRS ruling and making Bitcoin a currency. An argument for like-kind exchange supports the IRS view that digital currency is property, so it is unlikely that the community of users will fight for like-kind exchange.

One major conflict that the Department of Treasury has been avoiding is the differing treatments within the department. IRS stated that digital currency was property. FinCEN has stated that trading digital currency meets the definition of money transfer. Therefore, all the companies that administer or exchange the currencies must meet the latest FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML). This is difficult for a currency that prides itself in not having account holders' personal information.

Finally, there is the issue regarding foreign financial holdings. The rules on FBAR and SFFA (Form 8938) have not been established for digital currencies. A general consensus among lawyers, accountants, and EAs that practice in this area is if an account is held in a paper wallet (essentially, on a smartphone), then that

is considered cash in a wallet. An account held in a US exchange is not a foreign account. An account held in a foreign exchange where the exchange has no control over the account should not be considered foreign-held. Without a formal ruling, some practitioners, recommend filing anyway. For a taxpayer with an account in a foreign exchange where the exchange has some control, the FBAR and SFFA rules should be followed until the IRS determines otherwise.

How will the IRS know? They might not, but there are good reasons to disclose. In 2014, Mt. Gox, a Japanese Bitcoin exchange, “lost” millions of bitcoins. If the taxpayer has not been disclosing the foreign account, he probably should not claim the loss on his

taxes. Also in 2014, John Hom lost his case and was penalized \$40,000 for failing to file FBAR on online, foreign poker accounts.<sup>5</sup> The case began with an IRS examination.

There are still many unresolved issues and IRS is accepting comments. The use of digital currencies is increasing enough where it is definitely worth adding, “Do you own any digital currency?” to your annual client questionnaire. **EA**

### About the Author

**Beth Logan, EA**, is the Treasurer of the Massachusetts Society of Enrolled Agents. In addition to taxes, she is a small business consultant. She presents on various tax topics throughout the year. She has about \$1.50 in bitcoin which she acquired to learn about digital currency.

**John R. Dundon II, EA**, has a tax practice in Colorado

where he also serves as the President Emeritus of the Colorado Society of Enrolled Agents. He is a lifelong student of the IRC, a problem solver, and a protector of taxpayer's rights. He routinely shares his experiences in a well subscribed tax blog at [www.JohnRDundon.com](http://www.JohnRDundon.com)

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

### ENDNOTES

<sup>1</sup> I have over-simplified the technical aspects of Bitcoin. For a more detailed description, the best I have found is: Chicago Fed Letter, The Federal Reserve Bank of Chicago, December 2013, No. 317.

<sup>2</sup> Wisconsin Department of Revenue, Sales and Use Tax Report, Issues 1-14, March 2014.

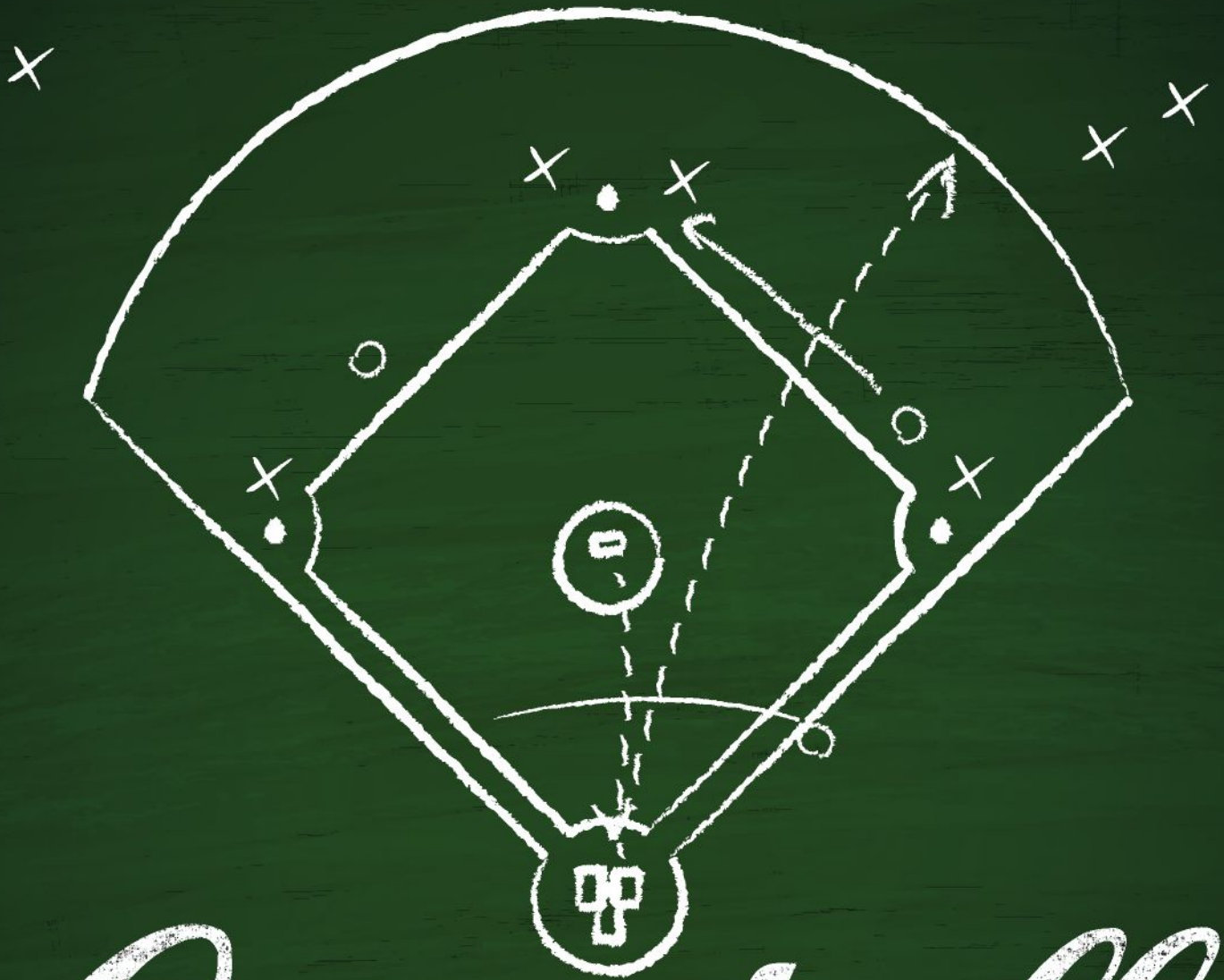
<sup>3</sup> Missouri Department of Revenue, Letter Ruling 7411, September 12, 2014.

<sup>4</sup> New York State Department of Taxation and Finance, Technical Memorandum, TSB-M-14(5)C, (7)I, (17)S, December 5, 2014.

<sup>5</sup> *United States v. Hom*, 2014 U.S. Dist. LEXIS 77489 (N.D. CA 2014)

## IRS NOTICE 2014-21: KEY POINTS

1. Digital currency operates like any other currency that circulates as legal tender in exchange for goods or services. However, it is not legal tender.
2. Digital currency is available in various online forms and can be digitally traded or exchanged for other digital currency. It can also be purchased or exchanged for U.S. dollars and other legal tender. The price continuously fluctuates.
3. If you conduct business using digital currency, you must record the value of the digital currency in USD at the end of the business day the transaction occurred for both income and capital gains reporting purposes. This also applies to a third party settlement organization issuing IRS Form 1099-K.
4. The fair-market value of digital currency at the exchange date of goods or services constitutes gross receipts and is subject to ordinary business income tax after subtracting costs of goods sold as well as ordinary, necessary, and reasonable business expenses.
5. Converting digital currency to legal tender is a capital transaction. A capital gain or loss may be incurred upon conversion.
6. Payments made using digital currency are subject to IRS information reporting. If a payment is made of fixed and determinable income using digital currency with a value of \$600 or more to a U.S. tax payer in any given tax year, it is required to report the payment to the IRS and to the payee.
7. Payments of digital currency are required to be reported on IRS Form 1099-MISC and should use the fair-market value of the digital currency in USD as of the payment date or transaction date for goods traded or services rendered.
8. Payments made using digital currency are subject to backup withholding to the same extent as other payments made in property. If you make payments using digital currency, you must solicit a taxpayer identification number (TIN) from the payee.
9. Underpayments attributable to digital currency transactions may be subject to penalties such as accuracy-related penalties under IRC Sec. 6662. In addition, failure to timely or correctly report digital currency transactions when required to do so may be subject to information reporting penalties under IRC Sec. 6721 and 6722.



# Curveballs

**NAVIGATING FORM 1040NR  
STEP BY STEP**

BY JEAN MAMMEN, EA



**Anyone with U.S. source income during the tax year may need to file a U.S. tax return, no matter where they live. The first decision is whether to file as a non-resident alien (NRA) of the U.S., on Form 1040NR, or as a citizen, by birth or naturalization, a resident alien, or a tax resident on Form 1040. If an individual is both a non-resident and (tax) resident in the same tax year, they file a dual-status return.<sup>1</sup> On Form 1040NR, only income considered U.S. source income is taxed.**

If an individual's tax residency status changes, revisit initial assumptions. A change may change the Form required, the income to be reported, the tax rate, and the return due date. Allowable personal exemptions, deductions, other exclusions, and credits will change. Even the filing methods allowable—electronic or paper only—will change.

An individual who is not a citizen of the U.S. files on Form 1040NR if they are neither a resident alien, holder of a *green card*, nor a tax resident who has spent enough countable days in the U.S. to meet the substantial presence test, or SPT.

**Electing Tax Residency:** A U.S. citizen or resident and a non-resident alien spouse may jointly elect to treat the *NRA spouse* as a tax resident. IRC 6013(g) or (h).

An individual who meets the SPT in their second year in the U.S. may make the *first-year election* to backdate their residency start date to their first day in the U.S. The individual elects this on either an amended first-year return or on an original return that was placed on extension until the SPT was met. (IRC 7701(b)(4); Treas. Reg. 301.7701(b)-4(c)(3)).

**SPT:** If the individual may count days of presence in the U.S., and has spent at least thirty-one days in the U.S. in the tax year, count all countable days present in the tax year, plus one-third of countable days present in the first prior year and one-sixth of countable days present in the second prior year. If the total is less than 183 days, the SPT has not been met and the tax filing Form is 1040NR. If the SPT has been met, residency begins on the first countable day in the U.S. in the tax year. The filing Form is 1040.<sup>2</sup>

**First Visit:** On an individual's first visit to the U.S., determining when the SPT has been met is easy if you know the visa type and the dates of entry and exit of each visit to the U.S.

**Who (almost) Always Counts Days** from date of arrival in the U.S.? Individuals with no visa. Individuals on most visas, including A3 and G5 visas. Other A and G, and E, J, M, Q visa holders do not.

**Who Never Counts Days (eXempt, eXcluded)** for SPT while in the U.S.? Mexican and Canadian residents for days they commute regularly to or from work in the U.S.<sup>3</sup>

A and G visa holders who are officials or staff of foreign governments (visas A1, 2) or international organizations (visas G1, 2, 3, 4).<sup>4</sup>

**Special exceptions:** people in transit, crew members, days a professional athlete competes in a charity event, days a person is delayed leaving the U.S. because of a medical situation that arose in the United States.<sup>5</sup>

**Who Delays Counting Days** (temporarily eXempt, eXcluded), for an initial period in the U.S.? E, J, M, Q visa holders: students, teachers, trainees, exchange visitors and their dependents do not count days in the U.S. on arrival on their first visit.

A student, or student dependent, begins to count days on their first day in the U.S. in their sixth calendar year in the U.S. (E, J, M visas) ((IRC 7701(b)(5)(E)(ii)).

A teacher, trainee, exchange visitor and their dependents begin to count days on their first day in the U.S. in their third calendar year in the U.S. (J, Q visas) ((IRC 7701(b)(5)(E)(i)).

## Second Visit for F, J, M, Q:

On subsequent visits to the U.S., a complete visa history is necessary to determine when counting for the SPT begins. Prior visits, even as a dependent, may have used up some or all of the eXempt/eXcluded period.

Students: Subtract the number of prior years excluded since 1985 from five, to find how many eXempt/eXclusion years remain.<sup>6</sup> Counting begins on the first day in the U.S. in the sixth calendar year.

Exchange visitors: Their eXempt/eXclusion period is any two calendar years within the prior six years on an F, J, M, Q visa. If that two-year period was met by prior visits within the six-year window, the individual begins counting days on their first day in the U.S. on this visit. If the exchange visitor's last visit to the U.S. on an F, J, M, or Q visa was more than six years ago, this visit is treated like a first visit.

Those who are eXempt/eXcluded from counting any days *must* file Form 8843 to show how many days in the U.S. do not count towards the SPT, whether or not a tax return is needed (Treas. Reg. 301.7701(b)(8)).

NB: The penalty for failure to file the 8843 is that some days that could have been excluded are counted towards the SPT.<sup>35</sup>

Warning: Doing this willfully to gain a tax advantage could backfire.

- 1) The government may choose not to apply the penalty "when it is in the best interest of the government ..."
- 2) Any non-U.S. citizen may be deported for Crime Involving Moral Turpitude (CIMT). Fraud is a CIMT. Attempting to defraud the government via an incorrect tax return could be a CIMT.<sup>36</sup> Three years of information about tax returns may be required when an individual applies for a green card.<sup>7</sup>

Attach Forms 8843 for dependents, spouse or child, to the principal's Form, and cite "accompany participant in (*insert name of program*)" as the visit's purpose.

Completing Form 8843: Do the day-counting for lines 4a and 4b on Form 8843 *before* deciding whether the SPT has been met and if 1040NR or 1040 is the appropriate Form.

Information for lines 5, 6, 9, or 10, is on program sponsor documents that participants carry. Sponsors of students issue Form I-20. Sponsors of teachers, trainees, and exchange visitors issue Form DS-2019.

## How to Visit and Stay a Tax Non-Resident

Frequent visitors, especially "snowbirds," beware: Track your days. Do not become an accidental Tax Resident. A foreign individual who spends 120 days or fewer in the U.S. each year will never meet the SPT. Upping that to 122 days in three consecutive years makes that individual a tax resident.<sup>8</sup>

## How to Leave and Revert to Non-Resident Status

When tax residency is established by meeting the SPT, it generally lasts until December 31 of the year of departure.<sup>9a</sup> An exception allows it to end on the documented last date in the U.S.<sup>9b</sup> Up to ten documented *de minimis* days may be disregarded.<sup>10</sup>

To End Tax Residency on the Last Date the Individual is Physically in the U.S.:

Prepare a dual-status return: a Form 1040 "statement" for the initial, tax resident portion of the year attached to a Form 1040NR "return" for the non-resident portion of the year, showing the full-year tax calculation, and attach:

- Form 8840 (Closer Connection) if the individual left before spending 183 days in the U.S. in the tax year, to establish that the tax home moved to one (or two) other countries.<sup>11</sup>
- A statement claiming a residency termination date if the individual spent more than 183 days in the U.S. Include information requested on Form 8840 demonstrating the tax home moved outside the U.S.<sup>12</sup>

Do not spend more than thirty days in the U.S. the following year.<sup>13</sup> The tax residency period would extend through December 31 of that year.

Be absent from the U.S. for a full calendar year before returning. Residency cannot then

## **SPT: If the individual may count days of presence in the U.S., and has spent at least thirty-one days in the U.S. in the tax year, count all countable days present in the tax year, plus 1/3 of countable days present in the first prior year and 1/6 of countable days present in the second prior year.**

persist, instead of lapsing, while the individual is outside the U.S. Example: an individual who was a tax resident by SPT leaves the U.S. March 3, 2015 and returns June 3, 2016. For 2016, they again meet the SPT. This individual remains a tax resident filing on Form 1040 on total worldwide income for both tax years, even though fifteen months' worth of income was earned by a non-U.S. individual living and working outside the U.S.<sup>14</sup>

### **Filing Form 1040NR**

There is only one taxpayer on a 1040NR return. If that individual is married to another non-resident alien who also has U.S. source income, each will be "taxpayer" on their own 1040NR tax return.

On Form 1040NR generally, if you have any U.S. source income, you must file whether or not you will pay tax. For community income and NRA considerations, see later and IRC 879.

**Personal Exemptions:** If the taxpayer is a resident of Mexico or Canada,<sup>15</sup> South Korea,<sup>16</sup> or India<sup>17</sup> and a student or business apprentice, the taxpayer may be able to claim the personal exemptions of a spouse or qualifying child. A spouse must not have U.S. source gross income or be claimable on another return. TIN's are required when claiming an exemption, either an SSN or an ITIN.<sup>18</sup>

South Korean spouses or dependents must have lived in the U.S. with the taxpayer for some part of the year. Indian dependents must not have entered the U.S. on an F2 or J2 visa.

### **Exceptions to Filing Requirements**

*Note: consider filing a protective return*

No income tax return is required if:

- Income is below one personal exemption if the only income is from wages and there is no Not Effectively Connected income (NEC).<sup>19</sup>
- Tax is fully paid by withholding at the source.<sup>20</sup>
- The only Forms needed are Form 5329 or Schedule H. The signed Form may be submitted alone.

### **Not Included in Taxable U.S. Income of an NRA:**

- Non-U.S. source income.
- Bank deposit interest on a personal bank account.<sup>21</sup>
- Capital gains if the non-resident alien is present in the U.S. fewer than 183 days.<sup>22</sup>
- Gambling winnings from blackjack, baccarat, craps, roulette, and big-6 wheel.<sup>23</sup>
- Treaty-based exclusions.

### **U.S. Source Income**

Compensation generally is sourced where the work is performed. Other income types are generally sourced where it is generated.

U.S. source income is divided into two types: ECI – Income that is Effectively Connected to the individual's own U.S. trade or business. IRC 864(b). ECI is taxed at the standard U.S. graduated tax rate<sup>24</sup> for the individual's filing status and amount of income. It is reported on the front page of Form 1040NR.

NEC - Not Effectively Connected to the individual's own U.S. trade or business. This might be income from investments in businesses located in the U.S. NEC is taxed at 30%,<sup>25</sup>

unless the individual is a resident of one of the 60 or so countries with which the U.S. has a bilateral income tax treaty, and that treaty sets a lower tax rate. Enter in the correct column on Schedule NEC, Form 1040NR.

If common sense does not settle income source (U.S. or foreign) or type (ECI or NEC), consult Publication 519, table 2-1, and IRC 871 (a),(b),(c),(d).

### **Income from U.S. Real Property can be Either ECI or NEC, by Taxpayer Election.**

NEC: With no election, gross U.S. real property income is reported on Schedule NEC as investment income, and taxed at 30%, or lower treaty rate. No expenses are taken against the income. The withholding agent, the person who pays out the income to the taxpayer, must do backup withholding and issue a Form 1042-S to the taxpayer. NRA withholding: IRC 1441(a), (b) and (c).

ECI: If the taxpayer makes the IRC 871(d) election to treat U.S. real property income as from a U.S. trade or business, income and expenses are entered on Schedule E and carried to the front page of Form 1040NR. The taxpayer provides a Form W-8(ECI) to the withholding agent. This relieves the agent of the responsibility for backup withholding. The first year the property is placed in service the election is made by attaching the prescribed statement to the return. The net income is taxed at graduated rates (IRC 871(d)(1)(B)).

### **Certain Visas**

F, J, M, Q visa holders receiving U.S. scholarships and fellowships have a U.S. trade or business.<sup>26</sup> Compensation paid by a foreign employer to an individual on an F, J, M, Q visa is foreign source.<sup>27</sup> A treaty may affect this.

### **Foreign Employer/U.S. worksite:**

Some foreign individuals work in the U.S. for a foreign company that deposits their pay directly into a foreign bank, after withholding foreign taxes to a foreign government. Usually, the U.S. tax code is primary. A tax credit is



# Curveballs

NAVIGATING FORM 1040NR  
STEP BY STEP

taken on the foreign tax return for taxes paid to the U.S.

When the payer is a foreign employer, the IRC or a tax treaty may treat the compensation as not U.S. source. Check the treaty and Publication 901.

For short-term work, IRC 861(a)(3) provides that if the work in the U.S. lasts under 90 days, compensation does not exceed \$3,000, and the employer is either foreign with no U.S. trade or business, or the foreign office of a U.S. person, then the compensation is not considered U.S. source. Many bilateral income tax treaties are more generous.

**Payment Timing:** When compensation is paid in a tax year after the tax year in which the work is performed, the payment remains U.S. source, even if the money is received after the individual has left the U.S.

**Pensions, Annuities, Social Security Income:** This is ECI if the income is based on work performed in the U.S., no matter where the individual is when it is received. If there is no treaty provision and U.S. Social Security benefits received by a non-resident alien are taxable, then 85% of the benefits are taxable. See Publication 901, Table 1, or check the treaty for the tax rate.

**Real (U.S.) Property Sales Proceeds:** This is U.S. source income whether or not the owner had elected to treat the U.S. real property as a U.S. trade or business.<sup>28</sup> FIRPTA is IRC 897.

**Resourced Income:** In some instances, foreign source income is resourced as U.S. source income. Resourced income from an activity outside the U.S. is earned in part because of activities that take place at a fixed base in the U.S.<sup>29</sup>

**Community Property Laws** If one or both spouses in a married couple is a non-resident alien subject to foreign or U.S. community property laws, they must disregard some provisions. By IRC 879, earned income, trade or business income and partnership distributive income, and separate property income must be reported in full on the tax return of the spouse who generated the income.<sup>30</sup>

**Claiming Deductions:** You must file *timely* a true and accurate return to claim any deductions or exclusions other than one personal exemption. Timely for 1040NR means within sixteen months<sup>31</sup> of the due date for an individual, or within eighteen months<sup>32</sup> for an entity.

The **due date** for 1040NR for an individual with wages subject to withholding is April 15. Otherwise, the individual's due date is June 15.<sup>33</sup>

Only itemized deductions may be claimed on Form 1040NR, unless the taxpayer is a student or business apprentice from India<sup>17</sup> who may choose the standard deduction.

Allowable deductions include state taxes, paid by withholding or estimated payments, charitable contributions to U.S. charities and casualty losses.<sup>34</sup>

Ordinary and necessary business expenses that are helpful in "carrying on" a business (IRC 162(a)) are allowable. Expenses incurred to *carry on* a business do not include the cost of obtaining an H1b visa, or studying for or taking a qualifying examination, such as the ECFMG, CPA, or bar examinations.

An individual's *tax home* usually shifts into the U.S. if they enter the U.S. intending to stay more than a year (long-term), or did stay more than a year, even though the visa description speaks of a temporary stay.

A Q visa academic exchange visitor who intends to stay less than twelve months (short-term), had a job back home, and will return to a similar job, might claim properly documented away-from-home on business expenses for food and lodging (IRC 162(a)(2)).

Some students are confused about this. By statute, students on an F or J visa have a U.S. trade or business<sup>26</sup>, perhaps with a scholarship or fellowship as the business-related income. They might have compensation from CPT, curricular practical training, while studying, Optional Practical Training (OPT), for up to a year after graduation.

Students who both live and have income in the same general area cannot deduct food and lodging as away-from-home on business

expenses. If the student normally has no income during the school year, but takes a paid internship away from their school, the location of that internship is their *tax home* for purposes of deducting related business expenses. They cannot deduct food and lodging expenses during their temporary internship (U.S. Court of Appeals *Hantzis v. Commissioner*, 1981. 638 F.2d 248).

## Entries on Schedule OI

Line H –Do not include any days that were eXempt/eXcluded from counting towards the SPT, unless they were A or G visa days.

Line J (NR-EZ) or Line L (NR): Income exempt from tax.

Use a separate line for each different treaty exemption.

Cite the treaty article accurately. The IRS does not accept incorrect citations. If an error is not found and corrected within the sixteen-month period for timely filing, the income exclusion may be lost. The article number is in column 7 of the treaty table in Publication 901. It is not shown on Form 1042-S.

**Treaties.** The U.S. is a party to about sixty bilateral income tax treaties and twenty-five International Social Security Agreements (ISSA) or "totalization" agreements. Check to see if these affect the taxpayer's situation.

Rev. Rul. 2007-60 states that provisions of a treaty are not affected if an individual who signs an I-508 waiver of occupation-related privileges while applying for a U.S. green card holds an A, G, or E-Treaty Trader visa or is a French national paid by the French Republic. Translation: If a treaty between a visa-sponsoring organization and the U.S. makes compensation paid by the sponsor to a non-citizen of the U.S. not taxable by the U.S., it remains tax-free if the individual gets a green card. Example: IMF/IBRD (World Bank group).

Treaty provisions and the U.S. tax code have equal weight under law. IRC 894; IRC 7852(d). If the two conflict, the Supreme Court stated in *Whitney v. Robertson*, 124 U.S. 190 (1888): "...the one last in date will control the other ... The duty of the courts

is to construe and give effect to the latest expression of the sovereign will.” EA

## About the Author

**Jean Mammen, EA, FSO (ret.)** is the author of 1040NR? or 1040? U.S. Income Tax Returns for Visa Holders + International Organization and Foreign Embassy Employees. To contact Jean, email [jean@1040nr1040.com](mailto:jean@1040nr1040.com).

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

## ENDNOTES

- 1 Treas. Reg. 1.6012-1(b)(2)(ii) (a), (b), and (c).
- 2 IRC 7701(b)(2)(A)(iii); IRC 7701(b)(3)(A); 301.7701(c)(1) and (4); 301.7701(c)(2)
- 3 IRC 7701(b)(7)(B); Treas. Reg. 301.7701(b)-3(e) shows conditions and examples.
- 4 IRC 7701(b)(5)
- 5 IRC 7701(b)(5); 7701(b)(3)(D); 7701(b)(7)(C) and (D); 301.7701(b)-3
- 6 Treas. Reg. 301.7701(b)(7)(iv)
- 7 IRC 6039E
- 8 Treas. Reg. 301.7701(b)-1(e) example 1
- 9a Treas. Reg. 301.7701(b)-4 (b)(1)
- 9b IRC 7701(b)(2)(B); Treas. Reg. 301.7701(b)-4(b)(2)
- 10 IRC 7701(b)(2)(C); 301.7701(b)(8)(a)
- 11 Treas. Reg. 301.7701(b)-2
- 12 Treas. Reg. 301.7701(b)-2(d)
- 13 Treas. Reg. 301.7701 (b)-1(c)(4)
- 14 Treas. Reg. 301.7701-4(e)(1) and (2)
- 15 IRC 873(b)(3); 152(b)(3)(A)
- 16 Treaty article 4(7)
- 17 Treaty article 21(2)
- 18 IRC 151(e)
- 19 IRC 6012(a)(1)(A)
- 20 Treas. Reg. 1.6012-1(b)(2)(i)
- 21 IRC 871(i)(2)(A)
- 22 IRC 871(a)(3)
- 23 IRC 871(j)
- 24 IRC 871(b)
- 25 IRC 871(a)
- 26 IRC 871(c)
- 27 IRC 872(b)
- 28 IRC 897(c)
- 29 IRC 864(c)(4)(B) and (C)
- 30 Treas. Reg. 1.879-1
- 31 1.874-1(a) and (b)(1)
- 32 1.882-4(a)(3)(i)
- 33 1.6072-1(c)
- 34 IRC 873(b)
- 35 Treas. Reg. 301.7701(b)(8)(d)
- 36 8 USC 1227(a)(2)(a)(i); 9 FAM 40.21(a)N3-2(3) and (7)

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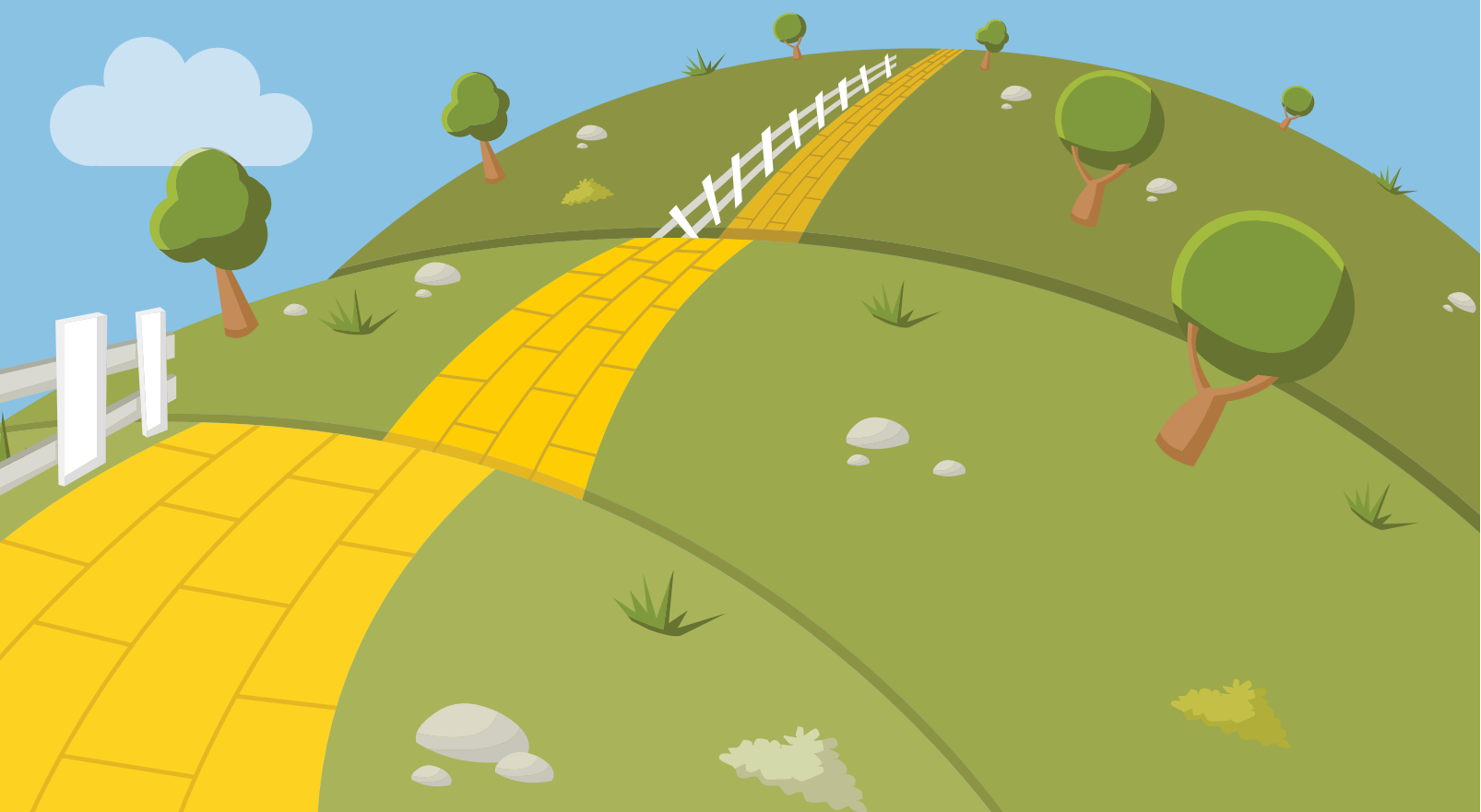
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IT'S TAXING TO SAY GOODBYE:

# *The Expatriation*

By Monica Haven, EA, JD

# *Tax*







“Leaving so soon, my pretty? Why, my little party’s just beginning,” says the Wicked Witch of the West to Dorothy. Apparently, the little girl from Kansas isn’t the only one in a hurry to escape—U.S. taxpayers by the thousands are abandoning their citizenship in hopes of fleeing their tax responsibilities. The party may indeed be just beginning with the imposition of the expatriation tax. This article will help practitioners determine who is subject to the tax, how it is computed, and when it must be reported.

## INTRODUCTION

The list of U.S. citizens who have chosen to expatriate is long. The *Wall Street Journal* reports more than 3,400 individuals renounced their U.S. citizenship or terminated long-term U.S. residency in 2014—a 14% increase over 2013 and a 266% increase over the 932 who left in 2012. Reasons for departure included a desire to return to family roots, marrying a foreign national, accepting a diplomatic appointment, or because dual citizenship was not an available option.

Many have not given a reason—and they don’t have to! Those of us left behind may collectively speculate that some Americans have left because U.S. tax and disclosure laws have become too oppressive. U.S. taxpayers living abroad are particularly hard-hit since they must file U.S. tax returns on worldwide income which may already be taxed by their resident countries. While taxpayers may avail themselves of treaty benefits or claim foreign earned income exclusion and/or the foreign tax credit, the impact of double taxation is not always fully mitigated. Most certainly, the reporting requirements are not eliminated.

Foreign account reporting has become onerous and involves incredibly steep penalties for failure to comply. As financial institutions throughout the world discover that they must comply with the complex and burdensome rules of the Foreign Account Tax Compliance Act (FATCA), Americans abroad often become personae non gratae for even the simplest of banking activities. Sometimes it seems easier to say goodbye!

Leaving does not come cheaply. Knowing it would likely be quite difficult if not impossible to collect tax from afar, Congress has enacted laws to ensure U.S. citizens and residents pay their fair share long before they escape the collection clutches of the U.S. Treasury.

The expatriation tax is an asset-based tax designed to discourage U.S. citizens from expatriating to avoid U.S. taxation.

The tax is onerous, just as it is intended to be. However, it is not yet burdensome as we hear story after story of U.S. taxpayers packing up and moving out with all of their wealth in tow. *The Huffington Post*, for example, reports that “Facebook co-founder Eduardo Saverin renounced his American citizenship to move to Singapore [and that] Democratic donor Denise Rich gave up her passport to permanently move to Europe” in an attempt to avoid U.S. taxation. For some, it is cheaper to leave and pay the expatriation tax than it is to stay and pay the income tax.

## HISTORY

After a few false starts, the Sixteenth Amendment to the U.S. Constitution was enacted in 1913, creating an income tax regime that was citizenship-based. Soon, U.S. citizens living abroad began to renounce their citizenships to escape double taxation. Nevertheless, the Supreme Court upheld the constitutionality of the taxation of Americans on their foreign-earned income (*Cook v. Tait*, 265 U.S. 47(1924)).

Although Congress never rescinded the taxation of U.S. citizens abroad, it has enacted various provisions to mitigate the deleterious effects upon taxpayers subject to multiple taxing authorities. The foreign tax credit introduced in the Revenue Act of 1918 allowed Americans to claim a credit for taxes paid to a foreign government and the Revenue Act of 1926 allowed taxpayers to shield an unlimited amount of foreign earnings (but not investment income) from U.S. taxation if they lived abroad for at least six months in any calendar year using the foreign earned income exclusion. Excludable income was limited to an amount that was raised in fits and starts during ensuing decades and it was set

at a fixed amount adjusted annually for inflation with the passage of the Tax Increase Prevention and Reconciliation Act of 2005. For 2015, the excludable amount is set at \$100,800.

Neither the foreign tax credit nor the foreign earned income exclusion managed to make the taxation of U.S. citizens abroad entirely fair or even comparable to that of U.S. residents. Whether in protest or out of economic necessity, more U.S. citizens began to renounce their citizenship. In 1966, Congress enacted a ten-year tax on U.S.-source income of individuals whose motive for expatriation was tax avoidance. The law, however, was unenforceable as the IRS was not informed of expatriations and was unable to objectively determine whether a taxpayer’s departure was motivated by “tax avoidance.” Thirty years later, the law was revised to presume that high net worth individuals chose to expatriate for no other reason than to avoid the payment of U.S. taxes. With yet another revision in 2004, this presumption became a definition which held that all departing taxpayers who met legislated income or net worth thresholds were incontrovertibly leaving for tax avoidance reasons only. In 2008, the law changed yet again when Congress unanimously approved a new tax designed to raise revenues to fund increased veterans’ benefits authorized by the Heroes Earnings Assistance and Relief Tax Act (HEART).

## THE EXPATRIATION TAX<sup>1</sup>

Dubbed the Billionaire’s Amendment by Senator Edward Kennedy (D-Mass.), this tax was designed to nab the super-rich but ultimately applies to all “covered expatriates.” This is defined as individuals who leave the U.S. and:

- have an average annual U.S. income tax liability that exceeds \$139,000 during the most recent 5 years prior to expatriation<sup>2</sup>
- have a net worth in excess of \$2 million on the date of expatriation
- have not certified on Form 8854 that they have met all federal tax obligations for the five years before expatriation.

The reason for leaving no longer matters since applicability of the tax is based solely on the three objective tests listed above.

# The Expatriation Tax

## HOW TO EXPATRIATE

Leaving or exiting the U.S. is, of course, a prerequisite to the imposition of the tax, so it becomes critical to determine whether a U.S. citizen or resident has jumped through the necessary hoops. The burden—by a preponderance of the evidence—is upon the expatriate to prove that all the proper steps have been taken.

While it is possible to relinquish U.S. citizenship by serving in the armed forces of an enemy state, accepting policy-level employment with a foreign government, or being convicted of treason, the quickest and most unequivocal way to give up U.S. citizenship is by swearing an oath of renunciation before a diplomatic or consular officer abroad. An individual seeking to

**"Leaving or exiting the U.S. is, of course, a prerequisite to the imposition of the tax, so it becomes critical to determine whether a US citizen or resident has jumped through the necessary hoops."**

renounce his citizenship must do so voluntarily. He will be required to complete a questionnaire (DS-4079 Request for Determination of Possible Loss of U.S. Citizenship), have an interview with a U.S. diplomatic officer abroad,<sup>3</sup> and receive official approval from the Department of State.

A U.S. lawful permanent resident (green card holder) is subject to expatriation rules only if he has become a "long-term resident", defined as a non-U.S. citizen who has been a legal permanent resident of the U.S. in at least 8 of the last fifteen tax years ending with the year that residency ends.<sup>4</sup> A U.S. resident who does not satisfy the definition of a long-term resident cannot, by definition, expatriate and cannot be held liable for the exit tax or any future tax on covered gifts and bequests.

A long-term resident will cease to be a lawful permanent resident if (a) his immigration and residency status have been revoked, or (b) he is treated as a resident of a foreign country under the provisions of a U.S. tax treaty and he does not

waive the treaty benefits using Form 8833 Treaty-Based Return Position Disclosure, or (c) he voluntarily and affirmatively abandons his status by submitting Form I-407 Abandonment of Lawful Permanent Resident Status to a consular officer.

## COMPUTING THE TAX

The exit tax is an asset-based tax that is assessed against U.S. citizens who have renounced their citizenship and long-term residents who have ended their residency status. Different rules and rate structures apply depending on the date of expatriation. This article will focus only on those rules in effect for expatriations after June 16, 2008.

The exit tax is a mark-to-market tax that is assessed on all of the expatriate's property which is deemed to have been sold on the day before the expatriation date. The resulting phantom gains and losses (irrespective of IRC Sec.1091 wash sale rules) from the deemed sales are reportable in the taxable year in which they are deemed to have occurred.

The expatriate's property includes his worldwide assets that would be part of his federally taxable gross estate for estate tax purposes if he had been a U.S. citizen or resident at death. However, specified tax deferred accounts (including individual retirement plans, qualified tuition plans, Coverdell education savings accounts, health savings accounts and Archer MSAs) are not subject to the mark-to-market regime. Instead, the covered expatriate is treated as if he had received a distribution of his entire interest in such accounts on the day before his expatriation date. While he will not be subject to an early distribution penalty (even if otherwise applicable), he will be required

to include the deemed distribution of his tax deferred accounts in gross income in the year of expatriation. He may then adjust his basis in these accounts by treating the deemed distributions includible in gross income as additional investments; thereby avoiding double taxation when he takes actual distributions from the accounts in the future.

The mark-to-market regime also does not apply to eligible deferred compensation plans or interests in non-grantor trusts, which are instead subject to an automatic 30% withholding whenever payments are made to a beneficiary. Deferred compensation plans are considered "eligible" if the payer is a U.S. person or elects to be treated as a U.S. person and notifies the payer of his status as a covered expatriate who has irrevocably waived his right to reduced withholdings under an applicable tax treaty.

The value of the expatriate's property known as the tax basis is reduced (but not below zero) by an exemption amount that is adjusted annually for inflation. Currently, this is set at \$690,000.<sup>6</sup> Prior exclusion amounts in effect were \$600,000 (2008), \$626,000 (2009), \$627,000 (2010), \$637,000 (2011), \$651,000 (2012), \$668,000 (2013) and \$680,000 (2014). Each individual is eligible for only one lifetime exclusion amount. If a covered expatriate repatriates at a later time, then once more loses citizenship or ceases to be a lawful permanent resident, the exclusion amount with respect to the second expatriation is limited to the unused portion of the first expatriation, as adjusted for inflation.

The exclusion amount must be allocated amongst all of the built-in gain properties subject to the mark-to-market regime by multiplying the exclusion amount by the ratio of each asset's built-in gain divided by the total built-in gain of all assets. The exclusion amount allocated to each gain asset may not exceed the amount of that asset's built-in gain.

In general, non-resident aliens (NRAs) who own foreign property when they become resident aliens of the U.S. do not get a stepped-up basis when residency begins. For example, an NRA bought land in Europe for \$100,000 in 2002. He became a U.S. resident in 2005 when the land was valued at \$150,000 and eventually



sold the land in 2013 for \$400,000. He would have a taxable capital gain of \$300,000.

However, a special exception applies for the purpose of the mark-to-market regime of the exit tax. As per the exception, an NRA who became a U.S. resident and later expatriates must – solely for purposes of determining the tax imposed by reason of Sec.877A(a)—adjust the basis of all assets to the fair market value on the date that he became a U.S. resident.<sup>7</sup> Therefore, the basis of the land owned by the NRA who became a U.S. resident, then abandoned his residency and returned to his native country, will be automatically stepped-up to \$150,000. The resulting deemed gain for purposes of the exit tax will be reduced to \$250,000. A taxpayer may make an irrevocable election on a property-by-property basis to be exempt from this rule by submitting Form 8854 with his income tax return for the taxable year that includes the day before the expatriation date.

Alas, a former U.S. citizen or long-term resident is subject not only to the one-time exit tax, but forever subject to gift and estate taxes for any gifts or bequests made to U.S. citizens, resident donees, and beneficiaries. Gifts and bequests made to non-U.S. citizens are exempt from the gift and estate tax regime.

They are then reduced by the applicable annual exclusion (\$14,000 in 2015), and taxed at the highest marginal bracket of gift or estate tax in effect during the year of the gift (40% in 2015). The resulting tax becomes the liability of the receiving transferee.

If the gift was made while the donor was still a U.S. citizen, the donor would remain eligible for the lifetime exclusion. The gift would only be taxable in the event that it exceeded that amount (\$5.43 million in 2015). Additionally, it would be the donor (not the donee) who becomes liable for the resulting gift tax.

Similarly, a U.S. citizen transferring assets to U.S. beneficiaries after death may use his available lifetime exclusion to reduce or even eliminate the estate tax. Non-citizen decedents may not benefit from this exemption.

Decedent A (a U.S. citizen at death) has an estate valued at valued at \$7 million on the date of death in 2015. Presuming the full lifetime exclusion was available and the estate was taxed

A covered expatriate relinquished his citizenship on November 1, 2009. On October 31, 2009, owned the following assets with a total built-in gain of \$2,000,000:

Asset	FMV (\$) on 10/31/09	Basis (\$) FM V at Purchase	Built-in Gain (Loss) (\$)
X	2,000,000	200,000	1,800,000
Y	1,000,000	800,000	200,000
Z	500,000	800,000	(300,000)

Step 1: Determine the portion of the exclusion amount allocable to each gain asset by multiplying the exclusion amount (\$626,000 for 2009) by the ratio of the built-in gain on each gain asset over the total built-in gain on all gain assets.

$$\text{Asset X: } (1.8 \text{ million} \div 2 \text{ million}) * 626,000 = \$563,400$$

$$\text{Asset Y: } (200,000 \div 2 \text{ million}) * 626,000 = \$62,600$$

NOTE: The exclusion amount is not allocated to the asset with a built in loss.

Step 2: Determine the amount includible in gross income with respect to each gain asset by subtracting the exclusion amount allocated to each asset from the amount of built-in gain deemed realized.

$$\text{Asset X: } 1.8 \text{ million} - 563,400 = \$1,236,600$$

$$\text{Asset Y: } 200,000 - 62,600 = \$137,400$$

Step 3: The taxpayer must report all includible amounts in gross income with respect to Assets X and Y, as well as the loss with respect to Asset Z on Form 1040 for the portion of the taxable year that includes the day before the expatriation date. Form 1040 and all attendant schedules should be attached as supplementary schedules (exhibits) to Form 1040NR for the remainder of that taxable year.

Gains or losses realized after the deemed sales on the date of expatriation will be adjusted for gains and losses taxed under the expatriation tax regime.

The taxpayer in the foregoing example now lives abroad and sells Asset X for \$3,000,000 and Asset Z for \$700,000 on October 15, 2013. His taxable gain is computed as follows:

$$\text{Asset X: } 3 \text{ million sales proceeds} - 2 \text{ million adjusted basis} = \$1,000,000$$

$$\text{Asset Z: } 700,000 \text{ sales proceeds} - 500,000 = \$200,000$$

at the highest marginal rate currently in effect, the net estate after tax that would pass to beneficiaries would total \$6,372,000 ( $\$7,000,000 - \{(\$7,000,000 - 5,430,000) * 40\}$ ).

In contrast, Decedent B—a non-U.S. citizen at death—could reduce his taxable estate by only \$14,000 per beneficiary. Presuming that the decedent had two beneficiaries, the net estate after tax that would pass to those beneficiaries would total \$4,211,200, more than \$2 million less than Decedent A's estate.

## REPORTING AND PAYING THE TAX

Gain or loss on the deemed sale of each asset—albeit not actually realized—is recognized and reported on the relevant form or schedule of the individual's Form 1040 U.S. Individual Income Tax Return for the year that includes the day before the expatriation date. The gain or loss is reported in the same manner as if the property had actually been sold.

Form 8854 Initial and Annual Expatriation Statement must be attached



# The Expatriation Tax

to the expatriate's final Form 1040 which, in turn, must be attached to the expatriate's Form 1040NR U.S. Nonresident Alien Income Tax Return. Presuming that the taxpayer renounces on any date other than January 1, he will be deemed a dual status taxpayer and responsible for filing Form 1040 to report income earned from the year-start until the day before expatriation as well as Form 1040NR to report income earned from the day of expatriation through the year-end. Of course, if the expatriate continues to receive U.S.-source income on which tax has not been withheld or income that is effectively connected with the conduct of a U.S. trade or business, he will have an ongoing requirement to file Form 1040NR.

Instructions for Form 8854 specify that:

- Part I must be used by all expatriates to provide general taxpayer information.
- Parts II-IV must be selectively used by taxpayers depending upon their respective dates of expatriation.
- Part V contains a balance sheet and income statement which must be completed by Part II and Part IV filers (those who expatriated after June 3, 2004 and before June 17, 2008, as well as those who expatriated in the most recent tax year).

NOTE: Part II filers (those who expatriated between 2004 and 2008 when regulations subjected expatriates to potential U.S. taxation on worldwide income for ten years after the date of expatriation) must file Form 8854 annually by the due date of each subsequent income tax return, even if no tax is owed.

Failure to file Form 8854 is subject to a \$10,000 penalty. Moreover, until the form is properly filed with the IRS, a taxpayer will continue to be treated as a U.S. citizen or resident for tax purposes.<sup>8</sup>

Tax resulting from deemed asset sales becomes part of the taxpayer's aggregate liability as computed on Form 1040 or Form 1040NR and is, of course, due by the fifteenth day of the fourth month after the end of the reporting period. However, tax attributable to the expatriation mark-to-market regime may be deferred on an asset-by-asset

"...a U.S. citizen transferring assets to U.S. beneficiaries after death may use his available lifetime exclusion to reduce or even eliminate the estate tax."



basis until the due date of the expatriate's income tax return for the year in which the asset is actually sold.<sup>9</sup> Taxpayers making such irrevocable election to defer payment must fill in Section C of Form 8854 and furnish a bond to the Secretary of the Treasury<sup>10</sup> or another satisfactory security (e.g., letters of credit) as prescribed by the Secretary.

If the deferral agreement is accepted by the IRS, the taxpayer may not extend the due date for payment of the deferred tax beyond the earlier of either:

- The due date of the return required for the year that includes the date of death, or
- The date that the posted security is no longer considered adequate by the IRS (unless the taxpayer increases his security within thirty days after notification).<sup>11</sup>

Interest on any unpaid liability resulting from the exit tax continues to accrue until the balance due is paid in full.

## GIFTS AND BEQUESTS TO U.S. CITIZENS <sup>(12)</sup>

In addition to the one-time exit tax assessed against covered expatriates, the IRC was modified in 2008 to assess tax against U.S. citizen and resident donees and beneficiaries of gifts and bequests received from former U.S. citizens or long-term residents. While gift and estate taxes normally become the liability of the donor or decedent, the liability for these taxes have been legislatively shifted to the recipients in the case of assets transferred by former U.S. citizens and residents. Gifts and bequests made by expatriates to non-U.S. citizens are exempt from the gift and estate tax regime.

To be clear, donees (rather than donors) are taxed to disabuse U.S. taxpayers of potential

tax avoidance. Covered expatriates who wish to move abroad and take their holdings with them to avoid ongoing taxation by U.S. authorities should not have the privilege of repatriating assets by gifting or bequeathing them back to U.S. citizen and resident beneficiaries. Since the U.S. cannot directly tax former citizens and residents, the 2008 Act ensures that the U.S. can instead assess tax against donees still within its jurisdiction.

Gifts and bequests made by a covered expatriate are valued as they would be under the estate tax regime, then reduced by the applicable annual exclusion (\$14,000 in 2015), and taxed at the highest marginal bracket of gift or estate tax in effect during the year of the gift (40% in 2015). The resulting tax becomes the liability of the receiving transferee.

If, instead, the gift were made while the donor was still a U.S. citizen, the donor would remain eligible for the lifetime exclusion. The gift would only be taxable in the event that it exceeded the exclusion amount (\$5.43 million in 2015). It would be the donor (not the donee) who becomes liable for the resulting gift tax.

Similarly, a U.S. citizen transferring assets to U.S. beneficiaries at death may use his available lifetime exclusion to reduce or even eliminate the estate tax; whereas, non-citizen decedents may not benefit from this exemption.

Decedent A (a U.S. citizen at death) has an estate valued at \$7 million on the date of death in 2015. Presuming the full lifetime exclusion were available and the estate were taxed at the highest marginal rate currently in effect, the net estate after tax that would pass to beneficiaries would total \$6,372,000 [= \$7,000,000 - {(7,000,000 - 5,430,000) \* 40%}]



In contrast, Decedent B (a non-U.S. citizen at death) could reduce his taxable estate by only \$14,000 per beneficiary. Presuming that the decedent had two beneficiaries, the net estate after tax that would pass to those beneficiaries would total \$4,211,200, more than \$2 million less than Decedent A's estate!

### CONCLUSION

While many practitioners may be unacquainted with a U.S. expatriate, the increasing trend of citizenship renunciations makes it ever-more likely that tax pros will soon be called upon to assist those who choose to turn-in their U.S. passports and green cards. If the current pace of renunciations persists, expatriate filings may exceed

estate tax filings. Indeed, *U.S. News* reports that only about 5,400 estates will owe estate tax in 2015, while others estimate that there will be fewer than 3,000 federally taxable estates in the next two years.

To be sure, both expatriate and estate tax reporting are specialty niches that require studied expertise. Tax practitioners may be well-advised to follow the trend and familiarize themselves with the intricacies of the exit tax.

Note: Only federal rules have been discussed in this article. Most states do not conform to the federal definition of non-resident and certainly do not care if the taxpayer they seek to tax is a U.S. citizen. For state tax purposes, residency and often domicile are the determinative factors

whether the state has jurisdiction to impose income tax. **EA**

### ENDNOTES

- <sup>1</sup> IRC Sec.877 and Sec.877A
- <sup>2</sup> This amount has since been indexed for inflation – the applicable amounts for each year are: \$145,000 (2009 - 10), \$147,000 (2011), \$151,000 (2012), \$155,000 (2013), \$157,000 (2014) and \$160,000 (2015)
- <sup>3</sup> 8 USC Sec.1481(a)
- <sup>4</sup> IRC Sec.877(e)(2)
- <sup>5</sup> IRS Notice 2009-85
- <sup>6</sup> IRC Sec.877A(a)(3)
- <sup>7</sup> IRC Sec.877A(h)(2)
- <sup>8</sup> IRC Sec.7701(a)(50)(A)
- <sup>9</sup> IRC Sec.877A(b)(1)
- <sup>10</sup> IRC Sec.6325(a)(2).
- <sup>11</sup> IRS Notice 2009-85 Guidance for Expatriates Under Section 877A
- <sup>12</sup> IRC Sec.2801

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# 2015 TAX LAW WRAP-UP

By David Mellem, EA

**C**ongress didn't do much in 2015, but what it has done can be far-reaching. So far, Congress has *not* extended the extenders, as we like to call them. Some of the more common extenders include the educator's deduction, the higher Section 179, bonus depreciation, tuition deduction, deduction for mortgage insurance, exclusion of principal residence indebtedness forgiveness, IRA distributions direct to charity, sales tax deduction, and the fifteen-year depreciation write off for certain real estate improvements. We are confident Congress will retroactively extend many of these extender items, but no one knows for sure. Of course if Congress waits until December like they did last year, we will again have delays to start the tax season. Here's to a happy, successful, stress-free tax season.

## FORM 1099

Form 1099 Penalties increase effective with Forms 1099 are required to be filed after December 31, 2015. This means the ones we will be preparing this coming January are subject to these higher penalties.

The penalty under Section 6722 for not furnishing information returns (i.e., Forms 1099) to payees increases.

- The penalty is \$250 per return (an increase from the previous \$100 per return penalty).
- If there is an unintentional delinquency and it is corrected no more than thirty days after the return due date, the penalty is reduced to \$50 per return (formerly \$30 per return).
- If there is an unintentional delinquency and it is corrected more than thirty days after the return due date but on or before August 1, the penalty is reduced to \$100 per return (formerly \$60 per return).
- The penalties above still have maximum amounts, but of course these maximums increased compared to prior years.

- The penalty for intentional disregard also increased from \$250 per return to \$500 per return.

Education institutions are exempt from these penalties for not having TINs of the students on the Form 1098T if the institution complies with the IRS rules on obtaining TINs.

## EDUCATION CREDITS AND TUITION DEDUCTION

Effective with tax years beginning on or after June 29, 2015, no education credit (American Opportunity Credit, Hope Scholarship Credit, or Lifetime Learning Credit) or tuition deduction is allowed unless the taxpayer receives a Form 1098T. A statement received by the dependent is treated as if it was received by the taxpayer.

Since IRS now requires school information on the Form 8863, this change requiring a Form 1098T to exist isn't too surprising. Each of us will have to decide if we want to see the Form 1098T or if we just want to confirm with the taxpayer that it exists.

## CHILD TAX CREDIT

Effective with tax years beginning after December 31, 2014, the refundable portion (if any) of the child tax credit is DENIED for any taxpayer who excludes ANY amount of gross income using the foreign earned income exclusion (i.e., Form 2555).

## HEALTH COVERAGE TAX CREDIT

The Health Coverage Tax Credit under Section 35 (which expired December 31, 2013) is now extended retroactively through December 31, 2019. To be eligible for this credit, taxpayers must qualify for Trade Adjustment Assistance (TAA) or be an eligible Pension Benefit Guaranty Corporation (PBGC) pension recipient. Form 8885 is the form used for this Section 35 credit.

## PUBLIC SAFETY EMPLOYEE

The exception from the 10% early distribution penalty for "public safety employees" is changed to include Federal employees who are law enforcement officers, customs and border protection officers, firefighters, or air traffic controllers effective with distributions after December 31, 2015 (Section 72(t)(10)).

## UNIFORM BASIS FOR INHERITED PROPERTY

The basis of inherited property is controlled by Section 1014 which says, in general, the FMV of the property on the date of the decedent's death is the new owner's beginning basis. This is generally the value found on the estate tax return (Form 706) but there are times when taxpayers have successfully argued the value was incorrect. This new Act adds Section 1014(f) which states the basis of inherited property cannot exceed the amount shown on the Form 706 if the property's inclusion on the Form 706 increased the estate tax. In other words, this provision applies if there is a Form 706 filed AND the tax, after credits, on the 706 is higher than it would have been if this particular asset did not exist.

Executors of estates are required to give information to the beneficiary and to IRS showing the value of property inherited by that beneficiary as well as any other information IRS chooses to require. IRS will issue regulations on any the requirements. This amendment applies to tax returns filed after July 31, 2015. Obviously Congress asking IRS on July 31, 2015, to get the form and manner created in time for executors to meet an August 31, 2015, due date (soonest possible due date) is asking a lot. IRS has responded by issuing Notice 2015-57 which extends the due date for this reporting until February 29, 2016. The notice also asks taxpayers to not submit anything regarding this reporting until IRS issues the form or other guidance.

## CHANGE TO SIX YEAR STATUTE UNDER SECTION 6501

Generally, the statute of limitations for IRS assessment of tax is three years. Under Section 6501 it is extended to six years if there is an understatement of gross income. Recently a court case stated an overstatement of basis is not an understatement of gross income and denied IRS the right to use a six year statute. Now Congress in this ACT has expanded the definition of “understatement of gross income” by stating it includes an overstatement of basis or unrecovered cost. This provision is effective with returns filed after July 31, 2015, AND any returns which are still open under the normal three-year statute of limitations (without regard to this provision).

## DUE DATES OF VARIOUS RETURNS CHANGES

**Partnerships** – Effective for taxable years beginning after December 31, 2015, the due date for partnership tax returns becomes the fifteenth day of the third month after the end of the partnership’s tax year. This means the due date for unextended calendar year partnership tax returns becomes March 15, the same due date as S Corporation tax returns. Congress also dictates to IRS that the maximum extension period for calendar year partnership tax returns cannot exceed one six-month period. IRS can choose a shorter prior of time if it desires such.

**C Corporations** – Effective for taxable years beginning after December 31, 2015, the due date for C Corporation tax returns also changes. The due date is changing to the fifteenth day of the fourth month after the end of most C Corporations’ tax years.

This sounds simple enough but that isn’t the whole story. There is a special rule that keeps the due date for a fiscal year C Corporations using a taxable year ending June 30 as the fifteenth day of the third month after the end of its fiscal year, which means the due date for C Corporation returns with a June 30 year end is September 15. These June 30 fiscal year C Corporation returns will have their due dates change to the fifteenth day of the fourth month effective for taxable years beginning after December 31, 2025—ten years after all other C Corporations. Note: The Act doesn’t say why this special rule exists. All we can come up with is that the government fiscal year ends September 30 so a due date of

September 15 causes the revenues to fall near the end of the government’s fiscal year instead of the beginning of the next fiscal year. We believe there is a provision in the law that says something about tax bills having to be able to be balanced over ten-year period.

Summary of C Corporation return due dates:

- All year ends except June 30 = six months.
- June 30 year ends = five months until 2026, then six months.

### Extensions for C Corporations

Congress dictates the maximum extension period is one six-month period. The law previously said one automatic three-month period, with another three-month nonautomatic extension available but IRS gave us a six-month automatic period anyway, so Congress is merely formalizing this].

There’s more. As we said the automatic extension period is a maximum six-month period but... a C Corporation that has a December 31 tax year end has a maximum five-month period for its extension for all tax years beginning prior to January 1, 2026. Effective for tax years beginning on or after January 1, 2026, calendar year end C Corporations will have the normal six-month extension period. This means calendar year C Corporations will have an April 15 due date but a September 15 extended due date for the next ten years!

Also, a C Corporation that has a June 30 tax year end has a maximum seven-month period for its extension for all tax years beginning prior to January 1, 2026.

Summary of extended C Corporation returns’ due dates:

- All year ends except December 31 and June 30 = six months.
- December 31 year ends = five months until 2026, then six months.
- June 30 year ends = seven months until 2026, then six months.

### FinCEN Report 114 (FBAR)

Effective for taxable years beginning after December 31, 2015, the due date for the FinCEN Report 114 (FBAR) will be April 15 AND there is now an extension available for a maximum of one six-month period. Also, the Secretary can waive penalty for failure to timely request for, or

file, an extension for a taxpayer required to file this form for the first time.

### Other Dues Dates and Extensions Periods

Some other due dates and extension periods are changing effective with taxable years beginning after December 31, 2015. This Act directs the Secretary of the Treasury to modify regulations to provide the following changes to extensions:

- 1) The maximum extension for calendar year trust tax returns is a five and a half month period ending on September 30.
- 2) The maximum extension for Forms 5500 is an automatic three and a half month period ending on November 15 for calendar year plans.
- 3) The maximum extension for calendar year Forms 990 is an automatic six-month period ending on November 15.
- 4) The maximum extension for filers of Forms 4720, 5227, 6069, and 8870 is an automatic six-month period.
- 5) The due date for Form 3520-A is the fifteenth day of the third month, with an automatic extension available for a maximum of one six-month period.
- 6) The due date for calendar year Form 3520 is April 15 with a maximum extension allowed for one six-month period.

### FORM 1098, MORTGAGE INTEREST STATEMENT.

Effective with statements required to be furnished after December 31, 2016, the Form 1098 will include the following new information:

- 1) The amount of the outstanding principal at the beginning of the year,
- 2) The date of the origination of the mortgage, and
- 3) The address of the property that secures the mortgage. **EA**

### About the Author

**David L. Mellem, EA**, became an enrolled agent in 1982. He has a Bachelor’s Degree in Accounting and Associate Degrees in Accounting and Data Processing. David prepares several hundred tax returns for individuals, corporations, partnerships, estates, and trusts. He is a partner of Ashwaubenon Tax Professionals. David is a tax reference for many journalists including money.cnn.com. He has served as a panel member on NAEA’s TaxTalkToday four times. In April 2009, David appeared on the Today Show as part of an NAEA panel. David can be reached at davidmellem@yahoo.com.

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

# Tax Appointment Worksheet

The Tax Appointment Worksheet is a tool to help you gather the needed information for new and returning clients for the 2015 tax year. This year's worksheet has been enhanced to reflect the changes in tax law.

This year will be the first year that everyone covered by health insurance should have a Form 1095 A, B, or C. For those who have received a government subsidy for the purchase of health insurance,

there will be a reconciliation of that subsidy. For those who were eligible to take the subsidy but opted to receive the credit, the credit will be calculated on this year's return.

EVENT		DOCUMENTS OR INFORMATION NEEDED
1	Married, divorced, or separated in 2015	<ul style="list-style-type: none"> <li>Married – prior year return of both spouses</li> <li>Divorced – finalized date; copy of the divorce decree</li> <li>Separated – copy of the separate maintenance agreement</li> <li>Community Property income allocation</li> </ul>
2	Birth or adoption	<ul style="list-style-type: none"> <li>Social Security cards and adoption papers</li> </ul>
	Adoption Credit	<ul style="list-style-type: none"> <li>Expenses date and amount, date of adoption, special needs certification</li> </ul>
3	Death of child or spouse	<ul style="list-style-type: none"> <li>Date of death</li> </ul>
4	Additional members of household	<ul style="list-style-type: none"> <li>Date of occupancy and relationship</li> </ul>
5	Job change	<ul style="list-style-type: none"> <li>Start date</li> <li>Name of new employer</li> <li>W-2s from new and old employers</li> </ul>
6	Unemployment	<ul style="list-style-type: none"> <li>Unemployment form</li> </ul>
7	Retirement contribution	<ul style="list-style-type: none"> <li>Type of plan</li> <li>Amount of contribution</li> </ul>
8	Retirement distributions	<ul style="list-style-type: none"> <li>Form 1099-R</li> <li>Rollovers</li> <li>RMD information if 70½ or older</li> </ul>
9	Social Security benefits	<ul style="list-style-type: none"> <li>Form 1099-SSA</li> </ul>
10	Sale of stocks, bonds, etc. (including mergers)	<ul style="list-style-type: none"> <li>Form 1099-B or other sale documents</li> <li>Basis or original costs</li> </ul>
11	Purchase of stocks, bonds, etc., personal residence, or other real estate	<ul style="list-style-type: none"> <li>Purchase documents, closing papers</li> </ul>
12	Inheritance	<ul style="list-style-type: none"> <li>Will, K-1 from the estate</li> <li>Basis information</li> </ul>
	Gifts made or gifts received	<ul style="list-style-type: none"> <li>Cash or property in excess of \$14,000 per person.</li> <li>Description of property given, basis, donee name</li> <li>Property – Basis of donor</li> </ul>
13	Trade of any property (real estate, vehicle, etc.)	<ul style="list-style-type: none"> <li>Date of trade, property given up and property received, basis and FMV</li> <li>Qualified intermediary sales agreements or closing papers</li> </ul>
14	Start or end a small business (Schedule C, LLC, S or C Corp, Partnership)	<ul style="list-style-type: none"> <li>Formation or termination dates</li> <li>Property contributions or distributions</li> <li>K-1s, if applicable</li> </ul>
	Business income/ expenses	<ul style="list-style-type: none"> <li>1099-Ks received for use of credit cards</li> <li>Inventory numbers, if applicable</li> <li>Mileage information</li> </ul>

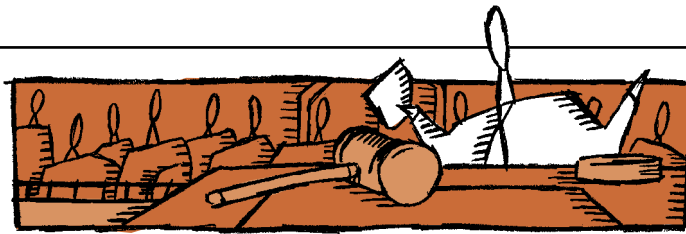


<b>15</b>	Lawsuit settlements	<ul style="list-style-type: none"> <li>• Date received</li> <li>• Reason for the settlement</li> <li>• 1099-MISC</li> </ul>
<b>16</b>	Rental property	<ul style="list-style-type: none"> <li>• Income</li> <li>• Expenses</li> <li>• New property purchased</li> </ul>
<b>17</b>	Prizes	<ul style="list-style-type: none"> <li>• Form 1099-MISC</li> <li>• Value of prizes not included on Form 1099-MISC</li> </ul>
<b>18</b>	Lottery or gambling winnings	<ul style="list-style-type: none"> <li>• Total amount won whether on W-2G or not</li> <li>• Total amount of losses</li> </ul>
<b>19</b>	Health insurance, medical, dental, or drug expenses	<ul style="list-style-type: none"> <li>• Health insurance premiums</li> <li>• Post-tax payments</li> <li>• Totals of other medical, dental, and drug expenses. If the health insurance is pre-taxed (i.e. cafeteria plan, Sec. 125, POP), premiums have already been deducted from the wage. Health Savings Account (HSA) information.</li> </ul>
	Medical miles (23.5 cents per mile)	<ul style="list-style-type: none"> <li>• Total medical miles driven January–December</li> </ul>
	Health insurance coverage verification	<ul style="list-style-type: none"> <li>• Form 1095 A,B, or C must be received from the marketplace, the insurance carrier, or your employer for every person included on the tax return.</li> </ul>
<b>20</b>	State taxes income, property taxes paid, sales tax paid on vehicles, motorcycles, or homes	<ul style="list-style-type: none"> <li>• Prior year's income tax return</li> <li>• Property tax bills</li> <li>• Closing papers from the purchase or sale of property</li> <li>• Letter from the state regarding any change in a prior-filed return</li> </ul>
<b>21</b>	Refinance a home	<ul style="list-style-type: none"> <li>• Closing papers with amount borrowed</li> <li>• Form 1098</li> <li>• Description of use of money</li> </ul>
<b>22</b>	First-Time Homebuyer Credit	<ul style="list-style-type: none"> <li>• Credit no longer available</li> </ul>
	Recapture/Repayment 2008 credit	<ul style="list-style-type: none"> <li>• Sale or change in use</li> <li>• Record of amount repaid-Year 6 of 15</li> </ul>
<b>23</b>	Charitable contributions of money, property, or out-of-pocket expenses	<ul style="list-style-type: none"> <li>• Date, amount, and type of contributions</li> <li>• Knowledge that receipts from the organizations have been received</li> <li>• Statement regarding whether goods and services were received for donation</li> <li>• Mileage log for charitable work</li> <li>• Vehicle donations require Form 1098-C</li> </ul>
	Charitable miles (14 cents/mile)	<ul style="list-style-type: none"> <li>• Total charitable miles driven</li> </ul>
	Transfer of IRA to charity	<ul style="list-style-type: none"> <li>• Brokerage statement showing transfer (Not allowed for 2015)</li> </ul>

<b>24</b>	Job-related expenses	<ul style="list-style-type: none"> <li>• Meals, lodging, and miscellaneous expense amounts for items related to employment</li> </ul>
	Business miles (57.5 cents per mile)	<ul style="list-style-type: none"> <li>• Total miles driven per vehicle January–December</li> <li>• Business miles driven per vehicle January–December</li> </ul>
<b>25</b>	Education expenses	<ul style="list-style-type: none"> <li>• Form 1098-T for parents or children if the child is a student, the form will come to the child.</li> <li>• Actual expense record to verify expenses for credit/deduction purpose.</li> <li>• Financial transcript from school needed to show when actual expenses were paid.</li> </ul>
	Student loan interest	<ul style="list-style-type: none"> <li>• Interest record for student loans</li> <li>• Form 1098-E</li> </ul>
<b>26</b>	Child or disabled spouse care	<ul style="list-style-type: none"> <li>• Name, address, and ID number of the day-care provider</li> <li>• Amount paid to the provider</li> <li>• If the provider comes into your home, a W-2 may be required</li> </ul>
<b>27</b>	Energy credit	<ul style="list-style-type: none"> <li>• Information regarding the purchase of solar, geothermal, fuel cell, or small wind energy property business or residence</li> <li>• No other residential credit in 2015</li> </ul>
<b>28</b>	Bankruptcy filing	<ul style="list-style-type: none"> <li>• Date filed</li> <li>• Bankruptcy papers to show property rejected/returned by court</li> </ul>
<b>29</b>	Debt forgiveness or abandonment of property	<ul style="list-style-type: none"> <li>• Form 1099-A for abandonment</li> <li>• Date property was taken by the bank or sold in foreclosure</li> <li>• Form 1099-C for cancellation</li> </ul>
<b>30</b>	IRS or State Communications	<ul style="list-style-type: none"> <li>• Letters, additional taxes paid, changes in prior-year returns, installment agreements, or offers in compromise</li> </ul>
<b>31</b>	Foreign Investments or Holdings	<ul style="list-style-type: none"> <li>• Any foreign accounts?</li> <li>• Any greater than \$10,000?</li> <li>• Foreign business interests or stock of \$50,000 or more?</li> <li>• Signature authority over foreign accounts?</li> </ul>

## About the Author

**Mary R. Mellem, EA**, is a Tax Professional from Green Bay WI who has been in the tax business for thirty-one years. She and her husband David operate Ashwaubenton Tax Professionals. In addition to servicing 1,200 tax and accounting clients during the year, their business includes tax consulting for other tax professionals as well as teaching tax seminars around the country. Mary has written the Client Newsletters for the NAEA Journal for several years, served on the Public Relations Committee, and is currently a member of the NAEA Education Foundation. To contact Mary, write to [marymellemea@yahoo.com](mailto:marymellemea@yahoo.com).



## TAX COURT CORNER

# What Constitutes Abuse of Discretion in a Collection Due Process (CDP) Hearing?

Scott E. Charnas, Petitioner

v.

Commissioner of Internal Revenue, Respondent

T.C. Memo. 2015-153

By Steven R. Diamond, CPA

**IRC Sec. 6330 gives the Tax Court jurisdiction to review an administrative determination made by the IRS Appeals Office in a CDP hearing. If the underlying tax liability is not an issue, the Court will review the determination for abuse of discretion, i.e. "if the determination was arbitrary, capricious, or without sound basis in fact or law."<sup>1</sup> The Tax Court will not substitute its judgment for that of the Appeals Office, but rather, determines whether or not the Appeals Office complied with the legal requirements of an administrative hearing.**

### FACTS

Mr. Charnas (petitioner) is an attorney with many years of working experience. For tax years 2009 and 2010, petitioner timely filed his individual income tax returns but did not fully pay his outstanding tax obligations. IRS issued a Final Notice of Intent to Levy on August 22, 2012 and followed by issuing a Notice

of Federal Tax Lien issued September 4, 2012. Petitioner submitted Form 12153, Request for a Collection Due Process or Equivalent Hearing, on September 18, 2012 which had checked boxes for all three collection alternatives.

Petitioner's collection due process hearing (CDP Hearing) was assigned to Settlement Officer Marilyn Matthews

(SO Matthews) who scheduled a phone conference with petitioner for February 20, 2013. SO Matthews told petitioner that she could not consider a collection alternative without first receiving a copy of petitioner's 2011 tax return, proof of estimated tax payments, and a Form 433-A, Collection Information Statement of Wage Earners and Self-Employed Individuals. Petitioner failed to submit the requested documents one week before the hearing but rather arrived with the requested documents and his representative at the IRS office on the day the hearing was scheduled. Petitioner testified that he went to the IRS office with the intention of telling SO Matthews his true circumstances and that the Form 433-A was misleading as it applied to him.

SO Matthews was on leave the day petitioner showed up at the IRS office and petitioner was told he would be contacted to reschedule. However, he left the documents he brought with him with an IRS employee. The documents included a copy of his 2011 individual income tax return Form 433-A, Form 433-B, Collection Information Statement for Businesses, and substantiation for the items on the forms.

### 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.

Petitioner's 2011 tax return showed total income for the year of \$55,853. For years 2009-2012, petitioner reported adjusted gross income of \$806,639, \$364,096, \$32,071, and \$438,973 respectively. The figures varied due to the fact that petitioner's main income source, contingency fees, varied widely from year to year. On Form 433-B, petitioner indicated that his income was variable from year to year but did not indicate when or by how much his income changed, indicating "unknown" in response to the question on that form.

SO Matthews reviewed petitioner's documents on February 25, 2013. Her notes indicated that petitioner's 2011 tax return reported \$8,382 due on \$11,716 in nonpassive K-1 income from petitioner's legal practice. She then indicated that neither petitioner nor his legal practice were fully in compliance with tax filing and payment obligations. On Form 433-A, petitioner reported a net difference between monthly income and expense of positive \$15,627.32. Her notes then went on to state that petitioner did not qualify for an installment agreement (IA) or an offer in compromise (OIC) as his information indicated that he has the ability to pay. Her notes did not discuss the discrepancy between the 2011 and 2012 income figures. She then told petitioner's representative that petitioner did not meet the requirements for an IA or OIC because he was not current with his estimated tax payments. She continued to note that his claim stating he could not pay the liabilities would not be considered as Form 433-A reflected an ability to make monthly payments.

## OPINION

The Tax Court noted that at the CDP hearing, the Appeals officer must verify that the rules and procedures were followed, must consider any relevant issues raised by the taxpayer, and consider whether any proposed collection action balances the need for efficient collection of taxes with

the legitimate concern of the taxpayer and be no more intrusive than necessary.

The Court determined that SO Matthews did not consider the issue raised by petitioner concerning his fluctuating income. Petitioner noted several times on Form 433-B that the law firm's future income was unknown due to the variations in receiving the contingency fee income. SO Matthews did not weigh the fluctuating income in either the notice of determination or the case activity report when she was assessing his ability to pay. Although the Commissioner argued that the petitioner should have attached a letter of explanation as to the varying nature of the receipt of income, the Court concluded that he had raised the issue when he made the entries on Form 433-B explaining the variability of his income and that he was not required to elaborate in writing if he intended to discuss this at his hearing.

The Commissioner contended that petitioner did not sufficiently participate at the hearing but the Court determined that he did not have a fair opportunity to participate. Petitioner had prepared the requested documents and traveled to the IRS office on the February 20, 2013 hearing date to specifically discuss the issue of his fluctuating income. Petitioner thought that SO Matthews would contact his representative to reschedule the hearing, but she did not schedule a specific time for the hearing, so petitioner could not plan to attend. SO Matthews made her determination without waiting for an explanation and the record indicates that she made her determination without even speaking with petitioner's representative.

The Commissioner argued that even if SO Matthews made her determination before speaking with petitioner's representative, it would not constitute an abuse of discretion because hearings can be conducted by correspondence instead of by telephone or face to face. The question the Tax Court needed to answer was

whether a correspondence hearing was sufficient to provide the petitioner with a fair hearing.

The Tax Court noted the regulations emphasize that the taxpayer's preference for a face to face, telephone, or correspondence hearings reflect the informal nature of the CDP hearings. Therefore, it is important to determine whether a taxpayer's concerns have been properly addressed at a CDP hearing. In this case, SO Matthews failed to review the issue of petitioner's fluctuating income, in which he traveled to the IRS office to discuss in a meeting scheduled for February 20, 2013, noted on Form 433-B which he submitted to SO Matthews, and supported with his 2011 tax return. SO Matthews failed to indicate that her review of the petitioner's documents would constitute the petitioner's hearing. Furthermore, SO Matthews failed to follow up with petitioner to schedule a new CDP hearing at which he could participate in. Cumulatively, the impact of all this was to limit petitioner's hearing to a review of one set of documents and an unscheduled call to petitioner's representative. Even though a review of documents and a phone call may be sufficient, in this case SO Matthews made her determination without considering petitioner's nonfrivolous reason for disagreeing with the collection action, i.e., his fluctuating income. On that basis, the Tax court concluded that SO Matthews deprived petitioner to a fair hearing and therefore acted in an arbitrary capricious manner. The case was sent back to the IRS Appeals Office so petitioner may have a fair hearing. At that hearing, the petitioner should present all the information that the Appeals Officer reasonably requests and that petitioner wishes to have considered and analyzed in deciding his collection alternative request. **EA**

## ENDNOTES

1. *Murphy v. Commissioner*, 125 T.C. 301





APPROVED  
CONTINUING EDUCATION  
PROVIDER

# Four-Hour Online Home CE Test

November/December 2015  
IRS Program Number: X9QQU-T-00343-15-S  
4 CE

The following test will provide 4 hours of CE credits. The test questions are drawn from the articles in this issue. The CE test must be taken online.

## INSTRUCTIONS

You will need your login and password to take the test online. All questions must be answered before the test is complete. Once you have marked all your answers, entered your credit card information, and clicked "Submit Test and Payment," your test will be graded immediately. Please complete the test before leaving your computer, otherwise the system will time-out and your responses will be lost. You cannot leave and return to a test. To qualify for CE credit, you must complete the test within one year of the publication date. Members \$65, nonmembers \$85 for forty questions.

### BITCOIN

1. The IRS treats mined digital currency as:
- A commodity that is not taxed until sold
  - Cash
  - Property provided in lieu of income
  - IRS does not recognize digital currency

2. Dana is a software engineer and started a side business mining Bitcoins. She "mined" six bitcoins in 2015 with a value of \$300 each on the day mined, but only \$280 on December 31. She did not receive a 1099-MISC. She has never spent any of the Bitcoins. Her best (legal) approach to her taxes is to:
- Not claim the money
  - Include \$1680 as hobby income
  - Include \$1800 as "other" income on line 21 of her 1040
  - File a Schedule C with \$1800 in revenue and include the expenses and capital depreciation of the computing system

3. Tim began playing a video game on January 1, 2014 and has "earned" 5000 Buddy Bucks for inviting friends to join. Buddy Bucks are a centralized currency, regulated by the video game company. He cashed out 200 Buddy Bucks for \$400 to buy a new television. He must claim income for 2014.
- True
  - False

4. In 2015, Tim decides to stop playing his game and trades in his Buddy Bucks for 0.47 bitcoin. He doesn't have a tax implication because this is a like-kind-exchange.

- True
- False

5. Kelly decides to sell some Bitcoin. The IRS states that Kelly must track the inventory and use:

- FIFO
- LIFO
- Specific share identification
- No ruling to date

6. Adam is holding \$20,000 of bitcoin in a foreign held exchange. Even though there are no formal rulings, Adam should report these holdings on:

- Form 8938 and through the FBAR process
- Form 8938 only
- FBAR only
- None

7. The ABC Inc. allowed customers to use U.S. dollars or Bitcoin to buy their products. Customers purchased eight widgets using Bitcoin in 2014. The price of a widget is normally \$35. Three days before they closed their fiscal year books, ABC Inc. sold their one (1) Bitcoin for \$380.

- A. ABC Inc. must include \$280 in income and \$100 in short-term capital gain.
- B. ABC Inc. does not need to include this de minimis amount of Bitcoin.
- C. ABC Inc. must include \$380 in income.
- D. ABC Inc. must file Form 8938.

8. Final rules for digital currency have not been established and the IRS is accepting comments from tax professionals and the public.

- A. True
- B. False

**1040NR**

9. Sunil Gandhi, a student from India on an F1 visa, has been in the U.S. with his homemaker wife for three years. Their two children live with them, a five-year-old boy and a baby who was born in the United States. What is the maximum number of personal exemptions that could be claimed on the tax return?

- A. 1
- B. 2
- C. 3
- D. 4

10. Which filing status is not available on form 1040NR?

- A. Other single non-resident alien
- B. Qualifying widow(er) with dependent child
- C. Head of Household
- D. Married resident of South Korea

11. Elizabeth has returned to the U.S. to start a second two-year research program on a J1 visa. She entered the U.S. on August 28, precisely two years after she left. On each visit, she remained in the U.S. for the full two years. What is her SPT situation for this tax return?

- A. She met the SPT
- B. She has 0 countable days of presence.
- C. She has 126 countable days
- D. She has 166 countable days

12. A student on an F visa doing OPT in her 5th year in the U.S. was sponsored by her employer for an H1-b visa. She went home in August to get the visa and returned to the U.S. October 10. Which non-reimbursable, out-of-pocket expenses may she claim?

- A. \$500 fee for the H1-b visa
- B. Round-trip travel of \$ 1,700 to go and get the visa
- C. Registration fee of \$200 for a professional conference in her field
- D. Food and lodging while temporarily in the U.S. on the F visa

13. Manuel has an H2a visa. He met his wife when they each worked in the United States. They usually worked in the U.S. for about 100 days each year. One of their two children was born in the U.S.; one was born in Mexico. This year, the children and their mother stayed in Mexico. Mom earned \$9,800 in a Mexican factory. All family members have TIN's. How many personal exemptions will Manuel claim on his U.S. tax return?

- A. 1
- B. 2
- C. 3
- D. 4

14. Laszlo is a J-1 research fellow from Peru, no tax treaty, filing a tax return for his second year in the United States He has the following income documents:

- Form 1042-S showing \$20,000 fellowship from NIH
- Documents from a Peruvian university showing matching \$20,000 fellowship
- Form 1042-S showing \$55 interest from NIH FCU

What is the taxable amount of his income?

- A. \$40,000
- B. \$20,055
- C. \$20,000
- D. \$40,055

15. Which of the following situations would qualify someone to file a U.S. tax return on form 1040?

- 1) Naturalized as a U.S. citizen, 2) Met the SPT, 3) Made a 6018(g) election, 4) Married a U.S. citizen
- A. All of the above
- B. 1 and 2
- C. 1 and 3
- D. 1 and 4

16. Searching on which acronym could lead to information about taxation of a foreign seller of U.S. real property?

- A. FATCA
- B. FIRPTA
- C. FISA
- D. ISSA

17. Tomas has a J1 visa. You are having trouble communicating with him. What is the best item you can ask for to determine if his eXempt period is two or five years?

- A. 1-94
- B. Passport
- C. Sponsor-issued form
- D. Institutional ID Card

18. Which of the following statements is true?  
 1) Form 1040NR is generally filed by a U.S. citizen residing outside the United States  
 2) Some income earned outside the U.S. may be classified as U.S. source income  
 3) Real Property income of a non-U.S. individual living in the U.S. is always ECI  
 A. All of the above  
 B. 1 and 2  
 C. 2  
 D. 2 and 3

19. Charles is a French student who came to the U.S. in August 2012 on a J-1 student visa. In July 2015 he sold 100 shares of Microsoft from an account in France when the shares were trading for \$45.00 per share. His basis in the shares was \$38.00 per share. How much gain will be taxed on his 2015 Form 1040NR?

- A. \$0
- B. \$700
- C. \$3500
- D. \$7000

20. James & Sandra Smith, Canadian citizens, are present in New Mexico, (a community property state) for three months (ninety-three days) on a TN visa (NAFTA) while James works at the U.S. office of his employer. James' wages during the year were \$120,000 total, \$30,000 earned while in New Mexico. Sandra did not work during the year. How much income would each spouse claim on their 1040NR?

- A. \$120,000 James; \$0 Sandra
- B. \$30,000 James; \$0 Sandra
- C. \$60,000 James; \$60,000 Sandra
- D. \$15,000 James; \$15,000 Sandra

21. Dimitri arrived in the U.S. on a J-1 exchange visitor visa on May 1, 2013, and does not expect to leave the U.S. before June 2016. In 2012, he was exploring programs in the U.S. on a tourist visa and spent thirty days in the United States. On his 2014 Schedule OI, what will he enter for 2014 for Item H (Give number of days (including vacation, nonworkdays, and partial days) you were present in the United States)?

- A. 365
- B. 0
- C. 30
- D. 10

22. Sebastien, a Greek citizen who lives in Moldova, has rental income beginning in 2014 from a house in Kentucky. He had purchased it for his son to live in while attending the university. He just found out that he needs to file a U.S. tax return. He needs to file the tax return by what date if he wants to deduct expenses, by making make the IRC 871(d) election?

- A. August, 2016
- B. October 2016
- C. December 2016
- D. April 2018

**TAX LAW WRAP-UP**

**23. Which of the following C corporation year ends do NOT have a six-month extension for their income tax returns after this year.**

- A. December 31 and June 30
- B. December 31 and March 31
- C. June 30 and September 30
- D. March 31 and September 20

**24. Which of the following is the earliest date that the change in the definition of "understatement of gross income" is first effective:**

- A. Returns required to be filed after December 31, 2015
- B. Returns filed after July 31, 2015
- C. Returns filed after November 15, 2015
- D. Returns filed after December 31, 2015

**25. Which of the following is the first year taxpayers claiming the Education Tax Credits will be denied the credit if a Form 1098T is not received:**

- A. Years beginning after December 31, 2014
- B. Years beginning after December 31, 2015
- C. Years beginning after December 31, 2016
- D. Years beginning after December 31, 2017

**26. The new uniform basis provision found in Section 1014 is first effective with:**

- A. Returns required to be filed after July 31, 2015
- B. Returns required to be filed after December 31, 2015
- C. Returns filed after July 31, 2015
- D. Returns filed after December 31, 2015

**27. The refundable portion of the Child Tax Credit will be denied to any taxpayer who excludes from AGI:**

- A. Any Foreign Earned Income
- B. Workers Compensation
- C. Cancellation of Indebtedness income
- D. Gain from the sale of a principal residence

**EXPATRIATION TAX**

**28. The trend of U.S. citizenship renunciations appears to be:**

- A. Increasing modestly.
- B. Decreasing.
- C. Holding steady.
- D. Promising for tax professionals seeking a new business.

**29. Citizenship-based taxation is based on the premise that:**

- A. It was upheld by the Supreme Court in 1924.
- B. The situs of a taxpayer's income and assets determines the U.S. government's ability to impose tax.
- C. Tax credits for foreign income taxes paid will offset all dilatory effects of double taxation.
- D. Federal tax law should parallel that of individual states.

**30. Gifts and bequests made by an expatriate to U.S. citizen and resident donees:**

- A. Are subject to the Expatriation Tax regime for ten years after the date of expatriation.
- B. Are taxed to the donor at the highest marginal Gift or Estate Tax rate in effect at the time of the asset transfer.
- C. May pass tax-free to non-U.S. citizens.
- D. Are eligible for the Unified Credit.

**31. The Expatriation Tax:**

- A. Is an asset-based tax assessed on all of the expatriate's property held at death.
- B. Is subject to a once-in-a-lifetime exclusion currently set at \$600,000.
- C. Must be paid immediately on the date of expatriation when filing Form 8854.
- D. May be deferred until the year in which some or all of the expatriate's assets are actually sold.

**32. The mark-to-market regime of the Expatriation Tax requires that:**

- A. The expatriate's assets are deemed sold on the day of expatriation.
- B. The resulting phantom gains and losses of the deemed sales are reported on the individual's Form 1040 in the year after expatriation.
- C. Actual gains and losses resulting from eventual sales are adjusted for amounts previously taxed at the time of expatriation.
- D. All of the above.
- E. none of the above.

**33. U.S. citizenship may be relinquished by doing all of the following except:**

- A. Serving in the military of an enemy state.
- B. Accepting policy-level employment with a foreign government.
- C. Turning in a valid U.S. passport to a U.S. Customs official.
- D. Swearing an oath of renunciation.

**34. U.S. resident aliens are subject to the Expatriation Tax if:**

- A. They abandon their Green Card.
- B. Their immigration status has been administratively or judicially revoked.
- C. They fail to affirmatively waive tax treaty benefits that allow them to be treated as residents of a foreign country.
- D. They are deemed to be long-term permanent residents who have formally renounced their citizenship.

**35. The presumption of tax avoidance was:**

- A. Introduced when the IRS could not subjectively determine if a taxpayer's departure was motivated by tax avoidance.
- B. Replaced with a definition that held that high-income, high-net worth taxpayers would expatriate for tax avoidance reasons only.
- C. Eliminated with the passage of the Heroes Earnings Assistance and Relief Act of 2008.
- D. All of the above.
- E. None of the above.

**36. A covered expatriate in 2015 is defined as an individual who leaves the U.S. and has:**

- 1. An average annual income in excess of \$160,000.
  - 2. An average annual U.S. income tax liability in excess of \$160,000.
  - 3. A net worth in excess of \$2 million.
- A. 1 or 3.
  - B. 2 or 3.
  - C. 1 and 3.
  - D. 2 and 3.

**37. Assets exempt from the Expatriation Tax:**

- A. Include IRAs, Sec.529 Plans and HSAs.
- B. Are subject to a 30% withholding tax each time a distribution is made to a beneficiary.
- C. Both a and b.
- D. Neither a or b.

**38. The tax filing requirements of an expatriate include all of the following except:**

- A. Form 4079 to determine the individual's present citizenship status and his intent to voluntarily relinquish U.S. citizenship.
- B Form 8854 at the time of expatriation, whether or not tax is due.
- C. Form 1040 and all attendant schedules to report phantom gains and losses of all deemed sales.
- D. Form 1040NR for the year of expatriation and for any ensuing year if the taxpayer receives income that is effectively connected with the conduct of a U.S. trade or business.

**TAX COURT CORNER**

**39. In the Charnas case, the Tax Court ruled that the IRS abused its discretion because:**

- A. The Appeals Officer had failed to consider petitioner's reasons for his fluctuating income
- B. The IRS had failed to provide adequate meeting space at the office where petitioner's CDP hearing was scheduled to take place
- C. The Appeals Officer called in sick during the day of the petitioner's scheduled meeting but as it turned out, the Appeals Officer wasn't really sick that day.
- D. None of the above.

**40. IRS regulations provide that:**

- A. A taxpayer's preference as to whether a CDP hearing should be a correspondence hearing, a phone meeting, or a face to face meeting should not be considered.
- B. The CDP hearing should be held within two weeks of the taxpayer's filing Form 12153, Request for a Collection Due Process or Equivalent Hearing.
- C. None of the above.



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# National Conference Highlights

**T**he 2015 NAEA National Conference was held August 2-4. This year marked the 30th anniversary of the National Tax Practice Institute™ and was packed full of special events, networking opportunities, and the highest-quality representation education. Nearly 700 tax professionals gathered in Las Vegas, NV to participate in NTPI® Level 1, 2, or 3, Graduate Level, or Tax Preparation Issues track. As always, challenging and intensive courses honed the knowledge and skills participants need to smoothly guide their clients through the often challenging maze of IRS codes, internal regulations, and agency structure. NAEA is proud to announce that 125 individuals completed Level 3 and now hold the distinguished designation of NTPI Fellow®. Congratulations to the graduates!



1. President Terry Durkin, EA, presents Aaron Blau, EA, CPA, with the the first-ever Emerging Leader Award.
2. NAEA members gather around Karen Hawkins, the immediate-past director of the IRS Office of Responsibility. Hawkins gave the keynote speech at Sunday's welcome reception.
3. Held to benefit NAEA's Education Foundation, auctioneer Bert Hartmann, EA, worked his magic at the Sharing Pearls of Wisdom auction. At the conference, the Foundation raised over \$14,000!

Photos courtesy of Sammy Vassilev

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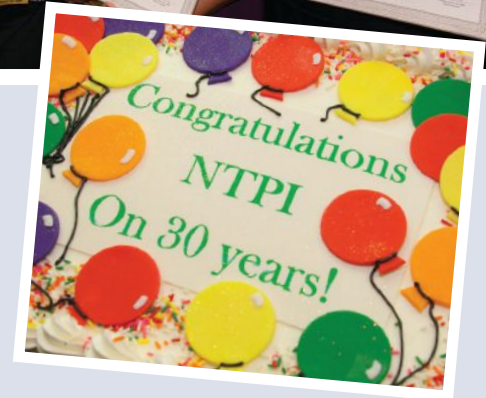
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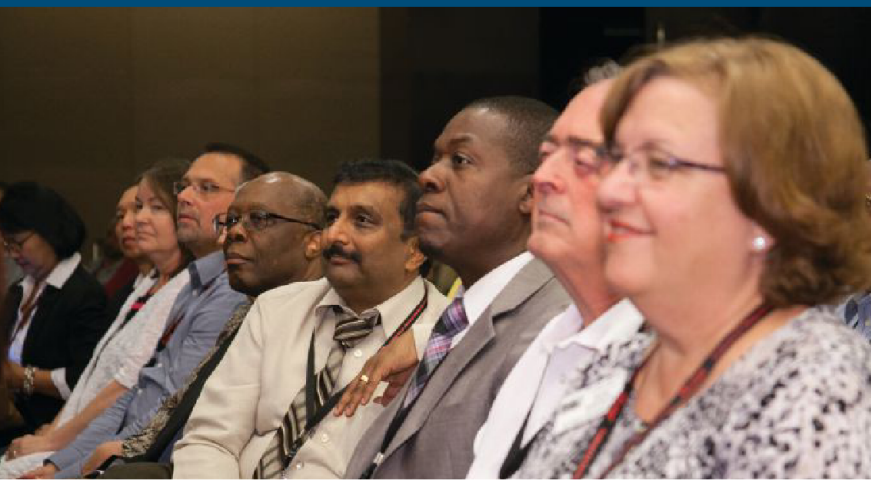
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## WHAT YOU SHOULD KNOW BEFORE TAX SEASON HITS:

# THE OFTEN-OVERLOOKED BENEFITS OF NAEA MEMBERSHIP

**N**AEA's advocacy and public relations efforts are fairly well-known benefits of membership. The weekly E@lert e-newsletter and the EA Journal are hard to miss because they are delivered directly to email and postal boxes. Surprisingly, the majority of members are missing out on other benefits available to NAEA members—because they aren't aware they exist! With tax season on the way, there are a few things I'd like to call to your attention.

### RESOURCES

Have you visited the Member Resources page of the NAEA website? That's where you can find member discounts on products and services that you use regularly. Companies that offer discounts to NAEA members include: Ad-Hold on-hold messaging; the big four rental car companies; CCH; Gleim;

OfficeMax; Paychex; Quickfinder; TASC; TheTaxBook; UPS; and more. GetNetSet, a company that develops websites for accounting and tax professionals, gives NAEA members a 20 percent discount. There's also a link to CalSurance, the company NAEA worked with to develop affordable professional liability insurance specifically for enrolled agents that can only be sold to NAEA members. Make sure to check out the page for even more helpful resources for your business!

If you aren't connected with NAEA on social media, please think about doing so before tax season. Our members-only Facebook, LinkedIn, and forums on [naea.org](http://naea.org) are venues where members post tax questions that are answered immediately by generous and helpful members. Here, members discuss everything from CE, businesses and payroll taxes, Corp./LLC/Partnership questions to collection issues, eFiling and estates,

and gifts and trusts. Those of you on Twitter can keep track of tax and association news by following NAEA: @Tax\_Experts.

Another place members can find answers to their questions is the NAEA Tax Research Center. NAEA Members have exclusive, complimentary access to this searchable tax knowledge database.

### TOOLS

I hope that by now most of our members have visited the "Tools for Members" section of the NAEA website. Here, members can find a wealth of devices designed to help promote their practices and the enrolled agent profession. One of my favorite tools is a brochure that explains the qualifications of EAs to taxpayers in an attractive and professional format. Some members mail these to their clients, while others keep them in their offices as waiting room reading material.



## WHAT YOU SHOULD KNOW BEFORE TAX SEASON HITS:

### THE OFTEN-OVERLOOKED BENEFITS OF NAEA MEMBERSHIP

Any public event is a chance to educate the public about EAs, and handing out these brochures is a good start! You can order these brochures from the NAEA store or download and print them from your office. NAEA also hired a design firm to create EA print ads. These were designed for members to personalize and send to local media. Why pay for design if we've already done so?

Another item you may not know is available is an EA public service announcement (PSA) that NAEA created for member use. There are also video and radio commercials as well as regularly updated client newsletter articles for members to use in their marketing. NAEA and enrolled agent logos are available in multiple formats for print or web. They can be used on business cards, websites, folders, and pretty much anywhere you need one! Additionally, customizable press releases

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have helped many members make it into the local media by announcing milestones, such as passing the SEE, becoming an NTPI Fellow®, or joining NAEA.

These are just a few of the benefits an NAEA membership offers that can help you through tax season. Don't forget to connect with your state affiliate and local chapter to gain access to valuable, localized resources. NAEA members tend to be active, enthusiastic, dedicated people and the lifelong relationships and friendships that have been formed through the organization are priceless!

So, what are you waiting for? It's almost tax season! Get out there and flex your tax expert muscles. NAEA is here to help you every step of the way. **EA**

### About the Author

**Gigi Thompson Jarvis, CAE**, is NAEA's Sr. Director of Communications and Marketing. She has worked in PR, marketing, and communications for over twenty years. Gigi earned a bachelor's degree in English Literature from Emory University and a Master's in Communications for the University of Georgia.

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