Remarks from Beanna

2017, seems like just yesterday it was 2000 and we were all waiting for the world to end. Here it is 17 years later and we are gearing up for the filing season. I hope there is not an analogy here!

We have gone to the ncpe Fall Update and ordered all the tax forms, copy paper and printer cartridges we anticipate needing. We have sent out the tax organizers, checked our software and booked appointments. We are just waiting for the first appointments to come in.

In the busy season, let us remember who we are. We are the unsung heroes of our tax system. We are those who work diligently in order that our taxpayers pay the lowest legal amount of tax. We are the champions of taxpayer rights and work tirelessly to ensure every taxpayer is treated with the courtesy and respect they deserve.

What I am saying is do what you do with pride! The taxpayers you serve deserve you, America depends upon you and your service to effective tax administration is an honored tradition. As we begin this adventure…… Start well, Stay well and Finish well!

Beanna

Beanna@ncpefellowship.com
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The Cures Act Brings Relief to Employers Without Group Insurance

H.R. 34 containing provisions that establish Small Business HRAs (SBHRA) was signed into law, December 13, 2016. What does this mean to you and your Clients who own small businesses? That employers with more than one but fewer than 50 full-time employees can once again use a Health Reimbursement Arrangement (HRA) to assist employees with health insurance premiums and out-of-pocket medical expenses without sponsoring Group insurance. (Integrated and One Employee HRA Plans are already compliant with federal law.)

You can begin providing tax relief to Clients who were previously ineligible for HRA employee health & welfare benefit Plans as early as January 1, 2017.

It’s important to know that HRA Plans require your Clients to plan ahead. Here are some key things to be aware of:

- Clients can write off insurance premiums beginning the first of the year in which they enroll.
- But they cannot write off out-of-pocket medical expenses until the first of the month in which they enroll.

The earlier your Clients sign up during a calendar year, the more they’ll save on their taxes.

Healthcare Reform will continue to bring BIG changes that will affect you.

- In 2013, IRS Notice 2013-54 was passed requiring HRAs with more than one eligible employee to be integrated with Group health insurance. TASC’s Legal and Governmental Affairs team spent countless hours researching this provision before offering compliant solutions for small business owners who had individual insurance. Clients who enrolled in our Non-Employer Sponsored Premium (NESP) and Non-Excepted Flexible Spending Accounts (NEFSA) received three additional years of tax savings (2014, 2015, and 2016).
- On December 16, 2015, the IRS provided further guidance on the application of Group health plan market provisions in the form of IRS Notice 2015-87. This provision required TASC to suspend the sales of its NESP/NEFSA Plans and survey Clients to determine the compliance of their Plans. TASC has spent the past year transitioning or cancelling non-compliant Plans.

Update: While the NESP/NEFSA Plan is still non-compliant, TASC will reach back out to these impacted Clients to inform them of the new SBHRA tax-advantaged benefit option.

Look to TASC as your back-office partner. TASC will continue to monitor and respond to the nation’s Healthcare Reform legislation. We will make every effort to avoid posing financial harm to our customers. And, as always, TASC will guarantee and defend Clients with compliant Plans.

Editor’s Note: While this may sound like an advertisement for TASC it is really a “thank you” for their efforts on behalf of small business, our clients. Thank you TASC, a sponsor of the ncpeFellowship. The following article describes what the legislation actually does.

Congress Eliminates IRS Penalty on Employer Reimbursements for Health Insurance

The Senate passed legislation eliminating a tax penalty on employers who reimburse employees for the cost of health insurance premiums, following passage of the measure last week in the House.

The IRS began enforcing the penalty on employers last year, even though it isn’t part of the Affordable Care Act. Employers who violate the rule can be fined up to $100 per day for each employee, or up to $36,500 a year, which is 18 times more than the penalty imposed on larger employers that don’t offer insurance to workers.

Under Section 18001 of the 21st Century Cures Act, business owners would be permitted to compensate employees for the cost of individual insurance premiums or medical visits. President Obama has issued a statement in support of the legislation.

The National Federation of Independent Business praised passage of the bill. “Both the Senate and the House have now passed critical legislation to protect small business owners from outrageous IRS fines,” said NFIB president and CEO Juanita Duggan in a statement. “Our research showed that a significant percentage of NFIB members reimbursed employees for the cost of health insurance, a practice the IRS tried to stamp out despite the lack of clear direction from Congress. Now Congress has acted to make it clear that businesses should not be punished just for trying to help their employees pay for health care costs.”

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The legislation includes a number of other sweeping health care provisions, including more funding for research into
diseases, improvements in the mental health treatment system, and an overhaul of the regulatory system for medical devices and pharmaceuticals. It also includes funding to fight opioid drug abuse, collect genetic information from a million volunteers for medical research purposes and provide money to back Vice President Joe Biden’s “moonshot” effort to find a cure for cancer.

“One of the last times I’ll preside over an actual Senate vote count,” Biden tweeted Monday. “A lot of lives will be saved by this bill, God willing.”

The bill also provides more authority for the National Institutes of Health to fund innovative medical research, allowing it to set up “Eureka prize” competitions to find effective treatments.

IRS Says 2017 Tax Season Starts January 23

The Internal Revenue Service said Friday that next tax season will begin on Monday, Jan. 23, 2017, while warning some taxpayers to expect longer waits for their tax refunds. The tax day deadline will be April 18.

The IRS said it would start accepting electronic tax returns on January 23 and it anticipates more than 153 million individual tax returns to be filed next year. The IRS believes more than four out of five tax returns will be prepared electronically using tax preparation software, as was the case last year.

However, even with the January 23 start date, the IRS also pointed out that many software companies and tax professionals will begin accepting tax returns before that date and then they’ll submit the returns when the IRS’s systems open. The IRS will also start processing paper tax returns on January 23. The IRS noted there is no advantage to filing tax returns on paper in early January instead of waiting until January 23 for the IRS to begin accepting e-filed returns.

The IRS also reminded taxpayers that a new law will require the agency to hold back tax refunds claiming the Earned Income Tax Credit and the Additional Child Tax Credit until February 15. The IRS wishes taxpayers to be aware it will take several days for these tax refunds to be released and processed through financial institutions. Factoring in weekends and the President’s Day holiday, the IRS is warning many affected taxpayers may not have actual access to their tax refunds until the week of February 27.

“For this tax season, it’s more important than ever for taxpayers to plan ahead,” IRS Commissioner John Koskinen said in a statement. “People should make sure they have their year-end tax statements in hand, and we encourage people to file as they normally would, including those claiming the credits affected by the refund delay. Even with these significant changes, IRS employees and the entire tax community will be working hard to make this a smooth filing season for taxpayers.”

The IRS also reminded taxpayers to hold onto copies of their prior-year tax returns for at least three years. Taxpayers who are changing the tax software products they use this filing season will need to get their adjusted gross income from their 2015 tax return in order to file electronically. The Electronic Filing Pin is no longer an option. Taxpayers can visit IRS.Gov/GetReady to get more advice on preparing to file their 2016 tax return.

The filing deadline to submit 2016 tax returns is Tuesday, April 18, 2017, instead of the traditional April 15 date. In 2017, April 15 falls on a Saturday, and this would usually move the filing deadline to the following Monday, April 17. However, Emancipation Day—a legal holiday in the District of Columbia—will be observed on that Monday, which pushes the nation’s filing deadline to Tuesday, April 18, 2017. Under the tax law, legal holidays in the District of Columbia affect the filing deadline across the nation.

“The opening of filing season reflects months and months of work by IRS employees,” Koskinen said. “This year, we had a number of important legislative changes to program into our systems, including the EITC refund date, as well as dealing with resource limitations. Our systems require extensive programming and testing beforehand to ensure we’re ready to accept and process more than 150 million returns.”

The IRS noted that it has been working in partnership with the tax industry and state revenue departments as part of its Security Summit initiative to strengthen tax processing systems to protect taxpayers from identity theft and tax refund fraud. Several new provisions are being added in 2017 to expand on the progress made this past year.

Regulations Implement New Due-diligence Requirements for Tax Return Preparers

Temporary and proposed regulations issued by the IRS on Monday implement new due-diligence requirements that tax return preparers must follow when they prepare returns that claim a child tax credit, additional child tax credit, or American opportunity tax credit (T.D. 9799; REG-102952-16).

The Protecting Americans From Tax Hikes Act, P.L. 114-113, amended Sec. 6695, the preparer penalties provision, to apply to tax return preparers who fail to exercise due diligence
when preparing a taxpayer's return with a claim for the child tax credit or additional child tax credit under Sec. 24, or the American opportunity tax credit under Sec. 25A. Before these changes, the due-diligence requirements and the penalties for noncompliance applied only to claims for the earned income tax credit (EITC). These new rules apply for returns or claims for refund prepared on or after Dec. 5, 2016, for tax years beginning after Dec. 31, 2015.

In the temporary regulations, the IRS adapted the current due-diligence requirements that apply to the EITC for those other credits. The IRS has also revised Form 8867, Paid Preparer’s Due Diligence Checklist, to include all of the credits. The form was previously called the Paid Preparer’s Earned Income Credit Checklist.

To comply with the due-diligence requirements, besides submitting Form 8867, the preparer must complete the worksheet in Form 1040, 1040A, 1040EZ, or any other form the IRS may prescribe for each credit, including how each credit was computed and the information used to make the computation. The preparer must not know or have reason to know that any information the preparer used to determine eligibility for, and the amount of, each credit is incorrect. The preparer also must make reasonable inquiries when required, documenting those inquiries and responses contemporaneously.

Finally, the preparer must retain for three years the Form 8867, the worksheet (or alternative records), and the record of how and when the information that was used to determine eligibility for, and the amount of, each credit was obtained by the preparer, including the identity of any person furnishing information and a copy of any document the preparer relied on in preparing the return. The regulations contain numerous examples illustrating how the penalties are to apply.

The regulations were also amended to reflect other legislative changes that subject the penalty amount to an inflation adjustment. The $500 penalty for each breach of the rules, which applies separately to each credit, is adjusted for inflation. For 2016 and 2017, the inflation-adjusted penalty is $510.

The text of the proposed regulations cross-references the temporary regulations; the IRS is asking that comments on the proposed regulations be received by March 6, 2017.

**Retrospective on Key Tax Developments in 2016**

This retrospective provides a thorough update on tax developments during the 2016 calendar year, including tax laws, regs, rulings, significant case law, and other guidance that may affect 2016 returns and planning for the 2017 tax year and beyond.

A number of the provisions listed are currently in effect only through the end of the year as Congress has failed to extend them beyond their expiration date. Whether some or all of these provisions may ultimately be retroactively extended (as many expect), made permanent (as many have recently been made) or stay expired (as sometimes happens) remains to be seen.

One of the largest developments of the 2016 calendar year, while not strictly a tax development by any means, was the election of a Republican President and Congress. Their strong opposition to some of the regulations mentioned above—and to major pieces of legislation enacted over the past few years, such as the Affordable Care Act (“Obamacare”) and the Foreign Account Tax Compliance Act (FATCA)—calls into question whether those tax rules will remain in force. And although further speculation is beyond the scope of this Retrospective, it is undeniable that many analysts are predicting a massive overhaul of the current tax system in 2017.

**Taxable & Exempt Income**

- Identity protection services received without cost, before or after a data security breach, are excludable from income; cash received in lieu of such services or proceeds received under an identity theft insurance policy are not excludable.

- Relocation and cleaning expense reimbursements to those affected by the large California natural gas leak are excludable from income; payments made to family and friends for housing them are not excludable.

- IRS disagrees with a case holding that a malpractice settlement received from accountants who advised taxpayers to participate in an abusive tax shelter was excludable from income.

- Under final regs, employees electing not to defer compensation income from restricted property no longer need to file a copy of the election statement with their returns.

- The maximum fair market value (FMV) for 2016 for which the fleet-average valuation method can be used drops to $21,200 for a passenger auto and increases to $23,100 for a truck or van.

- The maximum FMV for 2016 for which the cents-per-mile valuation method can be used drops to $21,200 for a passenger auto and increases to $23,100 for a truck or van.

- The optional standard mileage rate for valuing an employee's use of an employer-provided auto decreased to 54¢ per mile for 2016 (53.5¢ for 2017).

- The maximum FMV for 2016 for which the cents-per-mile valuation method can be used drops to $21,200 for a passenger auto and increases to $17,700 for trucks and vans.

- For 2016 and 2017, an employee can exclude up to $255 a month of employer-provided qualified parking benefits and the same amount for the combined value of transit passes and transportation in a commuter highway vehicle.

- Lump-sum cash payments to employees to reflect retroactive legislation increasing the exemption amount for

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Lump-sum cash payments to employees to reflect retroactive legislation increasing the exemption amount for...
certain qualified transportation fringe benefits are taxable compensation in certain situations.

• The maximum exclusion for employer-provided adoption assistance is $13,460 for 2016, and $13,570 for 2017. For 2016, the exclusion phases out for taxpayers with AGI over $201,920 and is completely eliminated at $241,920 (for 2017, these amounts are $203,540 and $243,540).

• Coverage by an employer wellness program that provides medical care is generally excluded from an employee’s income, but not cash payments of gym memberships or reimbursement of a cafeteria plan pretax deferral used for a gym membership.

• Cafeteria plan rules have been expanded to permit purchase of qualified health care benefits in more situations, including for larger employers.

• An employee can’t contribute to a health FSA through salary reduction contributions in excess of $2,550 for 2016 ($2,600 for 2017).

• Proposed reliance regs provide guidance on a number of nonqualified deferred compensation subjects.

• Proposed reliance regs provide guidance on income from adjustments to stock rights.

• For 2016 and 2017, the income threshold for the definition of a “highly compensated employee” under the employer-owned life insurance rules is $120,000.

• IRS has ruled on when pension payments made during phased retirement are not “received as an annuity.”

• The value of Olympic and Paralympic medals, and prizes awarded by the United States Olympic Committee, are excludable for athletes with AGI up to $1 million ($500,000 for married separate return filers).

• The per-diem dollar threshold in computing the limits for the exclusion of benefits from long-term care insurance is $340 for 2016 and $360 for 2017.

• Damages for wrongful incarceration are specifically excluded from income but, according to IRS, not damages for wrongful incarceration of a person released before trial and not convicted of a crime.

• The exception from COD income for certain discharges of qualified principal residence indebtedness was extended through 2016.

Deductions & Expenses of a Business

• For 2016 and 2017, the inflation-indexed definition of a high deductible health plan (HDHP) is a health plan with an annual deductible that is not less than $1,300 for self-only coverage or $2,600 for family coverage, and with respect to which the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $6,550 for self-only coverage or $13,100 for family coverage. For 2016, the limitation on deductible contributions for an individual with self-only coverage under an HDHP is $3,350 ($3,400 for 2017), and the limitation for an individual with family coverage is $6,750 (same for 2017).

• For 2016, the standard mileage rate for business travel is 54¢ (53.5¢ for 2017).

• The simplified per diem rates for post-Sept. 30, 2016 travel are $282 for high-cost areas and $189 for all other localities (up from $275 and $185).

• The provision treating Puerto Rico as included in the U.S. for purposes of the domestic production activities deduction (DPAD) was extended through 2016.

• For 2016, taxpayers using their car to travel to a new location because of a change in their work location may claim a 19¢ per-mile moving expense deduction (17¢ for 2017).

• IRS has provided a safe harbor for retail and restaurant businesses for when to deduct/capitalize remodeling costs.

Interest Expenses, Taxes & Losses

• IRS’s debt vs. equity regs provide documentation requirements for treating related-party interests as indebtedness and treat certain other interests as stock.

• IRS agrees that the qualified residence interest $1 million acquisition indebtedness limitation and the $100,000 home equity debt limitation are applied on a per-taxpayer basis rather than a per-residence basis.

• The treatment of mortgage insurance premiums as qualified residence interest was extended through 2016.

• Real property taxes may be deducted under a safe harbor method by homeowners who receive HFA’s Hardest Hit Fund payments.

• The election under Code Sec. 164 to deduct state and local sales taxes instead of state and local income taxes was made permanent.

Depreciation & Expensing

• 3-year MACRS depreciation for all racehorses was extended through 2016.

• 7-year MACRS depreciation for motorsports entertainment complexes was extended through 2016.

• 15-year MACRS depreciation for qualified leasehold
Improvement property, qualified restaurant property, and qualified retail improvement property was made permanent.

- Faster MACRS depreciation for qualified Indian reservation property was extended through 2016.
- IRS provided relief to taxpayers who didn’t take actions regarding bonus depreciation because it was extended retroactively.
- 50% bonus depreciation was extended to apply to property placed in service before 2018 (before 2019 for certain long-production-period property and aircraft). 40% bonus depreciation applies to property placed in service in 2018 (2019 for certain long-production-period property and aircraft), and 30% bonus depreciation applies to property placed in service in 2019 (2020 for certain long-production-period property and aircraft).
- For certain fruit or nut bearing plants, taxpayers can elect to apply bonus depreciation under special rules.
- Bonus depreciation is now allowed for all “qualified improvement property,” not just “qualified leasehold improvement property.”
- Time-of-acquisition requirement for bonus depreciation is simplified.
- Trading bonus and accelerated depreciation for certain otherwise-deferred credits was extended, with modifications.
- Bonus depreciation for certain property used in biofuel production was extended through 2016.
- The enhanced Code Sec. 179 expensing limit was made permanent and is $500,000 for 2016 and $510,000 for 2017.
- The enhanced investment-based phase-out level for Code Sec. 179 expensing was made permanent and is $2,010,000 for 2016 and $2,030,000 for 2017.
- The right to revoke or alter a Code Sec. 179 expensing election without IRS’s consent was made permanent.
- More generous Code Sec. 179 expensing election for qualified zone property generally was extended to property placed in service through 2016.
- Eligibility of qualified real property for Code Sec. 179 expensing was made permanent, and the $250,000 cap was removed.
- Eligibility of off-the-shelf computer software for Code Sec. 179 expensing was made permanent.
- Code Sec. 179 expensing is now allowed for air conditioning and heating units.

- For new vehicles bought and placed in service in 2016, and that qualify for bonus first-year depreciation, the boosted first-year dollar limit is $11,160 for autos (not trucks or vans), and $11,560 for light trucks or vans (passenger autos built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis). The regular first-year luxury auto limits (e.g., for vehicles not eligible for bonus depreciation, or for which the taxpayer elects out of bonus depreciation) are $3,160 for autos and $3,560 for light trucks or vans.
- IRS issued revised income inclusion amounts for autos, trucks and vans leased in 2016.
- 50% expensing for qualified advanced mine safety equipment was extended through 2016.
- Expensing for certain film and TV production costs was extended through 2016, and, for productions that begin in calendar year 2016, includes qualified live theatrical productions.
- The energy efficient commercial building property deduction was retroactively extended through 2016 and modified to reflect updated energy efficiency standards.
- Ownership of an oil or gas interest is not required for rapid amortization of geological and geophysical expenses.
- Cost of acquiring seismic data is ineligible for rapid amortization as a geological or geophysical expense if it is no longer useful after acquisition.
- IRS provided guidance for how to treat internet domain names under the rules for amortizable section 197 intangibles.

Charitable Contributions & Medical Expenses

- The amounts of benefits received by charitable donors that are considered to be inconsequential have increased for 2016 and 2017. Items are fully deductible if: (1) the value of all benefits received isn’t more than $106 for 2016 ($107 for 2017); or (2) the amount contributed to the charity is at least $53 for 2016 ($53.50 for 2017) and the donor receives only token benefits (bookmarks, calendars, mugs, posters, tee shirts, etc.) generally costing no more than $10.60 for 2016 ($10.70 for 2017).
- The above-basis deduction rule for charitable contributions of food inventory by both non-corporate taxpayers and C corporations was made permanent.
- The limitation on deductible contributions of food for taxpayers other than C corporations was permanently increased to 15% of net income, and the limitation on deductible contributions of food inventory for C corporations was permanently increased to 15% of taxable income.
For contributions by individuals (including ranchers and farmers), the increased charitable deduction for qualified conservation easements was made permanent.

Agricultural research organizations are now 50% charities.

For contributions by corporate ranchers and farmers, the increased charitable deduction for qualified conservation easements was made permanent.

For purposes of the corporate charitable deduction ceiling, Alaska Native Corporations are allowed to deduct donations of conservation easements up to 100% of taxable income.

Accrual corporations may generally deduct charitable contributions made after the end of their tax year if the contribution is made by the 15th day of the fourth month following the close of the year.

The maximum premiums paid for a qualified long-term care insurance contract, deductible as a medical expense, have increased for 2016 and 2017.

The mileage rate for use of a car for qualified medical transportation is 19¢ per mile for expenses paid or incurred in 2016 (17¢ for 2017).

The Tax Court held that payments made under a court’s pretrial order meet the “written instrument” requirement under the deductible alimony rules.

Education Tax Breaks & ABLE Accounts

The enhanced American Opportunity Tax Credit (AOTC) was made permanent with heightened verification processes and extended paid-preparer due diligence requirements.

For 2016 and 2017, the maximum AOTC/Hope Scholarship Credit is $2,500. It phases out at the same levels of modified AGI in both years ($80,000; $160,000 for a joint return).

For 2016, the Lifetime Learning credit phases out for taxpayers with modified AGI in excess of $55,000 ($111,000 for a joint return). For 2017, the corresponding figures are $56,000 and $112,000.

For 2016, the higher education exclusion for savings bond income phases out ratably for taxpayers with modified AGI between $77,550 and $92,550 ($116,300 to $146,300 for joint filers). For 2017, the corresponding ranges are $78,150 to $93,150, and $117,250 to $147,250.

For 2016, the deduction for interest paid on qualified higher education loans phases out ratably for taxpayers with modified AGI between $65,000 and $80,000 ($130,000 and $160,000 for joint filers). For 2017, the corresponding figures are $65,000 and $80,000, and $135,000 and $165,000.

The up-to-$250 above-the-line deduction for teachers’ out-of-pocket classroom-related expenses was made permanent and indexed for inflation (with no increase for 2016 and 2017).

The above-the-line deduction for qualified tuition and related expenses was extended through 2016.

The amount of aggregate contributions from all taxpayers that a qualified ABLE account may receive during 2016 or 2017 is $14,000.

Affordable Care Act Provisions

There is a 2-year moratorium on the 2.3% medical device excise tax—i.e., it will not apply to sales during 2016 and 2017.

The annual fee on health insurance providers is suspended for calendar year 2017.

For 2016, the monthly national average bronze plan premium for purposes of the individual shared responsibility payment is $223 for an individual and $1,115 for a family of 5 or more.

The Cadillac excise tax on high cost employer-sponsored coverage was delayed for two years; it goes into effect for tax years beginning after 2019.

The adjusted applicable dollar amount for the Patient-Centered Outcomes Research Institute fee is $2.26 for policy years and plan years ending on or after Oct. 1, 2016 and before Oct. 1, 2017.

IRS provided Code Sec. 45R health care credit relief to certain small employers in Wisconsin where no Qualified Health Plan (QHP) or Small Business Health Options Program (SHOP) Exchange was available for all or part of 2016.

For years beginning after Dec. 31, 2016 (subject to limited transition relief), small employers can establish health reimbursement arrangements (HRAs) for their employees without being subject to a penalty for failure to satisfy the market reform requirements applicable to group health plans.

For years beginning after Dec. 31, 2016, an employee who is provided with a small employer HRA that constitutes “affordable coverage” will not be eligible for a premium assistance tax credit under Code Sec. 36B.

Final regs modify rules on eligibility for and the amount of the Code Sec. 36B premium tax credit.
Business & Personal Tax Credits

- The railroad track maintenance credit was retroactively extended through 2016.
- The mine rescue team training credit was retroactively extended through 2016.
- The solar energy credit was extended for five years and will be gradually phased out over that time.
- The carbon dioxide sequestration credit figures have increased for 2016.
- The work opportunity tax credit was extended through 2019 and expanded to include qualified long-term unemployed individuals.
- The cellulosic biofuel producer credit was extended through 2016.
- The research credit was made permanent.
- The 9% minimum low-income tax credit rate for nonfederally subsidized new buildings was made permanent.
- The production credit for Indian coal facilities was extended through 2016.
- The production tax credit for electricity produced at qualified wind facilities was retroactively extended for five years and gradually phases out over that time.
- The election by a qualified wind facility to take the energy credit instead of the production tax credit was retroactively extended for five years and will be gradually phased out over that time.
- The credit for facilities producing energy from certain renewable resources was modified to include facilities, the construction of which begins before 2017.
- The empowerment zone employment credit was extended through 2016.
- The Indian employment tax credit was extended through 2016.
- The new markets tax credit was extended through 2019.
- The credit for biodiesel and renewable diesel was extended through 2016.
- The credit for energy-efficient new homes was extended through 2016.
- The employer wage credit for employees who are active duty members of the uniformed services was made permanent and expanded to remove a prior limitation based on the number of employees.
- The maximum amount of the earned income tax credit and the credit’s AGI-based phaseout thresholds have increased for 2016 and 2017.
- For 2016, the maximum amount of investment income that can be received for EITC purposes is $3,400 ($3,450 for 2017).
- The Code Sec. 35 health coverage tax credit was retroactively extended and modified.
- For tax years beginning after 2014, taxpayers taking the Code Sec. 911 foreign-earned income/foreign housing exclusions can’t claim the refundable child tax credit.
- The nonbusiness energy property credit was extended through 2016.
- The residential energy-efficient solar property credit, for certain qualified solar electric property expenditures and qualified solar water heating property expenditures used in a taxpayer’s residence, was extended for five years and gradually phases out over that time.
- The new qualified fuel cell motor vehicle credit was extended through 2016.
- The alternative fuel vehicle refueling property credit was extended through 2016.
- The credit for 2-wheeled electric plug-in vehicles was retroactively extended to apply to eligible vehicles acquired in 2015 and 2016, but not for 2014 purchases.
- The AGI amounts used in computing the “saver’s” credit for elective deferrals and IRA contributions increased for 2016 and 2017.
- The qualified zone academy bonds program was extended through 2016.
- The possessions tax credit for American Samoa was extended through 2016.
- Cuba was removed from the list of countries whose taxes can’t be offset by the foreign tax credit.

Sales & Exchanges

- For depreciation purposes, the optional business standard mileage rate for 2016 remains at 24¢ (25¢ for 2017).
- Temporary regs explain how an election to pass the credit for investment credit property to a lessee affects the lessor’s basis in the property.
• Final regs cover transfers of loss property to corporations.

• Form 8971 is a new form that is used to report the estate tax value of inherited property to beneficiaries.

• Proposed reliance regs explain how the requirement for consistent basis reporting for estate and income tax purposes applies for determining the basis of inherited property.

Individual Tax Computation

• The standard deduction amounts are: for joint filers and surviving spouses, $12,600 for 2016 ($12,700 for 2017); for heads of household, $9,300 for 2016 ($9,350 for 2017); for singles, $6,300 for 2016 ($6,350 for 2017); and for marrieds filing separately, $6,300 for 2016 ($6,350 for 2017). For 2016 and 2017, the basic standard deduction of individuals who can be claimed as dependents by another taxpayer can’t exceed the greater of (a) $1,050 or (b) $350 plus the individual’s earned income; and, it can’t be more than the regular basic standard deduction amount.

• The inflation-adjusted threshold amounts for 2016 at which the limitation on itemized deductions (the “Pease” limitation) begins are: $311,300 for joint returns or surviving spouses ($313,800 for 2017), $285,350 for heads of household ($287,650 for 2017), $259,400 for single filers ($261,500 for 2017), and $155,650 for married individuals filing separately ($156,900 for 2017).

• For 2016 and 2017, the personal exemption amount is $4,050.

• The inflation-adjusted threshold amounts for 2016 and 2017 at which the personal exemption phaseout (PEP) begins are: $311,300 for joint returns or surviving spouses ($313,800 for 2017), $285,350 for heads of household ($287,650 for 2017), $259,400 for single filers ($261,500 for 2017), and $155,650 for married individuals filing separately ($156,900 for 2017).

• For 2016 and 2017, under the kiddie tax, the parents’ highest tax rate applies to a child’s unearned income over $2,100.

• For 2016, the dollar thresholds for the optional methods of computing net earnings from self-employment are $5,457 and $7,560 ($5,630.75 and $7,800 for 2017).

Capital Gains & Losses

• For tax years beginning in 2016, a corporation is subject to a 23.8% alternative tax rate on its qualified timber gain.

• The Sixth Circuit, disagreeing with the Tax Court, held that a foreign currency option is a foreign currency transaction that is treated as a Section 1256 contract.

• Capital gain treatment doesn’t apply to forfeited deposit received on cancelled sale of trade or business property.

Tax Accounting

• Final regs provide a simplified accounting method for gains and losses on shares in money market funds.

• IRS disagrees with Third Circuit decision finding customer discount rebates satisfied “all events” test.

• Bonus depreciation isn’t taken into account in applying the long-term contract percentage of completion method before 2020 (2021 for property with a long production period).

Tax Withholding

• Partners in a partnership that own a disregarded entity are subject to self-employment tax.

• IRS began accepting applications for professional employer organization (PEO) certification on July 1, 2016, and the first PEO certifications will become effective on Jan. 1, 2017.

• For 2016 and 2017, an employee who can be claimed as a dependent on someone else’s return can’t claim an exemption from withholding if his income exceeds $1,050 and includes more than $350 of unearned income.

• Motion picture payroll service companies that qualify as motion picture project employers can be treated as the employer of their film and television production workers for FICA and FUTA purposes.

• For 2016 and 2017, the threshold amount for cash payments to domestic service employees (e.g., nannies) to be subject to FICA is $2,000.

Alternative Minimum Tax

• For 2016, the inflation-adjusted amount used to determine the tentative minimum tax is $186,300 ($187,800 for 2017).

• For tax years beginning in 2016, the individual alternative minimum tax (AMT) exemption amounts are: $53,900 for unmarried individuals, $83,800 for married individuals filing jointly, and $41,900 (50% of the joint filing amount) for married individuals filing separately. The corresponding 2017 amounts are $54,300, $84,500, and $42,250.

• For tax years beginning in 2016, the AMT exemption amount for estates and trusts is $23,900 ($24,100 for 2017).

• For 2016, the AMT exemption amount for a child subject to the kiddie tax is $7,400 ($7,500 for 2017).
Corporate Tax Computation & S Corporations

• The reduction in the S corporation recognition period for built-in gains tax was made permanent.

• Basis adjustment to stock of S corporations making charitable contributions of property was made permanent.

Corporate Transactions

• A loss on one block of stock exchanged in a reorganization may not reduce gain on another block.

• An acquired taxpayer that elects to treat a stock sale as an asset sale under Code Sec. 338(h) can’t elect the success-based fees safe harbor.

• IRS has provided safe harbors that apply to a parent corporation’s acquisition of control of, and distribution of, a subsidiary when the subsidiary’s shareholders will be substantially restored to their initial positions.

• Distributions after Dec. 6, 2017 generally won’t qualify as a tax-free Code Sec. 355 division if either the distributing or controlled corporation (but not both) is a real estate investment trust.

• Temporary regs provide rules to prevent a C corporation from avoiding gain recognition on certain transactions that occur within 10 years of a Code Sec. 355 distribution.

• Final regs under Code Sec. 367 eliminate the foreign goodwill exception and limit the scope of property that is eligible for the active trade or business exception, subjecting more outbound transfers to current gain recognition.

• Temporary regs provide guidance to determine whether a corporation is a predecessor or successor of a distributing or controlled corporation for purposes of the Code Sec. 355(e) exception to nonrecognition treatment.

Trusts, Estates & Decedents

• For 2016, the threshold amounts of taxable income of trusts and estates to which the 0%, 15% and 20% rates for capital gains and qualified dividends apply are: 0% for amounts up to $2,550 (same for 2017); 15% for amounts over $2,550 and up to $12,400 (up to $12,500 for 2017); and 20% for amounts over $12,400 ($12,500 for 2017).

• For 2016, the threshold amount for the personal exemption for a qualified disability trust is $259,400 ($261,500 for 2017).

• A court disallowed an estate’s set aside deduction where the possibility that the amount could instead go to noncharitable beneficiaries wasn’t so remote as to be negligible.

• Where a grantor gave a distribution committee the power to make distributions, a court held that the committee’s discretionary distributions did not cause the grantor or any of the other beneficiaries to be treated as the owner of the trust for income tax purposes.

Exempt Organizations

• For 2016 and 2017, tax-exempt entities that fail to disclose their participation in prohibited tax shelter transactions are subject to a $100 per day penalty, not to exceed $51,000.

• IRS has released online Form 8976 for use by organizations seeking tax exemption under Code Sec. 501(c)(4) to notify IRS that they are seeking tax-exempt status.

• For 2016, agricultural or horticultural organizations may exclude annual dues up to $161 from unrelated taxable income ($162 for 2017).

• IRS has issued guidance on the requirements for Type III supporting organizations, under the private foundation rules.

Retirement Plans

• For 2016 and 2017, the limit on 401(k) plan elective deferrals is $18,000.

• For 2016 and 2017, the catch-up contribution limit for 401(k), Code Sec. 457, and most Code Sec. 403(b) participants is $6,000.

• For 2016 and 2017, an individual who isn’t an active participant in certain employer-sponsored retirement plans and whose spouse isn’t an active participant may make an annual deductible cash contribution to an IRA up to the lesser of: (1) $5,500 (with an additional $1,000 for those age 50 or older) or (2) 100% of the compensation that’s includible in his gross income for that year. For 2016, the otherwise allowable deduction will be phased out ratably for MAGI between: $98,000 and $118,000 for joint filers ($99,000 and $119,000 for 2017); $61,000 and $71,000 for single taxpayers and heads of household ($62,000 and $72,000 for 2017); and $0 and $10,000 for married taxpayers filing separate returns (same for 2017). For a married taxpayer who is not an active plan participant but whose spouse is such a participant, the otherwise allowable deductible contribution will be phased out ratably for 2016 for MAGI between $184,000 and $194,000 ($186,000 and $196,000 for 2017).

• For 2016, the allowable Roth IRA contribution phaseout amounts have increased for 2016 and 2017. The maximum annual contribution that can be made to a Roth IRA is phased out for taxpayers with MAGI: between $184,000 and $194,000 ($186,000 and $196,000 for 2017) for taxpayers filing joint returns; $117,000 and $132,000 ($118,000 and $133,000 for 2017) for single taxpayers
and heads of household; and $0 and $10,000 for married taxpayers filing separate returns (same for 2017).

- Final regs encourage qualified plans to provide a “split annuity option” by simplifying the calculation of the bifurcated benefits.
- For 2016 and 2017, the compensation amount used in determining “highly compensated employee” status under the qualified plan coverage and eligibility rules is $120,000.
- For 2016, annual additions under a participant’s defined contribution plans cannot exceed $53,000 ($54,000 for 2017).
- For 2016, the annual benefit provided under a defined benefit plan cannot exceed $210,000 ($215,000 for 2017).
- After 2016, IRS will limit the issuance of determination letters for individually designed plans.
- Generally effective for requests submitted on or after Jan. 1, 2017, more retirement plan determination letter requests will be exempt from the user fee requirement.
- Forthcoming regs will ban replacing defined benefit plan lifetime income with a lump sum payment.
- The rule allowing up to $100,000 in distributions from IRAs to be tax-free if distributed directly to a charity was made permanent.
- IRS has established a program allowing taxpayers to self-certify that there was reasonable cause for their missing the 60-day IRA rollover window.

Foreign Income & Transactions

- IRS issued temporary anti-inversion regs that target “serial inverters” and that limit a company’s ability to participate in successive inversions within a relatively short time frame.
- Final regs require country-by-country reporting by large multinational corporations, effective for reporting periods of ultimate parent entities of U.S. MNE groups that begin on or after the first day of a tax year of the ultimate parent entity that begins on or after June 30, 2016.
- Limitations in high-cost localities for purposes of the exclusion for foreign housing costs were updated.
- The Subpart F exception for active financing income was made permanent.
- The look-through rule under which certain payments between related controlled foreign corporations (CFCs) are not treated as foreign personal holding company income (FPHCI) is retroactively extended to apply to tax years of a foreign corporation beginning before 2020.

- Final regs clarify what constitutes “U.S. property” for income inclusion purposes for U.S. shareholders of CFCs.
- The Treasury Department updated the list of international boycott countries.
- Exemption from tax for interest-related dividends and short-term capital gains dividends received from a regulated investment company (RIC) was made permanent.
- RIC qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA) was made permanent.
- Exemption from withholding for interest-related dividends and short-term capital gains dividends received from a RIC was made permanent.
- For dispositions after Feb. 16, 2016, the withholding rate on U.S. real property interest (USRPI) dispositions (and certain dispositions of partnership interests or beneficial interests in a trust or estate where the partnership, estate, or trust directly or indirectly owns a USRPI) increases from 10% to 15%. However, the 10% withholding rate continues to apply to certain dispositions where the transferee uses the property as his residence.
- Temporary regs close a loophole by denying the foreign tax credit with respect to foreign income that is not subject to U.S. taxation because of covered asset acquisitions.
- IRS phased in application of the Code Sec. 871(m) dividend equivalent regs.

Returns & Payments of Tax

- Individual return filing thresholds have increased for 2016 and 2017.
- The filing deadline for 2016 individual returns is Apr. 18, 2017.
- Taxpayers may pay their taxes in cash at participating 7-Eleven stores.
- IRS issued a revised schedule of user fees that raise the fee for a regular installment agreement to $225 as of Jan. 1, 2017, but offer reduced fees for those who set up an installment agreement online.
- Domestic C corporations must file their returns by the 15th day of the 4th month after the end of the tax year (except for C corporations with a tax year that ends on June 30, for which this change won’t apply until tax years beginning after 2025).
- Forthcoming regs will provide that most corporations can get an automatic 6-month extension to file their income tax returns; but for tax years from 2016 to 2025, the automatic extension for calendar year C corporations will
be five months and will be seven months for a C corporation with a tax year that ends June 30.

- A partnership must file its income tax return by the 15th day of the 3rd month after the end of the partnership’s tax year, and a 6-month automatic extension is available.

- IRS is directed to modify its regs to provide that the maximum extension for the returns of trusts filing Form 1041 will be 5 ½-month periods, i.e., Sept. 30 for calendar year taxpayers.

- The income tax return filing threshold for a bankruptcy estate of an individual is $10,350 for 2016 ($10,400 for 2017).

- Forms W-2, W-3, and returns to report non-employee compensation must be submitted by Jan. 31 of the following year and are no longer eligible for the extended filing date for electronically filed returns.

- For tax-exempt obligations acquired after 2016, a payor must report on an information return the daily portions of OID on the tax-exempt obligation.

- The relief afforded to HUD and state housing finance authorities from information reporting penalties with respect to payments made to or on behalf of financially distressed homeowners under certain programs was extended through 2017.

- IRS is directed to modify its regs to provide an Apr. 15 FBAR filing deadline.

- There is an automatic 2 ½-month extension to file certain Forms 5500 (for pension and profit-sharing plans).

- Final regs eliminate the rule that had required a creditor to furnish a Form 1099-C, Cancellation of Debt, upon the happening of a 36-month period during which the creditor hasn’t received any payment on indebtedness.

- For calendar years beginning after Dec. 31, 2016, small employers that establish HRAs for their employees (see “Affordable Care Act Provisions,” above) must report the total amount of “permitted benefit” on the employees’ W-2s.

Tax Audits, Deficiencies, Refunds & Penalties

- IRS has proposed increasing the user fee for processing an offer in compromise (OIC) from $186 to $300 for OICs submitted after Feb. 27, 2017.

- For partnership tax years that begin after 2017 (or earlier if elected), streamlined unified audit partnership rules replace the TEFRA and electing large partnership rules. Adjustment to items of income, gain, loss, deduction, or credit of a partnership for a partnership tax year, and any partner’s distributive share of such adjustment, is generally determined at the partnership level.

- For credits or refunds made after Dec. 31, 2016, no credit or refund for an overpayment for a tax year will be made to a taxpayer before the 15th day of the second month following the close of that tax year if the taxpayer claimed the EITC or additional child tax credit on the tax return.

- The rule allowing a quick refund of corporate estimated tax overpayments has been changed to make the latest date for applying the refund be the 15th day of the 4th month after the year ends (except for C corporations with a tax year ending on June 30).

- Overpayment and underpayment interest rates rose in the second quarter of 2016.

- For 2016, the minimum failure to file penalty on income tax returns filed more than 60 days late, unless due to reasonable cause, is the lesser of $205 ($210 for 2017) or the amount of tax required to be shown on the return.

- The preparer willful or reckless conduct penalty is equal to the greater of $5,000 or 75% (up from 50%) of the income derived by the tax return preparer as to the return or claim.

- Certain civil penalties on tax return preparers, and total maximum amounts that can be imposed, increase for 2016 and 2017.

- “Micro-captive transactions” in which taxpayers enter into contracts with a related company that is treated as a captive insurance company are identified by IRS as “transactions of interest.”

- The penalties for failure to file information returns and provide payee statements increased for 2017 as compared with 2016.

- IRS will not impose penalties for failure to file information returns and provide payee statements as to 2016 and 2017 Form 1098-Ts where the only error is that the eligible educational institution reports the aggregate amount billed for qualified tuition and related expenses instead of the aggregate amount of payments received as required under current law.

- Effective for returns and statement required to be filed after 2016, a new safe harbor from penalties applies for the failure to file correct information returns and for failure to furnish correct payee statements, where the error is $100 or less ($25 or less in the case of errors involving tax withholding).

- For 2016, failure to file a partnership return exposes the partnership to a $195 per-partner, per-month penalty ($200 for 2017).
• For 2016, failure to file an S corporation return exposes
the S corporation to a $195 per-shareholder, per-month
penalty ($200 for 2017).

• IRS will transmit a certification to the State Dept. for
action to deny, revoke or limit the passport of an individual
who has a seriously delinquent federal tax debt.

• A small employer that establishes an HRA (see
“Affordable Care Act,” above) but fails to provide employees
with the requisite notice will, subject to transition relief, owe
a $50 per-employee, per-incident-of-failure penalty, subject to
a $2,500 calendar year maximum for all such failures
under Code Sec. 6652(o).

Estate, Gift & Generation-Skipping Transfer Taxes

• For 2016, the basic exclusion amount for gifts and
estates increased to $5,450,000 ($5,490,000 for 2017).

• The Tax Court found that a decedent who had retained
a right to transferred property had to include the value of
such property in the estate.

• The total decrease in the value of all real property
under the special use valuation election may not exceed
$1,110,000 for 2016 deaths ($1,120,000 for 2017 deaths).

• Donated property, which was property other than that
indicated by the relevant trust agreement, was valued for
purposes of an estate’s charitable deduction based on the
value of the property actually received by the charity.

• For 2016, the transfer tax applicable credit amount
increased to $2,125,800, i.e., the tax that would otherwise
be imposed on $5,450,000 ($2,141,800 for 2017, the tax
that would otherwise be imposed on $5,490,000).

• An executor must file an estate tax return if the
decedent’s gross estate at death exceeds the basic
exclusion amount ($5,450,000 for 2016; $5,490,000 for
2017).

• IRS no longer automatically issues estate tax closing
letters, but authorized representatives may request hardcopy account transcripts to learn whether IRS has
closed its examination of post-May-2015-filed estate tax
returns.

• For 2016 and 2017, the gift tax annual exclusion
remains at $14,000.

• For 2016, the gift tax annual exclusion for gifts to
noncitizen spouse increased to $148,000 ($149,000 for
2017).

• For 2016, the GST exemption has increased to
$5,450,000 ($5,490,000 for 2017).

• Reminder: Jan. 31 is due date for W-2 and certain
1099-MISC forms

• Unlike in prior years, 2016 W-2 forms (Wage and
Tax Statement) that report employee compensation and all 1099-MISC forms (Miscellaneous Income) that report
nonemployee compensation must be filed by Jan. 31, 2017.

• Background. In general, information returns are required
to be filed for compensation paid by persons engaged in
a trade or business, to individuals, whether as employees
or nonemployees, in the course of the person’s trade or
business. The returns for employees are Form W-2, Wage
and Tax Statement, and Form W-3, Transmittal of Wage and
Tax Statements, and the return for nonemployees is Form
1099-MISC, Miscellaneous Income. Persons required to
file a return are also required to furnish the individuals to
whom the return relates with a written statement containing
the aggregate amount of payments and the payor’s contact
information. Those written statements must be supplied by
Jan. 31 of the calendar year following the year for which the
return must be filed. (Reg. § 31.6051-1(d); Code Sec.
6041(d))

• Before amendment by the Protecting American from
Tax Hikes Act of 2015, Div. Q (PATH Act, P.L. 114-113,
12/18/2015), the filing due date, in the calendar year after
the year for which the return had to be filed, was Feb.
28 for Form W-3 and the last day of February for Form
1099-MISC. (Reg. § 1.6041-2(a)(3)(ii); not yet amended to
reflect the PATH Act; Reg. § 1.6041-6; not yet amended to
reflect the PATH Act) If Form W-3 or Form 1099-MISC was
filed electronically, the filing due date was Mar. 31 in the
calendar year after the year for which the return had to be
filed. (Code Sec. 6071(b) before amendment by the PATH
Act)

• Jan. 31 due date for 2016 and later returns. The 2015
PATH Act provides that, for 2016 and later year returns,
Forms W-2 and W-3 and any returns or written statements
required by IRS to report nonemployee compensation must
be filed by Jan. 31 of the year after the calendar year to
which the returns relate. (Code Sec. 6071(c)) Thus, the
provision accelerates the filing of information on wages
reportable on Form W-2 and nonemployee compensation
to Jan. 31, which is the same date as the due date for the
related written employee and payee statements. Further,
the extended electronic filing due date is no longer available
for the filing Form W2, Form W-3, or Form 1099 with respect
to nonemployee compensation.

• Nonemployee compensation generally includes fees
for professional services, commissions, awards, travel
expense reimbursements, or other forms of payments for
services performed for the payor’s trade or business by
someone other than in the capacity of an employee. (PATH
Act Joint Committee on Taxation Report —JCX-144-15, pg.
118)

• Nonemployee compensation is shown on Form 1099-
MISC, Box 7. Thus, Forms 1099-MISC with entries in Box
7 must be filed by January 31. However, for Forms 1099-
MISC that don’t have entries in Box 7, the deadline remains Feb. 28 for paper filings or Mar. 31 for electronic filings.

• Many states require employers to file copies of Form W-2 with the state’s taxing authority. While several of those states had Jan. 31 due dates even before the federal law change, many that previously had later due dates have adopted the Jan. 31 date for 2016 returns.

**Who Pays What Taxes In The US**

Every presidential election brings with it a renewed debate on taxes: should tax rates be increased or decreased (which in turn forces economists to break out their textbooks to brush up on their Laffer curve definitions)? Traditionally, the question eventually boils down to one thing: what should the tax treatment of the “rich” be: should the wealthy pay more or less in taxes?

Why the particular focus on the rich? The answer is simple: while those American who declare $500,000 and above in income represent less than 1% of total tax returns, they account for a quarter of taxable income and - more importantly - are responsible for 37% of government revenues collected through individual income taxes.

And with approximately $1.55 trillion in individual income tax expected to be collected in 2016, this means that less than 1% of US taxpayers will be responsible for more than a third, or roughly $575 billion in government revenue, nearly double what corporate income taxes ($300 billion) are expected to bring in.

To any readers surprised by this, here are further details from the St Louis Fed’s Fernando Martin and his recent note “A Closer Look at Federal Taxes”

The first table provides a snapshot of revenues collected by the U.S. federal government for fiscal year 2016. Total revenue was $3.3 trillion, or roughly 18 percent of gross domestic product (GDP). Almost half of this revenue comes from individual income taxes. About one-third comes from payroll taxes, which are collected to fund Social Security, Medicare, and other social insurance benefits. Only 9 percent of total revenue comes from corporate income taxes, while another 9 percent comes from various sources (e.g., excise taxes, estate and gift taxes, and custom duties). These proportions have been stable in recent years.

![Individual Income Taxes: Who Pays What](image)

Given the prominent role individual income taxes play in financing the federal government, this essay inspects these taxes in more detail. The second table breaks down individual income taxes by adjusted gross income brackets and four categories. The first three are relative to total filings: the share of returns; the share of taxable income generated (note that about one-third of returns report zero taxable income); and the share of tax revenue collected. The final category is the implied average tax rate. The data are for fiscal year 2014, the latest available for tax revenue by income levels. Notably, the data do not distinguish between single or joint (filed with a spouse) tax returns.

The differences in individual income tax collection at the extremes of the income distribution are striking. Filers earning less than $50,000 annually account for nearly two-thirds of all tax returns but contribute 7 percent of total revenue. Around half of the filers in this group report zero taxable income; for those with taxable income, the average income tax rate is 12 percent. In contrast, filers making at least $1 million annually account for 0.3 percent of all tax returns and contribute 27 percent of total revenue. Their average tax rate—31 percent—is almost triple that of filers in the lowest income bracket.

Due to the progressive nature of the U.S. income tax code, average tax rates increase up the income ladder. Each income group’s contribution to total revenue, however, depends not only on their tax rate but also on the number of filers in the group and how much income they generate. For example, tax filers earning between $100,000 and $199,999 annually face an average income tax rate of 17 percent but contribute 22 percent of revenue, very close to the proportion contributed by those earning $1 million or more. The reason is that there are many more filers in the former group (12 percent versus 0.3 percent), who together generate about one-quarter of total taxable income (versus 17 percent for the highest earners).
These properties of the income distribution have profound implications for the likely effects of tax reform. For example, tax cuts for the middle class, even minor ones, would imply big declines in revenue; and collecting significantly more revenue from the rich would necessitate large tax hikes.

To illustrate this point, consider a simple back-of-the-envelope calculation. Suppose the desire is to cover the deficit by increasing the tax rates of the top income earners. The current deficit estimate for fiscal year 2016 is $590 billion. Income taxes collected from filers earning $500,000 or more annually (the top 1 percent) add up to roughly the same amount as the deficit. The tax rate of this group would need to double to collect enough revenue from the group to cover the deficit. Specifically, their average tax rate would need to increase from 30 percent to around 60 percent. A tax increase of this magnitude, however, might decrease the incentives for high-income earners to work as hard and encourage them to seek new ways to shield their income. Hence, in practice, the tax rate may need to be raised further and even then might not be enough to raise all the additional revenue.

Individual income taxes only partially reveal how the burden of federal taxation is distributed among different income groups. For low-income earners, payroll taxes constitute a significant portion of tax liabilities. The current Social Security and Medicaid withholding rates are 6.20 percent and 1.45 percent, respectively (in addition, employers must also match these contributions). Thus, the average tax rate faced by an individual making less than $50,000 annually and reporting positive taxable income is 12 percent in income taxes plus 7.65 percent; that is, almost 20 percent of income. Since wages contribute less to total income for higher-income earners, payroll taxes play a less significant role at the top. In other words, payroll taxes are regressive. Note, however, that the benefits they provide are progressive, as high-income earners rely more heavily on other sources of funding for retirement and healthcare (e.g., a 401(k) retirement plan).

**Disability Insurance (DI) Facts**

Social Security disability payments are modest, but they keep some families financially afloat.

Appeal Your Non-Medical Decisions Online

Social Security has a new way for you to conduct business with us online. You no longer need to visit our offices or call us to appeal a denial or adverse action related to your benefits. Beginning December 10, 2016, you can file an appeal online for non-medical issues, even if you live outside the United States. Examples of non-medical appeals include those for overpayments and Medicare premium rates.

The online appeals application is simple, convenient, and secure; it guides you through every step of the process. From outlining your rights to an appeal, to publications on the appeals process, a fair review of your case is right at your fingertips. The online application also lets you upload supporting documentation and save your submission.

### Disability Insurance (DI) Facts

- **Disability Workers:** $1,662,343
- **Spouse:** $323.26
- **Children:** $352.26

**Facts:**

- **Total DI Beneficiaries:** 10,639,833
- **Aggregated Benefits Paid (Monthly):** $11.9 Billion
- **Aggregated Benefits Paid (Yearly):** $143.0 Billion

Social Security disability payments are modest, but they keep some families financially afloat.

**Submitting your appeal and necessary documents online will save time and can help expedite the decision. Here are some things you'll need when you're ready to submit an appeal:**

- Notice date or receipt from Social Security that explains what adverse action you wish to appeal; and

- Supporting documentation you wish to add to your request for appeal.

**What Is Excise Tax, And Do I Have to Pay It?**

Most people pay many different types of taxes, and they most often notice the income tax, sales tax, and property tax they have to pay. Yet there are other taxes that Americans pay all
Excise tax is a broad category of taxes that federal and state (or even local) governments impose on certain items, such as gasoline, cigarettes, and alcoholic beverages. Because excise tax is paid by the retailer or producer and not by the consumer, it’s easy for those who buy these products never to realize that there’s a tax related to their purchase, let alone how to calculate how much the excise tax is.

Gasoline excise tax is one of the most commonly paid taxes.

How much are excise taxes?

Excise taxes vary by location. Federal law requires that federal excise taxes be charged uniformly across the nation, but states have also created their own excise taxes that can make the total tax burden vary greatly from place to place.

Consider the three major types of excise taxes -- tobacco, gasoline, and alcohol -- to see some good examples of how this works in practice.

The federal government imposes an excise tax of $1.01 per pack on cigarettes, which produced more than $13 billion in revenue in 2014, according to figures from tobacco giant Altria Group. However, states also impose excise taxes, and they vary from just $0.17 per pack in Missouri to as much as $4.35 per pack in New York, according to figures gathered by the Tax Foundation. For cigarettes, the median state excise tax rate is $1.53 per pack, which is more than half again the federal excise tax rate.

For gasoline, the federal excise tax rate is $0.184 per gallon. Again, however, state excise add-ons come in a wide range. Data from the American Petroleum Institute found that state gasoline taxes range from $0.1225 per gallon in Alaska to $0.5040 per gallon in Pennsylvania. Some of these taxes aren’t technically excise taxes, but they’re effectively the same in that they target specific products. Total highway excise taxes raised $35.5 billion at the federal level, making up a huge portion of the money funding the Highway Trust Fund.

Finally, alcohol has different excise taxes depending on type. The regular rate for beer is $18 per 31-gallon barrel. Wine excise taxes vary by alcohol content, ranging from $1.07 to $3.40 per gallon. Hard cider carries a $0.226-per-gallon excise tax. Distilled spirits have an excise tax rate of $13.50 per proof gallon, which works out to $2.14 for a 750-milliliter bottle of 80-proof alcohol. States impose a wide range of alcohol taxes, with spirits taxes ranging from $1.50 per proof gallon in Maryland to $14.27 in the state of Washington.

How are excise taxes enforced?

Enforcement and collection of excise taxes varies depending on the government imposing the tax. At the federal level, the Bureau of Alcohol, Tobacco, Firearms, and Explosives is responsible for investigating and preventing offenses related to unlawful manufacturing and trafficking of alcohol and tobacco. The IRS is responsible for handling excise tax returns and collecting the roughly $70 billion in total excise tax revenue owed to the federal government annually.

At the state level, various enforcement agencies and tax collection entities often work together to enforce the excise tax. In many states, sales of alcohol are allowed only within state-operated stores, and that practice greatly facilitates the collection of any excise tax revenue. Private retailers often pay excise taxes the same way they remit sales taxes to state and local governments.

Are excise taxes good or bad?

Excise taxes are often controversial. In the cases of tobacco and alcohol, some see excise taxes as a way to discourage use of those products, while others note that the burden of paying those taxes falls disproportionately on lower-income consumers. For gasoline, the fact that the federal excise tax is a flat rate, rather than a percentage of the current gas price, has led to criticism from those who believe the tax hasn’t kept up with the true maintenance costs imposed on governments by users of highways.

Excise taxes don’t get talked about very much, but they do play a vital role in the overall revenue streams that federal and state governments receive. By being more aware of excise taxes, you’ll put yourself in a better position to avoid them where possible, and to minimize them when necessary.

Safeguarding Taxpayer Data – How to Get Started

Tax professionals must safeguard taxpayer data by law. It is also critical to tax preparers’ business success. Protect your clients and yourself by taking a few common sense steps. You can seek advice from security consultants or insurance companies. IRS Publication 4557, Safeguarding Taxpayer Data, also offers tips on how to get started.

These best practices include:

- Take responsibility yourself or assign someone to be responsible for safeguards;
Examples of security controls include:

- Assess the risks to taxpayer information in your office. Make sure to include your operations, physical environment, computer systems and employees, if applicable;
- Make a list of the locations where you keep taxpayer information (computers, filing cabinets, and containers taxpayers may bring you);
- Write a plan of how to safeguard taxpayer information. Put appropriate safeguards in place;
- Use service providers who have policies to maintain an adequate level of information protection; and
- Monitor, evaluate and adjust your security program as your business or circumstances change.

To safeguard taxpayer information, determine the appropriate security controls for your environment based on the size, complexity, nature and scope of your activities. Security controls are the management, operational and technical safeguards you may use to protect the confidentiality, integrity and availability of your customers’ information.

Exercise Due Diligence with Mismatching Tax Verification Documents

In July 2011, in response to growing public concern over employment-related identity theft, the Treasury General for Tax Administration announced that the Internal Revenue Service could do more to assist taxpayers by informing them if fraudulent income was being reported under their social security numbers.

This commonly occurs when an SSN is misused by an individual to obtain employment. TIGTA wanted the IRS to identify and flag tax returns that had an SSN on third-party documents, but the tax return was being filed with an Individual Taxpayer Identification Number as its tax identifier. Once the return was flagged with this ITIN/SSN mismatch, the SSN owner would be notified their number had been used on someone else’s return. During tax years 2009-2013, the IRS ITIN program found that an average of 24 million annual individual tax returns contained discrepancies in the form of an ITIN/SSN mismatch.

In August 2016, TIGTA published a report highlighting that the IRS had “not established an effective process to send the required notice to the Social Security Administration (SSA) to alert it of earnings not associated with these victims” of identity theft. The TIGTA commentary provides a timely reminder of how current U.S tax policy may have adverse consequences for certain taxpayers, since the IRS allows a tax return to be electronically filed even when it includes an ITIN that fails to match the corresponding SSNs on third party W-2s.

This policy potentially conflicts with a tax preparer’s professional responsibility to adopt a sufficient level of due diligence, as prescribed by Circular 230, so it is important to ascertain how professionals are currently dealing with this ethical and professional dilemma. In order to explore this issue, the researchers at Metropolitan State University of Denver recently surveyed accounting professionals, paid tax preparers, and volunteers in the Volunteer Income Tax Assistance program, about their views on mismatched tax verification documents, and whether clients should be advised to certify tax returns prepared using conflicting source information. The contacted individuals included CPAs, Enrolled Agents, accounting academics and accounting students. Approximately 2,000 accounting professionals and students were contacted, and surveys were completed by 99 and 28 CPAs and EAs, respectively.

The MSU Denver survey asked respondents whether they follow the rules within Circular 230. The survey then asked the respondents about the extent to which they agree or disagree with a series of statements about whether they would prepare a tax return and allow a client to sign such a return in situations where a client provided mismatched or conflicting income verification documents. The survey used a five-point scale for classifying responses, ranging from strongly agree, agree, undecided, disagree, to strongly disagree. Selected results from the survey are provided in Table 1. For presentation purposes, the “strongly agree” and “agree” responses for each statement have been combined together into a single column entitled “number agreeing.”

Statement 1 focused on determining whether respondents followed Circular 230 when preparing tax returns, and 100 percent of EAs agreed with this assertion. In contrast, only 64.6 percent of CPAs agreed with this statement. Of the 35.4 percent of CPAs who did not agree, 70 percent claimed to be undecided about whether they followed Circular 230, with the remainder choosing not to answer the question.

Statement 2 explored whether respondents would prepare a tax return where a client provided mismatched or conflicting verification documents. Only 6.1 percent of CPAs agreed they would prepare a tax return in such situations. In contrast, 21.4 percent of EAs said they would complete a return using mismatched documents. Of the other responses, a total of 22 CPAs and EAs chose to not answer this question.
In terms of expected results, the researchers expected to see an inverse relationship between each respondent’s answers to statements 1 and 2, as a tax preparer exercising due diligence in accordance with the requirements of Circular 230 should be reluctant to prepare a return based upon conflicting verification documents. While this was clearly the case for the majority of respondents, 21.4 percent of EAs would still prepare a return under such conditions, even though 100 percent of the EAs surveyed agreed that they followed Circular 230. Statements 3 and 4 explored whether respondents would advise their clients to sign their tax return if it was prepared using mismatched or conflicting documents. Statement 3 posed this statement from the perspective of a paid credentialed tax preparer, and statement 4 posed it from the perspective of a volunteer tax preparer, such as a volunteer at a VITA site. The results for both statements 3 and 4 provided further evidence of a strong inverse relationship with each respondent’s views about statement 1, although in both scenarios, more than 30 percent of CPAs would advise their client to sign a tax return if mismatched or conflicting documents were used during its preparation. The percentage of EAs who agreed that clients should be advised to sign such returns, was relatively lower, with 21 percent and 14 percent stating that paid and volunteer preparers, respectively, would advocate client certification despite a source document mismatch.

In summary, the results of the survey raise a number of questions about the extent to which the current IRS policy on ITIN/SSN mismatches is potentially influencing the practices of CPAs and EAs, in both the paid and volunteer tax preparatory arenas. While survey data is still being collected, the data to date highlights a potential tension between the need to follow the due diligence requirements of Circular 230 against a preparer’s professional concern for their clients. Are clients really best served by a paid or volunteer tax preparer that allows them to sign a tax return prepared using mismatched verification documents? Clients are signing under the jurat of the 1040: “Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.”

Best practice would suggest not, especially when this advice could potentially harm the client, the preparer, and those third parties whose SSNs have been misused. Clearly action is needed to tackle the ITIN/SSN mismatch issue. Despite having an ethical and professional responsibility to adopt the highest levels of due diligence, tax preparers are facing increasing pressure to prepare returns using mismatched information, the survey results suggest. As one respondent commented, “Congress or the IRS should think about a better regulation to avoid such a conflict,” while another stated that their chief concern was not for their client, but “for those whose identity has been compromised.”

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Authors and contributors to this article: Christine Kuglin, MPAcc, CFE, EA, is a professional in residence in Metropolitan State University of Denver’s Department of Accounting. Dr. Andrew Holt is an accounting professor at MSU Denver. Dr. Allan Rosenbaum (deceased) was an author of many current tax laws who was honored in Washington, D.C., last year for his contributions. Anh Sylvain is on the audit staff at the accounting firm Hein & Associates and was educated at MSU Denver.

20 Plant Workers’ $420 Million Powerball Win
Cleverly Misses Tax Mess

By Robert Wood

There is plenty of feel-good news that twenty Tennessee metal manufacturing workers are splitting a $420.9 million Powerball jackpot. The cash to the employees of North American Stamping is $254 million, or $12.7 million per person before taxes. One of them, Amy O’Neal, told The Tennessean that their group has been playing the lotto for eight years just “for fun.” Ms. O’Neal, who bought the ticket for the group, said they usually buy about $120 worth of tickets every Wednesday and Saturday to support education and the state of Tennessee.

Is that a hobby, a business, or a loose investment partnership? The IRS sometimes asks precisely that question, and it can matter. These 20 workers have been cooperating and pooling their ticket buys for years, which arguably makes them a real partnership for tax purposes. And that could matter. Taxes apply to the win, of course, but the nature and identity of the 20-member group raises curious issues about exactly how
It is a real tax mess when one person wins and must pay out portions to others. Often, that cannot be deducted, which means the winner can pay tax on more than he or she gets to keep. In contrast, a partnership can exist with a handshake, or even 20 of them. No written documents are required. Of course, a lack of written documents sometimes foments disputes once some real money is on the table. One partner can sometimes remember the deal differently than others. Lottery winners sometimes face a sad aftermath. If one person wins but then pays shares to others, the winner may not be able to deduct the payments, being taxed on more than he or she won.

However, a partnership can be a one-time deal or a series of them, in this case tracking for years. The good tax news is that it may not matter whether the 20 are treated as partners of a 20 member partnership or mere co-owners who each report their own share.

There is a tax form difference between the two, but there is no reason to think that the IRS would care as long as they are paid. But that may not be true if their deal is viewed as a trust.

How can you tell? It’s tough if there are no documents. The name may not matter, and yet it seems conceivable that the IRS could say, “if you call it a trust it might just be one.” There are two types of trusts for tax purposes. There are simple grantor trusts taxed as a flow-through. There are also complex trusts taxed more like a corporation. If it is, it could be an expensive mess. And although it is probable that all will go swimmingly for these 20 winners, this is one more illustration of how success or good luck can sometimes lead to a surprising tax-gotcha.

**Why is Data Security So Urgent Now?**

Tax and accounting professionals are responsible for information that, if compromised, can threaten the identity and financial security of their clients, their firms and staff, third parties, and more. No big revelation there – this has been the case since long before I started my career in this profession almost 20 years ago, so why all the recent focus on data security?

As you may already know, hackers are more frequently committing tax fraud for illegal financial gain. In May 2015, criminals used information obtained from social media and stole around 724,000 taxpayers’ return data from the IRS’s Get Transcript system. Then in January 2016, criminals stole Social Security numbers from outside the IRS and used them to get IRS e-filing personal identification numbers that could be used to file fraudulent returns electronically.

Do these threats seem irrelevant to the professional tax preparer? Think again. With new security requirements, the IRS has effectively and drastically reduced the number of fraudulent cases with do-it-yourself consumer tax preparation software ... and because that well is drying up, the hackers are turning their focus on professional tax preparers.

Case in point: On Sept. 2, 2016, the IRS released a notice, “IRS Warns of a New Wave of Attacks Focused on Tax Professionals.” Some key excerpts stand out in the notice and have shocked many practitioners with whom I’ve spoken:

- “… new wave of attacks that allow identity thieves to file fraudulent tax returns by remotely taking over practitioners’ computers …”
- “… accessing client data and completing and e-filing returns but directing refunds to criminals’ own accounts …”
- “Victims in the tax community learned of these thefts while reconciling e-file acknowledgements …”

The hackers of today aren’t loud and obvious – they’re not physically breaking into your office or destroying your computers (although these attacks do also happen). Instead, they hide behind anonymity and strike from anywhere in the world, quietly breaking into your system and filing returns in your clients’ names, taking the money, and leaving you and your firm to cope with the devastating aftermath – which is often only discovered after the damage is already done.

This is real. This is now. This is a potential security threat, whether you’re a sole proprietor or part of a top 100 firm.

While the threats are serious, the future is not hopeless. The IRS and software vendors are taking many steps to address security. The security of your data and your clients’ data is a top priority. Information security is not a new priority. We’ve all been focused on it for a long time – and we’ll continue to do our part to keep data as safe and secure as possible.

Security in IT is like locking your house or car – it doesn’t stop the bad guys, but if it’s good enough they may move on to an easier target. — Paul Herbka

While security concerns are not new, knowing how to handle current security threats might be new for you, and you should know what resources are out there.

- Keep an eye on blogs offering insights on a range of timely professional topics, including the ever-important subject of data security.
- Consult with your advisors for guidance on data security practices and legal standards applicable to your practice.
- Check the IRS website regularly for security news and alerts. A good place to start is the IRS resources page, “Protect Your Clients; Protect Yourself.”

Working together, we can continue to maintain the identity and financial security of those that trust the tax and accounting profession.
How to Beat the Crooks to Your Tax Refund

The sooner you file your 2016 return, the less likely the bad guys will get to your money before you do.

According to the Department of Justice, Brown was just sentenced to 135 months in federal prison after pleading guilty as the leader of a massive identity theft and tax fraud ring. The case involved filing at least 12,000 fraudulent federal income tax returns seeking refunds of at least $20 million. Brown and his co-conspirators fraudulently claimed refunds over eight years, often in the names of people whose identities had been stolen, including the elderly, people in assisted-living facilities, drug addicts and incarcerated prisoners. In addition to being sent to the slammer for more than a decade, Brown was ordered to pay more than $4.5 million in restitution to the IRS.

While Brown is out of the refund-stealing business, there are plenty of other crooks who’d love to get their hands on your tax refund. The IRS is battling hard against them, and with some success. In the first nine months of 2016, the number of taxpayers filing affidavits saying they had been victimized fell by 50%. But still, that meant nearly 250,000 of your fellow citizens reported that they were victims of tax-related identity theft.

Fortunately, the key to the fraudsters’ success also points to a prime way to protect yourself. The IRS says refund thieves typically file their fake returns early in the filing season so the IRS gets the phony forms before legitimate taxpayers have time to file their returns.

So, one of the best ways to protect yourself is to file as soon as possible.

Filing Season Starts January 23

The IRS will begin accepting 2016 electronic returns and processing paper ones on January 23, 2017. The closer you are to the front of the line, the safer your refund will be. So, start collecting your tax information—your W-2s, your 1099s, etc.—as soon as it begins arriving in the mail. Pull together receipts and other information on your itemized deductions as soon as possible.

The stakes are high. In 2016, the IRS sent out about $320 billion in tax refunds to nearly 111 million taxpayers. The average refund was $2,857. We expect the numbers to be similar for 2016 returns filed in 2017.

Protect Future Refunds

There’s an even better way to protect your tax refund: Don’t overpay your taxes in the first place. If a crook claims a fake refund in your name—but you actually owe money with your return—you won’t have to fight to get your money back. The IRS might be out, but you won’t be.
relatives in ways that today’s wealthy might wish for.

“People can tour the property and reconnect,” said Mr. McLane, who works in the family office division of BNY Mellon. “It is a little bit of the glue for the family at this time, since the family is so dispersed around the country.”

Some cemeteries have also become the connective tissue for families of far more modest means.

Part of this results from rules of the Internal Revenue Service, which grants nonprofit status to these cemeteries under section 501(c)13 of the Internal Revenue Code. The rules require families to maintain a detailed list of all descendants eligible to be buried there. Despite having a 19th-century business link, Rockefellers cannot not be buried in the Dosoris Cemetery unless they have married a Pratt.

Another way these cemeteries keep families together has to do with the land itself. It is a physical link to the past, without any of the bad feelings or friction of a home that can linger over the generations.

“In our family, it provides a certain amount of continuity,” said Andrew Edmonds, the president of a family cemetery he didn’t want identified. “If you have a large family, as we do, it brings the family together. They’ll support the cemetery. There’s family history there.”

That continuity is not without work. Mr. Edmonds’s family cemetery has two people working full time to keep the genealogical records of relatives who are spread around the world. Knowing the family members — and ensuring none profit from the cemetery — enables the cemetery to retain its 501(c)13 status. If it were to be audited and found not compliant, the I.R.S. could disallow charitable donations to it or subject investments to federal tax.

“When a cousin has a baby, we have to keep track of that,” Mr. Edmonds said. “Marriages and divorces and such — it’s a remarkable amount of work to maintain all that.”

His family’s cemetery also has a sizable endowment to cover the costs. Not all private cemeteries have one.

Bill Sanderson, a partner at the law firm McGuireWoods in Washington, and his father, John, a certified public accountant, visited their family cemetery in Cartersville, Va., about an hour west of Richmond, this week. Mr. Sanderson took his 2-year-old son, Luke, for the first time, and his nephew Clinton came along, too.

He said members of the family had been going to the property since the 1830s, when the first Sandersons who came to Cumberland County began dying. His grandmother left an endowment of $1,200 to maintain the cemetery, so paying for its upkeep has fallen to his family.

“This was always part of my growing up,” Mr. Sanderson said. “We lived in Richmond, and once a year we’d deal with the cemetery. You’d go there and meet a guy who’d cut some trees down or mow the grass.”

Mr. Sanderson said he always went back to this cemetery. “The people who are buried there are so ancient in terms of my connection that it is almost a genealogical exercise,” he said. “There is also the connection of, does the tree need pruning? Or, is the stone tipped over? That is less of a celebration and more maintaining a connection to this place.”

It is this connection, created by wealth but maintained by obligation, that keeps these families thinking about long-lost cousins.

Of course, not all members of a family feel the same kinship to a cemetery, just as they wouldn’t to a family home. David Hunt, a Pratt descendant who is chairman of Charles Pratt & Company, which manages the family’s wealth, said that when he was growing up around Katonah, N.Y., he rarely went to the family cemetery.

“It didn’t have the same sense of place to me,” he said, noting that relatives on his father’s side are buried in Bedford, N.Y. “I’ve been out there a couple of times, not often, but for various events. I respect the locale.”

Since retiring from the Central Intelligence Agency and becoming more involved with the family office, he said, he has come to appreciate the Dosoris Cemetery more.

This is an advantage of a place. It’s there, no matter when a relative goes to it.

“A lot of these families have family meetings and wealth advisory services, with the relevant family dynamic services,” said Stephen Chambers, deputy manager of the history division at the Winthrop Group, which researches family and corporate histories. “But having a place, a cemetery, where there is some physical evidence of the past, it does provide a different entry point for the family.”
Mr. Chambers said these cemeteries worked well as a starting point for a broader embrace of a family's history, even if its golden age might have passed.

“One of the biggest shifts with this is families thinking about cemeteries not as a way to fixate on this morbid space of death, but that families are all about birth and life and death and the cemetery is a natural part of that,” he said.

Pierre du Pont, a partner at HPM Partners, a wealth advisory group in New York, said private family cemeteries as well as genealogies and regular meetings helped to propagate family values and principles across generations. But when he has spoken to clients about their own family cemeteries, he cautions that they require thinking out 100 years or more.

“If there’s a piece of property that is important to the family, if it’s where the business and family has its roots, go there,” Mr. du Pont said. “Create an artifact. Pay for a tent or endow some funny trust whose sole purpose is to put up a tent every five years and pay for alcohol. That’s what ties a family tighter.”

Maintaining cemeteries — beyond I.R.S. compliance — is not cheap. Mr. McLane, who serves as the chairman of the Dosoris Cemetery Trust, said the annual upkeep, which includes a full-time caretaker, was $125,000 to $150,000.

When rare trees planted by Olmsted fall down or the mausoleum needs repair, he said, the trust needs to ask members of the family for donations.

“The cemetery has an endowment, but these endowments don’t go on forever without some additional capital,” he said. “The hardest part of this is getting people to recognize that this is a place where everyone should be together.”

Mr. Edmonds cautioned families to be careful managing those endowments to make sure they didn’t run out. “I can’t suddenly decide to sell hot dogs,” he said. “We can only turn to our family. There are very few who handwrite significant checks. We have to be incredible stewards.”

In this new Gilded Age, private cemeteries for hedge fund and technology billionaires have yet to take off. These billionaires prefer philanthropy as a way to preserve their legacy, not parcels of land in places their descendants may never visit. Mr. McLane, in his day job as an adviser to family offices, sees this as a missed opportunity.

“With family foundations, over time, different generations of the family have changing philanthropic intent,” he said. “Those are challenges for family foundations. What’s unique about a cemetery is it’s a common theme just around the legacy and history of a family.”

Mr. Sanderson seems to embrace this view as he and his father and, now, his young son return to their cemetery.

“My dad made a spoken or unspoken commitment that the grass is always going to be cut,” he said. “There is an unspoken commitment between my dad and me that as long as I’m around I’ll do it, too.”

In that lawn are the roots of his family.

Practice Management

The Year Ahead

Some of the profession’s sharpest experts look at 2017

New year, new president, new changes, new challenges and new opportunities: 2017 promises to be an interesting 12 months. To help you start getting a handle on what it might mean for your practice, your firm and the accounting profession as a whole, we’ve turned to two different groups: a panel of experts in the field, and a large group of accountants themselves.

You can see some of the results of our survey of more than 800 accountants, CPAs and tax pros to see what they expect the next year to look like (see the “2017 in numbers” slideshow), and you can read the predictions, warnings and advice of our experts below.

This year’s experts are: Joanne Barry, executive director and CEO of the New York State Society of CPAs; Crosley+Co. founder Gale Crosley; California Society of CPAs CEO Loretta Doon; CPA.com strategic advisor Greg LaFollette; Illinois CPA Society president and CEO Todd Shapiro; Boomer Consulting president Sandra Wiley; and ConvergenceCoaching co-founder Jennifer Wilson.

What are the one or two trends that accountants should most keep an eye out for in 2016?

Crosley: First, the development of technologies in audit. On the attest side, data analytics and continuous audit will be the biggest game changers our profession has seen in years. Although we don’t know exactly how these trends will unfold, they represent a sea-change at the very core of the profession. Our future auditors will be very different from today’s. Just Google “future trends in audit,” read some of the white papers, and you’ll see what I mean.

And second, the development of technologies in tax. Tax compliance is also going through a major transformation. As we move toward total electronic sharing of information between investors, clients, tax preparers and the IRS, the very need for a tax preparer (as we know it today) is being questioned. Be thinking about a future where tax consulting represents the lion’s share of your tax revenues.

Wilson: The Big Four are actively using their audit data analytics/testing technologies (Halo and other custom solutions) and these are going to change the game in the expectations for audit efficiency and insights available to
clients. Midsized firms should be shopping solutions like Validis and devising strategies to remain competitive in the delivery of the increasingly commoditized audit services.

In an effort to add more value around their compliance solutions, firms will be seeking more advisory opportunities and increasing their focus on the delivery of consulting services, especially specialty tax solutions like SALT, international, sales tax and more. This was already a focus for 2016, but the resources being allocated to consulting by all size firms will continue to increase.

Barry: We will be seeing more vigilance by regulatory agencies, especially the SEC Enforcement Division and the Public Company Accounting Oversight Board. This year we have seen that they are increasingly dissatisfied with audit quality and will pay more attention to the acquisition and growth of consulting services. Their strategy might be to increase pressure with more public criticism of firm deficiencies and failures. This might also lead to smaller or understaffed firms exiting the public audit market, especially in audits of broker/dealers where there is an 80 percent audit deficiency rate. Peer review changes will also have an impact on firms as the profession works to enhance quality in this area.

Joanne Barry

Shapiro: One major trend will be the changing workplace. In an effort to keep staff, more and more employers are implementing policies for a more employee-focused workplace. Some large firms have implemented “dress for the day” or “work where you are,” and unlimited PTO. To compete for new staff and retain current staff, firms of all sizes will look toward implementing policies that were once thought unprofessional. Ultimately, this requires greater trust in our employees to “do the right thing.”

Second would be the continued aging of the profession. On the public accounting side, a high level of merger activity will continue as more and more small firms run by aging Baby Boomers will look to an exit strategy. Midsized firms will continue to expand into this space. On the corporate side of the accounting world, this aging population will provide more opportunities for advancement, long sought after by Gen Xers.

LaFollette: More and more firms will be offering boutique-style, value-priced “packages” to clients. Example: Silver, Gold and Platinum Tax Service, where Silver is basic preparation with a 15-minute consultation after preparation; Gold adds a one-hour tax and overall financial planning consultation; and Platinum adds unlimited, year-round phone/e-mail access and representation before the IRS for any issues concerning this return. The “packages” might be priced at $600, $950 and $2,500. These examples are not suggested prices but rather illustrative of what a firm might deploy.

Another major trend is that clients will increasingly shop and screen professionals based solely on that professional’s digital presence, making your “digital brand” and “digital footprint” more and more important. This has been happening for years, but the rate of adaptation hasn’t kept pace. The train has now left the station, and those not on will find it very, very difficult to catch up.

Wiley: Firms of all sizes will need to spend time working on their business in the key areas of management, talent development, technology, process improvement and growth. While all are important, a couple of key trends bubble to the top when looking ahead to 2017:

• Succession reality: Our clients and next-gen leaders deserve a laser focus on the area of transition. It has been on the radar for many years, but this is the year that true movement will occur. The youngest Baby Boomers are in their late 50s and they have been thinking about the possibilities of retirement with little true action, but now it is time to share their plans and transfer their relationships and wisdom.

• Security: The increase in security challenges will only grow in 2017. The No. 1 way to protect client data and firm integrity is education and a heightened awareness of how to “stop the bad guys” for everyone on the team.

Doon: Technology and the hyper-rapid move toward the singularity — that point in time where the invention of artificial intelligence will abruptly trigger runaway technological growth, resulting in changes to human civilization. I believe that not only is the singularity near, but in many cases it is already here.
However, the value and essence of human professional judgement cannot be dismissed. The accounting profession can and must retain and enhance its values of integrity, objectivity and professional skepticism culminating in trust to clients and to the public.

What do you think will be the most surprising thing for accountants in the coming year?

Barry: The Ben Affleck film “The Accountant” wins Best Picture of the Year! Also, the Tax Simplification Act of 2017 will be even more complex and difficult to understand than any previous reform in recent memory.

LaFollette: Firms will be amazed at the speed at which some technologies become mainstream. By this time next year we’ll be seeing artificial intelligence embedded in accounting software and it will be accessed by voice. A user might ask, “What’s my bank balance?”, “How much does Customer A owe me?” or “How many yellow widgets do we have in stock?” and have an almost instantaneous answer. The major accounting software vendors have already prototyped this “chatbot” technology and have been demonstrating it to the thought leader community.

Wiley: Given the war for talent that is raging, the push and the reward to hire professionals from outside the accounting realm will be a pleasant surprise. Individuals with expertise in specific niches, marketing, business development, technology, finance and economics are just a few new professional acumen that we will see in firms in the coming year.

Doon: The continuing increase in demand for business needs beyond the financial statements and audit. For the smaller accounting firms and practitioners, there was a need to fill the client demand for financial statements and tax returns. Then, there was a need for specific expertise in niche areas such as valuation, wealth management and financial planning. Now I think the trend will move towards firms having a broader knowledge base or having the ability to attain this knowledge base in some way to service the needs of clients in a more comprehensive way. Are you ready to provide comprehensive services?

Shapiro: The increased focus from clients (public accounting) and C-suite executives (corporate accounting) on cybersecurity. Based on the assertion that there are two types of people in the world — those that have been hacked and those that don’t know they’ve been hacked — there will be increased expectations on accounting/finance to understand, control and implement solutions to mitigate risk.

Wilson: I think there will be more mid-level management and young partner moves out of firms that don’t empower their best and brightest to change their firms to begin to look and feel like firms they want to own. These frustrated next-gen leaders will find the courage to leave their firms for better opportunities with firms that “get it.”

Do you expect anything to get radically worse for accountants, or radically better?

Shapiro: The search for staff and escalating pay for those you do hire will get radically worse. At what point will salaries start to choke firms and companies? Smaller organizations will find it harder and harder to hire staff.

On the other hand, the need to find and retain staff will drive a more employee-centric workplace. The focus on work/life balance, “dress for the day,” “work where you are” and unlimited PTO will present the accounting profession in a positive light.

Wiley: I fear that the rising cost of health insurance will continue to adversely affect businesses over the next year. Change will come, but not in 2017. While this is not an “accountants only” concern, it is one that affects our profession, and every client we have.

Wilson: Turnover will continue to hurt. Finding experienced talent will be even tougher — if that’s possible. Succession and retirements will also drain the firms of resources. Provided the political climate doesn’t destabilize our economy, firms will find opportunities to sell services — especially value-added services and staff augmentation services like outsourced accounting — even better than in 2016.

Barry: The talent shortage will get worse. Firms are seeing adverse feedback about the grinder mentality of many large firms, and they’re seeing high attrition rates by the third year. Auditing’s unfriendly hours don’t help young professionals meet their needs for true work-life balance, and we’ll continue to see the impact of that. Client services and rainmaking skills need to become part of new CPA training right out of the gate. By holding on to the old model, the worst-case scenario will be that the best and brightest, as they choose taxation, finance and advisory services over auditing, will forego the CPA track altogether.

LaFollette: Clients will demand more and more value-added...
services, and price resistance to old-style compliance-type services will continue to grow.

Doon: Neither. The accounting profession has a certain resiliency in the business community. In good or bad economic times, the objective and meaningful accounting for assets will always be there. However, what the profession needs to keep in mind is how to make it better by making products and services more relevant and useful.

Crosley: The market conditions are excellent for growth due to several factors. These include shifting directions in standards and regulations, and the discussion about the relevance of today’s financial statements; international opportunities as a result of Brexit; technology evolution reshaping our core services; the dearth of talent causing a re-think of offshoring; and the impact that client accounting services is having on our thinking about our core services (examples: para-professionals, value pricing).

What advice would you give firms going into next year?
Doon: Take good care of your resources — especially your personnel. You are not only going to need capital but also a highly skilled and motivated team in order to morph to the next level of relevancy and value to clients.

Barry: The next generation of partners is now taking over firms in greater degrees. They need to make sure that they build firms of the future and do not build on the old models. They will need the skills and mentoring, perhaps from outside the firm, to re-invent the model and to bring change to the firm. This is directly tied to recruitment and retention.

Help your new CPAs pay off their student debt. It’s one of the greatest benefits you can offer in today’s marketplace — and you might build loyalty to your firm along the way.

Wiley: I would look at current leaders in the firm and tell them that the most important thing they can do is to find ways to pass their wisdom and knowledge on to the next-gen leaders in your firm. The process can take years, and can be exhilarating. It is all in their mindset, and if they can adjust their focus from the day-to-day client work, and focus on mentoring, teaching, protecting and future-firm focus, our profession will thrive. If they choose not to move on this, they are doing a disservice to the future of our profession.

Wilson: Make the changes needed to be a next-gen firm and retain your future leaders. Wonder what those changes are? Ask them! Put together a next-gen advisory board and have them prioritize the changes they most want to see — then work with them to implement these changes. They are bright enough to generate solutions and implement them. Empower them and get out of the way!

Crosley: I recommend a consistent process throughout the firm to retain and grow your largest, most strategic clients. My IBM days taught me that not all clients are equal. Our firms know this, but are coming up short on ways to protect against large client defection. As your firm’s partners retire, and mergers continue, more substantial competitors can impress your clients with their cutting-edge capabilities, presenting a real threat to the firm.

Shapiro: Focus on the future.

Automation of compliance-related activities, whether in public accounting (audit and tax) or in corporate accounting, will drive the future landscape of our profession. Integrated systems and new technology within companies will allow for expanded automation. A global financial institution said that while 2,000 employees around the globe are involved in the monthly close process today, it will be fully automated by the year 2020. A Big Four firm noted that it will be hiring half as many new staff by the year 2020 as a result of technology and artificial intelligence. Maybe this won’t all happen by 2020, but it will happen and will happen fast.

We are on the verge of a technology revolution. Firms need to start focusing on and preparing for the future now. 2020 is just over three years away. The winners in the world of accounting will be those that embrace and plan for a changing profession.

LaFollette: Remember that you make your own future. The profession is changing — rapidly. You can change with it and prosper or you can choose to ignore the inevitable. Remember the famous quote from the great American engineer, statistician, professor, author, lecturer and management consultant W. Edwards Deming: “It is not necessary to change. Survival is not mandatory.”

Question of the Month

In order to take the Domestic Production Activities Deduction Credit, must the taxpayer pay wages?

Instructions to Form 8903:

Form W-2 Wages
Your allowable DPAD generally can’t be more than 50% of the
Form W-2 wages you paid to your employees (including Form W-2 wages allocated to you on a Schedule K-1). If you didn’t pay Form W-2 wages, you generally aren’t allowed a DPAD. However, you don’t need Form W-2 wages to claim a DPAD you are allocated as a:

Patron of an agricultural or horticultural cooperative, or

Member of an expanded affiliated group.

If the taxpayer does not directly pay the W-2 wages but uses a professional employee organization (PEO) or employee leasing company that serves as the employer for purposes of IRS reporting, the final regulations indicate that the taxpayer may include wages paid by another entity, the PEO or leasing company, and reported by the other entity on Forms W-2, if the wages were for the true employment by the taxpayer.

In addition, the regulations suggest that taxpayers can include wages paid to employees as defined under Section 3401(d)(1). This section of the Code treats those with control of wages as an employer for employment tax purposes, even if that entity is not the wage payee.

In essence, if workers are truly common law employees of the taxpayer, then they can include those wages in the W-2 limitation – even though the wages are not reported on Forms W-2 issued by the taxpayer.

See Revenue Procedure 2006-47 for more information.

Other Information About DPAD

Qualified taxpayers are able to take advantage of the domestic production activity deduction (DPAD). This deduction—also called the manufacturing deduction or the Sec. 199 deduction—replaced former foreign sales corporation and extraterritorial income provisions of the Code, so taxpayers who did not benefit from those provisions’ export tax benefits may overlook it. However, the DPAD is available to a wide variety of U.S. taxpayers, not just those who export their products.

The deduction is limited to 9% of the lesser of qualified production activities income (QPAI) or taxable income for the year. When the deduction was created in 2005, it was 3%. It increased to 6% in 2007, and has been 9% since 2010 (Sec. 199(a)). This percentage is reduced for oil and gas activities (Sec. 199(d)(9)).

Adjusted gross income is substituted for taxable income for individuals, estates, or trusts (Sec. 199(d)(2)). The deduction is calculated and reported on Form 8903, Domestic Production Activities Deduction, or on Schedules K-1 for passthrough entities.

The deduction is further limited so that it cannot exceed 50% of allocable W-2 wages. Wages for this purpose include amounts reported on Form W-2, Wage and Tax Statement, along with deferred compensation such as deferrals for 457, 401(k), 403(b), SIMPLE, and SEP plans (Sec. 199(b)).

QPAI

QPAI equals domestic production gross receipts (DPGRs), reduced by cost of goods sold, and other deductions, expenses, and losses allocable to the receipts (Sec. 199(c)(1)).

As the name implies, DPGR applies to domestic operations and consists of:

- Gross receipts from lease, rental, sale, exchange, or disposition of qualified production property (QPP) which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States. QPP is normally tangible personal property, but it also includes computer software and sound recordings. It does not include land, buildings, or structural components.

- Construction or substantial renovation of U.S. real property.

- Engineering or architectural services for U.S. construction projects (Sec. 199(c)(4)).

DPGR does not include activities that are:

- Exclusively sales of property; or

- Exclusively services, with the exception of construction, engineering, or architecture.

Allocation of receipts

Any reasonable method may be used to allocate gross receipts between DPGRs and non-DPGRs. Taxpayers are required to use the specific identification method if the amounts are readily available and the method would not cause the taxpayer to incur any undue burden or expense. There is a de minimis exception when less than 5% of total gross receipts is from non-DPGRs. In this case, there is no requirement to allocate gross receipts (Regs. Sec. 1.199-1(d)).

Allocation of costs

When determining QPAI, taxpayers need to determine the allocable portion of cost of goods sold along with the allocable portion of other expenses, losses, and deductions. For taxpayers that have no non-DPGRs, all cost of goods sold would reduce their QPAI. Other taxpayers should use a reasonable method of allocation. These methods could include allocating expenses based on gross receipts, units produced, or total production costs. Taxpayers should keep in mind that if costs can be specifically identified without undue burden or cost, this method should be used. The method for allocation of cost of goods sold should be consistent with method of allocation of gross receipts, unless there is support that a different method is more accurate (Regs. Sec. 1.199-4).
Three methods may be used to allocate deductions. They are:

- Sec. 861 method;
- Simplified deduction method; and
- Small business simplified overall method (Regs. Sec. 1.199-4).

A taxpayer may change which method it uses from year to year.

Sec. 861 method

The Sec. 861 method is the most costly and cumbersome calculation. Under this method, a taxpayer must allocate and apportion its deductions using the allocation and apportionment rules provided under the Sec. 861 regulations. Any costs that are not directly allocable need to be apportioned. This method does result in more accurate calculations, but the simplified methods are often used because of this method’s recordkeeping burden.

Simplified deduction method

The simplified deduction method may be used by taxpayers with average annual gross receipts of $100 million or less or total assets of $10 million or less at the end of the year. Under this method, allocable deductions are calculated by multiplying deductions by the ratio of DPGRs to total gross receipts. It differs from the small business simplified overall method in that it may not be used for cost of goods sold.

Small business simplified overall method

Certain taxpayers may use the small business simplified overall method. Several limits apply for using this method, and the following taxpayers qualify:

- Taxpayers with average annual gross receipts of $5 million or less;
- Certain farmers who are not required to use the accrual method; and
- Certain taxpayers with annual gross receipts of $10 million or less who are eligible to use the cash method of accounting.

Under the simplified overall method, allocable costs are calculated by multiplying cost of goods sold and other deductions by the ratio of DPGRs to total gross receipts.

Passthrough entities

In the case of passthrough entities, the DPAD limitations are applied at the shareholder, partner, or member level (Sec. 199(d)(1)). Therefore, entities are required to present information that allows calculation of the limitations at this level. There are two methods for providing this information, as follows:

- Entities that qualify to use the small business simplified overall method or simplified deduction method may calculate QPAI and W-2 information at the entity level and pass through this information only; or
- Entities can pass through separate information so that the deduction may be calculated at the shareholder, partner, or member level.

Other issues

The DPAD applies in calculating both the regular tax and alternative minimum tax (AMT). However, for corporate taxpayers, the taxable income limitation of Sec. 199(a)(1)(B) for AMT purposes is calculated based on alternative minimum taxable income instead of regular taxable income (Sec. 199(d)(7)). The DPAD has no effect on shareholder or partner basis (Regs. Sec. 1.199-5(c)(1)(i)).

The DPAD, if applicable, can provide tax relief to various taxpayers. The recordkeeping may appear to be burdensome, but the use of simplified methods provides relief in this area. While the name may suggest that it is a manufacturing deduction only, various taxpayers may find that they are eligible for it.

Editor’s Note: Instructors learn from their attendees with experience who are willing to share their knowledge! Good and accurate information is always appreciated.

News from Capitol Hill

Trump’s Tax Plan Explained in 4 Charts

Predicting the priorities of the Donald Trump administration is a favorite parlor game in Washington and on Wall Street these days.

Though the President-elect will be coming into power with Republican majorities in both the House and the Senate, many of his most popular positions, like his hardline stances on trade and immigration, are not exactly popular with Congressional leadership.

This is not the case, however, when it comes to tax reform. Trump promised big tax cuts during his campaign, and as his platform evolved it came to look very similar to the sort of reform that House Speaker Paul Ryan has been pushing for years now. Here are four charts that explain the Trump plan, and how the tax code could likely affect you starting next year:

The Trump plan simplifies the tax code, combining seven tax brackets into three while raising the threshold at which workers begin paying income tax. Many married couples will
One of the most important elements of the plan: Corporate taxes dive from 35% to 15%. The new rules would also allow pass-through entities, such as sole proprietors, to be taxed at this low rate rather than at the higher personal rate. According to the Tax Policy Center, the plan has no provision to “limit the number of employees who would redefine themselves as sole proprietors.” Dentists (and hedge funds), rejoice.

The cuts (plus the lack of commensurate budget reductions) would add $6 trillion more to the national debt relative to baseline projections.

Trump’s plans would lower taxes for most Americans but would raise taxes on some large families and single parents because of the elimination of some exemptions. Take-home pay for the top 1% of earners could rise substantially.

New Due Date for FBARs

The new annual due date for filing Reports of Foreign Bank and Financial Accounts (FBAR) for foreign financial accounts is April 15. This date change was mandated by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41 (the Act). Specifically, section 2006(b)(11) of the Act changes the FBAR due date to April 15 to coincide with the Federal income tax filing season. The Act also mandates a maximum six-month extension of the filing deadline. To implement the statute with minimal burden to the public and FinCEN, FinCEN will grant filers failing to meet the FBAR annual due date of April 15 an automatic extension to October 15 each year. Accordingly, specific requests for this extension are not required. (Please note: The due date for FBAR filings for foreign financial accounts maintained during calendar year 2016 is April 18, 2017, consistent with the Federal income tax due date.)

IRS Strengthens Web Tool Access, Offers Tips for Use

As part of a wider effort to protect taxpayers, the Internal Revenue Service took steps this year to strengthen access to several IRS.gov applications, including adding requirements for the use of security codes texted to mobile phones to access certain tools.

This security code process is part of a two-factor or two-step authentication process that is becoming increasingly commonplace, especially in the social media, financial and tax
To protect taxpayers, the IRS developed a new process it calls “Secure Access” following efforts by cybercriminals to impersonate taxpayers. Criminals are amassing more and more taxpayer data stolen from sources outside the tax system. They use the data to file fraudulent tax returns or to attempt access to taxpayer accounts.

The more rigorous Secure Access process supports the IRS Get Transcript Online and Get an IP PIN tools.

Here’s what you need to be successful:

A email address;
Your Social Security number;
Your filing status and address from your last filed tax return;
Your personal account number from a:
credit card, or
home mortgage loan, or
home equity (second mortgage) loan, or
home equity line of credit (HELOC), or
car loan

A readily available mobile phone. Only U.S.-based mobile phones may be used. Your name must be associated with the mobile phone account to complete the process in one session. If you have a Google Voice or similar virtual phones or a pay-as-you-go plan, you can opt for an activation code by mail, which will take five to 10 days for delivery. Landlines and Skype may not be used.

Each time you access your IRS.gov accounts, you must have your username, password and your mobile phone handy to receive a security code.

You may be familiar with similar two-factor authentication options. Social media and financial institutions use this option to provide additional protection. For example, these sites may send a security code should they fail to recognize your computer device, there’s an attempt to change your password or there’s an attempt to transfer money.

The purpose of two-factor authentication is to ensure that you and only you are able to access your accounts.

The IRS, state tax agencies and the tax industry joined as the Security Summit to enact a series of initiatives to help protect you from tax-related identity theft. You can help by taking these basic steps.

To learn additional ways you can take to protect your personal and financial data, visit “Taxes. Security. Together.” Also read Publication 4524, Security Awareness for Taxpayers.

New Retirement Savings Law

Tax professionals could get many of the technical changes they seek for the new partnership audit regime when and if Congress passes a Tax Technical Corrections Act (H.R. 6439, S. 3506).

Partners could push out adjustments in an audit beyond the first tier of partners and underpaid tax amounts should factor in the partner’s tax rate, according to an analysis of the bill released Dec. 6 by the Joint Committee on Taxation (JCX-91-16). Tax lawyers and accountants have been pushing Congress to make changes to the new regime for examining partnerships that Congress included in the Protecting Americans from Tax Hikes (PATH) Act last year.

The technical corrections bill is unlikely to pass before the end of the year, but the changes give both taxpayers and Internal Revenue Service officials, who are in the process of writing regulations to implement the audit regime, a view of how the law could be revised in the coming months. The law goes into effect in 2018. The bill also makes changes and clarifications to other tax laws.

“The tax-writing committees should be commended for following up and clarifying key aspects of the historic partnership audit reforms enacted last year,” Ryan P. McCormick, senior vice president and counsel at the Real Estate Roundtable, told Bloomberg BNA in an e-mail. “The technical corrections bill provides critical certainty to the real estate industry and others that partnerships will be able to pass tax adjustments through tiered partnerships to the ultimate partner.”

Koskinen Impeachment Saga Continues

The push to impeach IRS Commissioner John Koskinen continued into the Congress’ final days this year, and it will likely spill over into 2017.

Members of the conservative House Freedom Caucus filed a privileged resolution Dec. 6 that would force a vote on impeaching Koskinen. House members then voted to refer the motion back to the Judiciary Committee, where Chairman Robert W. Goodlatte (R-Va.) will decide next steps. The series of events likely won’t culminate in any action this year, but the caucus will continue to push for the commissioner’s removal next year, Rep. Mark Meadows (R-N.C.) told Bloomberg BNA.

The Freedom Caucus members Reps. Tim Huelskamp (R-Kan.) and John Fleming (R-La.), have been pushing to remove the head of the IRS for the past several months. Neither member is returning to Congress next session. But even with Meadows, who is the incoming chairman of the
caucus, continuing to spearhead the issue, it likely won’t gain any traction in the Senate.

Freedom Caucus members say Koskinen must be impeached for not cooperating with a congressional investigation into IRS targeting of conservative groups applying for tax exemptions. Finance Committee Chairman Orrin G. Hatch (R-Utah) has repeatedly said he opposes removing Koskinen, because there isn’t enough evidence. Koskinen’s term ends in November of next year. He has said he would step down if asked to by the new administration.

Get Ready for Sweeping Tax Law Change

We’ve been surprised by investment professionals who tell us their clients are not certain that tax reform will pass, or that it could be a modest bill. Tax reform most definitely will pass, and it will not be modest -- it will be the most sweeping reform bill in our lifetimes.

The House Ways and Means Committee is ready to roll. Chairman Kevin Brady should send a bill to the House floor by late winter; it will combine individual, business and international reform. After the full House passes the bill in the spring, it will move to the plodding Senate -- which will be consumed for months by tedious confirmation hearings for Donald Trump’s cabinet.

What Can Trump Get Done In His First 100 Days

Senate Finance Committee Chairman Orrin Hatch (R., Utah), will move deliberately; perhaps a bill can get to a House-Senate conference committee by summer, using the budget “reconciliation” process, which will require only a simple majority vote in the Senate. Optimists think the bill can pass by the August recess, but we’re more inclined to predict final passage in the fall, perhaps as the new fiscal year begins on Oct. 1.

Some proponents of sweeping reform want the measure to be retroactive, but we doubt that will happen. A possible effective date would be Oct. 1, 2017 -- or it might not take effect until Jan. 1, 2018. That wouldn’t necessarily upset Trump; a roaring economy in 2018 would coincide with the midterm elections.

The one certainty is that the top rate will fall sharply, from 39.6% to about 33%. Both the Trump plan and the House bill would create three brackets for couples -- 33% for income over $225,000, 25% for income up to $225,000 and 12% for the first $75,000.

The capital gains rate probably would fall to the pre-Obama level of 20% and the Obamacare surcharge definitely will be killed. The standard deduction could surge to $25,000 or more for couples.

The Issue To Watch: The real drama will come over deductions; Trump would cap them at $100,000 for individuals and $200,000 for couples. That’s not popular in Congress, although there’s support for killing some deductions such as the state and local tax break -- and there could be curbs on the mortgage interest deduction. The $1.1 million cap on mortgage deductions could be reduced, and the tax break for second homes could get curbed or eliminated.

Other deductions are so popular that we cannot envision their elimination. The charitable contribution deduction could get a waiver from the overall cap on deductions. A huge issue is the tax-exempt status of municipal bonds; our guess is that since the state and local tax exemption is likely to die, curbs on muni bonds are not likely to be included in the overall deduction cap -- but this is not a certainty.

What About The Estate Tax? Eliminating the “death tax” has been part of the GOP mantra for years, and we think it will be curbed, only affecting a few thousand ultrawealthy estates. But totally eliminated? That’s a close call; it could be viewed as politically risky by some Republicans. Another controversial tax -- the AMT -- will probably get killed since the cap on deductions would make it moot.

Possible Snags: There will be plenty of grumbling about the cost -- Trump’s proposal would cost as much as $6 trillion over 10 years, while the House bill would cost about half as much. His version is more generous to corporations (we’ll look at corporate tax reform later this week). And Trump would spend more on child and elder care credits, which have generated a lukewarm response on Capitol Hill. But the total cost will be staggering -- even if “dynamic” scoring is used. If there’s serious push-back on the cost it would come later this winter from fiscal hawks in the House.

Bottom Line: There are hundreds of details to be ironed out, and there’s the intriguing issue of whether an improving economy really needs a big tax cut. And clients cannot be certain on the effective date or the cap on deductions. But tax reform is coming -- this is the signature issue for Trump and the GOP -- and we feel very confident that it will be enacted within 10 months or less, with an enormous impact on the overall economy in 2018.

Business Promotion

Credit Karma Launches Always-Free Online Tax Preparation Service

Credit Karma introduced Credit Karma Tax, its new online self-directed tax preparation service. Credit Karma Tax provides always-free federal and state tax preparation, along with free e-filing, for its members. This announcement coincides with a new look and feel for the company.

“Today almost half of all Americans can’t afford a $400
Military Taxes

Combat-Injured Veterans Tax Fairness Act of 2016

This bill directs the Department of Defense (DOD) to identify:
• certain severance payments to veterans with combat-related injuries paid after January 17, 1991, from which DOD withheld amounts for tax purposes, and
• the individuals to whom such severance payments were made.

DOD shall provide each such veteran with:
• notice of the amount of improperly withheld severance payments, and
• instructions for filing amended tax returns to recover such amount.

The period for filing a related claim with the Internal Revenue Service for a credit or refund is extended beyond the three-year limitation to the date that is one year after DOD provides the veteran with the information required by this Act.

DOD shall ensure that amounts are not withheld for tax purposes from DOD severance payments to individuals when such payments are not considered gross income.

Estate and Trust News

Form 1041-T / 1041 Line 24b - Estimated Tax Payments Allocated to Beneficiaries

Applicable code section - 26 U.S. Code §643 (g):

(g) Certain payments of estimated tax treated as paid by beneficiary

(1) In general In the case of a trust—

(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

(B) any amount so treated shall be treated as paid or

Editors Note: It is always good to know our competition!
credited to the beneficiary on the last day of such taxable year, and

(C) for purposes of subtitle F, the amount so treated—

(i) shall not be treated as a payment of estimated tax made by the trust, but

(ii) shall be treated as a payment of estimated tax made by such beneficiary on January 15 following the taxable year.

(2) Time for making election

An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe.

(3) Extension to last year of estate

In the case of a taxable year reasonably expected to be the last taxable year of an estate—

(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

(B) the fiduciary of the estate shall be treated as the trustee.

Eligible fiduciary entities

Estates may only make the IRC §643 (g) election in its final year. Trusts may make the IRC §643 (g) for any tax year of the trust.

When - By the 65th day following the allowable tax year - No extension

If the 65th day, the due date, falls on a Saturday, Sunday, or legal holiday, file by the next business day.

Filing an extension request for the Form 1041 tax return does not extend the due date for filing Form 1041-T. There is no extension of the 65-day rule for filing Form 1041-T.

Where - The appropriate IRS office by paper only

Attach Form 1041-T to Form 1041 only if you are making the election with Form 1041; otherwise, paper-file Form 1041-T separately. The “mail to” address is on the Form 1041-T instructions, page 2. Form 1041-T cannot be e-filed.

For the election to be valid, a trust or decedent’s estate must file Form 1041-T by the 65th day after the close of the tax year.

Why - To distribute the federal tax estimated payments already made

Note that the §643 (g) election to distribute the federal tax payments must be filed within 65 days. Note, too, that the §663(b) election to treat distributions made within the first 65 days of the following tax year both have the “65-Day” requirement. There is symmetry here for good reason. If the trustee or executor distributes the taxable income within 65 days, it makes sense to distribute the federal tax payments as well.

How - The election is made on Form 1041-T

The election is made on Form 1041-T, Allocation of Estimated Tax Payments to Beneficiaries, which must be filed by the 65th day after the close of the trust’s tax year.

Form 1041-T shows the amounts to be allocated to each beneficiary. This amount is reported on the beneficiary’s Schedule K-1 (Form 1041), box 13, code A.

If you have already filed Form 1041-T, do NOT attach a copy to your return.

Practical application - Timing is critical

Timing is critical: Failure to file Form 1041-T by the due date (Monday, March 6, 2017, for calendar year estates and trusts) will result in an invalid election. An invalid election will require the filing of amended Schedules K-1 for each beneficiary who was allocated a payment of estimated tax.

The total of the federal taxes passed to beneficiaries is reported on Form 1041, Line 24b, Estimated Tax Payments Allocated to Beneficiaries.

Except for backup withholding, withheld income tax can’t be passed through to beneficiaries on either Schedule K-1 or Form 1041-T. Withheld income tax is reported on Line 24e of Form 1041.

Earliest Inherited Property Basis Reporting Deadline Was 6/30/16

T.D. 9797, 12/01/2016; Reg. § 1.6035-2

IRS has issued final regs which provide that the earliest due date for providing statements to IRS and to beneficiaries, under the rules requiring consistent basis reporting for estate tax and income tax purposes, was June 30, 2016. The regs thus confirm the rule contained in Notice 2016-27, 2016-15 IRB 576.

Background—requirement to file consistent basis statements. The executor or administrator of a decedent’s estate must file the estate tax return. (Code Sec. 6018(a))

If the executor or administrator is unable to make a complete return with respect to any part of the gross estate, he must include in his return all the information he has, including a description of such part and the name and address of every person holding a legal or beneficial interest in such part. If they are notified by IRS, such legal or beneficial owners must then file returns as to their parts of the estate. (Code Sec. 6018(b))
On July 31, 2015, President Obama signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41; the Act). Section 2004 of the Act enacted Code Sec. 1014(f) and Code Sec. 6035.

Under the Act, effective for property with respect to which an estate tax return is filed after July 31, 2015, the basis of any property to which Code Sec. 1014(a) (i.e., the rules for determining basis of property acquired from a decedent) applies can’t exceed:

- (A) In the case of property, the final value of which has been determined for purposes of the estate tax on the estate of the decedent, such value.
- (B) In the case of property not described in (A), above, and with respect to which a statement has been furnished under new Code Sec. 6035(a) (see below) identifying the value of such property, such value. (Code Sec. 1014(f)(1))

Code Sec. 6035 imposes reporting requirements with regard to the value of property included in a decedent’s gross estate for federal estate tax purposes.

Code Sec. 6035(a)(1) provides that the executor of any estate required to file an estate tax return under Code Sec. 6018(a) must furnish, both to IRS and the person acquiring any interest in property included in the decedent’s gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to that interest as IRS may prescribe.

Under Code Sec. 6035(a)(2), each person required to file a return under Code Sec. 6018(b) must furnish, both to IRS and each other person who holds a legal or beneficial interest in the property to which such return relates, a statement identifying the information described in Code Sec. 6035(a)(1).

Code Sec. 6035(a)(3)(A) provides that each statement required to be furnished under Code Sec. 6035(a)(1) or Code Sec. 6035(a)(2) must be furnished at such time as IRS may prescribe, but in no case at a time later than the earlier of: (i) the date which is 30 days after the date on which the return under Code Sec. 6018 was required to be filed (including extensions, if any); or (ii) the date which is 30 days after the date such return is filed.

Background—IRS-provided delays for initial due date. Notice 2015-57, 2015-36 IRB 294, provided that, for statements required under Code Sec. 6035(a)(1) and Code Sec. 6035(a)(2) to be filed with IRS or furnished to a beneficiary before Feb. 29, 2016, the due date under Code Sec. 6035(a)(3) was delayed to Feb. 29, 2016. Notice 2016-19, 2016-9 IRB 362, provided the same rule, except with Mar. 31, 2016 substituted for Feb. 29, 2016. Then, in temporary regs issued in early March, 2016, IRS reiterated the Mar. 31, 2016 date by saying that executors and other persons required to file or furnish a statement under Code Sec. 6035(a)(1) or Code Sec. 6035(a)(2) before Mar. 31, 2016 need not do so until Mar. 31, 2016. (Reg. § 1.6035-2T(a)) And, then, in late March, 2016, IRS announced that statements required under Code Sec. 6035(a)(1) and Code Sec. 6035(a)(2) to be filed with IRS or furnished to a beneficiary before June 30, 2016 need not be filed with IRS and furnished to a beneficiary until June 30, 2016.

New regs confirm Notice’s date. IRS has now withdrawn the portion of the March temporary regs that contained the Mar. 31, 2016 initial due date (T.D. 9797, 12/01/2016) and issued final regs with the June 30, 2016 that was contained in Notice 2016-27. (Reg. § 1.6035-2)

People in the Tax News

Nona Fisher Becomes New President of the North Carolina Society of Tax Professionals

At the retirement of Dorothy Leamon, Nona Fisher becomes the NCSTP President. Both are members of the Fellowship and we wish them great success in all their endeavors.. Dorothy, the First Lady of North Carolina Tax Professionals, is to be commended for her efforts in providing quality education to NC. In a world of many women, there are too few ladies and if you know Dorothy, you know a lady.

Jean Nelson Elected President of National Association of Enrolled Agents

ncpeFellowship Member Jean Nelson was elected as President of the National Association of Enrolled Agents and the Fellowship wishes to congratulate her and wish her great success as she leads NAEA.

Kevin Brady, Chairman of the House Ways and Means Committee Writes IRS Commissioner Koskinen

Rep. Kevin Brady (R-TX), chairman of the House Ways and Means Committee, joined by a key colleague on the panel, on Dec. 14 wrote to IRS Commissioner John Koskinen requesting information regarding the agency’s practice and policies when receiving an application for tax-exempt status by groups expressing support for the State of Israel.

“Based on internal IRS documents, facts exposed during litigation, and recent news reports, the Committee seeks documents from the IRS to understand how the IRS has treated tax-exempt organizations connected to Israel with viewpoints different than the Administration’s in the past and how the IRS plans to treat such organizations in the future,” the letter said.

The letter cited agency documents referring to a “Special Israel Policy” and other suggestive terminology. “Other documents raised questions about coordination between the IRS, the U.S. Department of the Treasury, and the U.S. Department of State regarding the treatment of tax-exempt organizations
with an interest in the State of Israel," it stated.

The letter placed heavy emphasis on the treatment of a pro-Israel organization, Z Street, which applied for tax-exempt status in 2009 and was only granted that status on Oct. 22, 2016.

Along the way, the letter stated, the Obama administration argued before the U.S. Court of Appeals for the District of Columbia Circuit, that it should be allowed “to process exemption applications pursuant to different standards and at different rates depending upon the viewpoint of the applicants” for a maximum of 270 days. The Appellate Court called this a “blatant violation of the First Amendment,” the letter said.

The letter, which was co-signed by Rep. Peter Roskam (R-IL), chairman of the House Ways and Means Oversight Subcommittee, can be accessed at https://waysandmeans.house.gov/wp-content/uploads/2016/12/2016.12.13-Brady-Roskam-to-IRS-re-Z-Street-.pdf. (Link Click here)

Westchester County Attorney Charged with Failing to File Tax Returns for Three Years

The New York State Department of Taxation and Finance today announced the arrest and arraignment of a PricewaterhouseCoopers tax partner who allegedly failed to file his state personal income tax returns three years in a row.

William J. O’Hagan, 56, of 940 King Street, Chappaqua, was charged with two counts of criminal tax fraud, both felonies, and repeated failure to file a personal income tax return in a timely manner for the years 2010, 2011, and 2012, also a felony.

O’Hagan is an attorney and a certified public accountant with PwC in its NYC office. The NYS Tax Department’s Criminal Investigations Division estimates that the defendant “willfully failed to pay the State” $86,457, according to court documents. “It’s particularly egregious when a tax a partner at an internationally respected firm is charged with blatantly failing to pay his own taxes,” said Acting Commissioner Nonie Manion. “A professional of his standing is expected to know and uphold the law on behalf of clients, which makes these accusations especially troubling.”

The case will be prosecuted by the Albany County District Attorney’s office. O’Hagan, who pleaded not guilty, was released on his own recognizance after an appearance in Albany City Court. The next court date is scheduled for January 6, 2017.

If convicted, O’Hagan could face a maximum sentence of from 2 and 1/3 years to 7 years in prison. A criminal complaint is an accusation and the defendant is presumed innocent until proven guilty.

Fairview Bus Company Owner From Cliffside Admits Ducking $500,000 In Taxes

A Fairview charter bus company owner from Cliffside Park admitted Thursday that he stifled the government out nearly $500,000 in income tax payments.

Adel Saadalla, the 52-year-old owner and operator of K&T Express, told a federal judge in Trenton that he deposited proceeds from the business into his personal bank accounts from 2010 through 2013 and didn’t report it, New Jersey IRS Special Agent in Charge Jonathan D. Larsen said.

“In doing so, he caused an approximate tax due and owing to the government of $492,644,” Larsen said.

Larsen’s Criminal Investigation team conducted the investigation in tandem with U.S. Attorney Paul J. Fishman’s office. Assistant U.S. Attorney Justin S. Herring is handling the prosecution.


The plea “should reassure those Americans who file accurate, honest and timely returns that the government will hold accountable those who do not,” Larsen said.

Tax Cheat’s Collection Takes in $55 Million at Auction

The taxman taketh and sometimes the taxman taketh more. Luigi Compiano found out just how much the taxman can take. You see, Compiano took over his family’s private security firm, and stopped paying the Italian government the many millions of Euros it was owed. Compiano and the family instead spent that money on a whole lot of houses, cars, motorcycles, boats, bicycles, and many other toys. Many of those items just went up for auction, and RM Sothebys had a field day with all 817 lots it was in charge of selling.

The auction took place in Italy over the course of three days. It was called the Duemila Ruote (which means two thousand wheels) collection and it featured more than 400 cars, 150-
managed a Glendale Heights tobacco shop called Valentina #1, which also operated as Valentine Tobacco Shop. Between August 2011 and July 2014, Aburukbeh filed fraudulent sales tax returns with the state, underreporting millions of dollars in sales.

“This business owner illegally pocketed sales tax money that should have gone to the state to benefit Illinois residents who rely on important state programs,” Madigan said.

The investigation was conducted by the IDOR’s Criminal Investigations Division and referred to Madigan’s office for prosecution.

“I commend the efforts of both Revenue’s Criminal Investigation Division, as well as the Attorney General’s office for remaining vigilant in efforts to investigate and prosecute tax fraud in Illinois,” said Connie Beard, Director of the Illinois Department of Revenue. “The hard work of all involved in the Aburukbeh indictment sends a clear message that we take allegations of tax fraud seriously.”

**Boston Cab Tycoon Sentenced for 1.5 Years In Halfway House for Tax and Other Violations**

Multimillionaire Edward J. Tutunjian, the former king of Bostons struggling taxi industry, was sentenced by a federal judge Tuesday to serve 18 months in a halfway house and pay for his care at the Boston facility.

The man known as the king of Boston’s cab industry who at one time owned nearly a fifth of the city’s taxi medallions has been sentenced to spend a year and a half in a halfway house for federal tax and other violations.

The U.S. attorney’s office in Boston says 67-year-old Edward Tutunjian, owner of Boston Cab, was sentenced on Tuesday to 20 months of probation.

The Belmont resident previously paid $2.3 million in restitution after pleading guilty to payroll tax evasion, employing drivers not in the U.S. legally, and failing to pay overtime wages.

Tutunjian has owned Boston cab since 1972. Prosecutors say he owned approximately 372 taxi medallions by 2014 and made millions of dollars in revenue, mostly in cash. Tutunjian has transferred the medallions to his wife.

**Dupage Businessman Pleads Guilty to Tax Fraud**

Attorney General Lisa Madigan today announced that a DuPage County businessman pleaded guilty and was sentenced to prison for defrauding the state out of nearly $400,000.

Tale Aburukbeh, 37, of Chicago, pleaded guilty to filing fraudulent sales tax returns and was sentenced to two years in the Illinois Department of Corrections. He was ordered to surrender by Jan. 17, 2017. Aburukbeh was also ordered to pay $392,160 in restitution to the Illinois Department of Revenue (IDOR).

In 2015, Madigan’s office charged Aburukbeh while he
IRS Waives 60-day Rollover Rule for Disabled Taxpayer But Not the One-IRA-rollover-per-year Rule

PLR 201647014

In a private letter ruling (PLR), IRS waived the 60-day rollover rule for the first of two IRA distributions made by a disabled taxpayer who mistakenly deposited the payouts in a non-IRA account. Thus, the amount of the first distribution could be deposited late into an IRA. However, the amount of the second distribution got no reprieve since Code Sec. 408(d)(3)(B) provides a one-IRA-rollover-per-year rule that can’t be waived.

There is no immediate tax if distributions from an IRA are rolled over to an IRA or other eligible retirement plan (i.e., qualified trust, governmental Code Sec. 457 plan, Code Sec. 403(a) annuity and Code Sec. 403(b) tax-shelter annuity). For the rollover to be tax-free, the amount distributed from the IRA generally must be recontributed to the IRA or other eligible retirement plan no later than 60 days after the date that the taxpayer received the withdrawal from the IRA. (Code Sec. 408(d)(3)) A distribution rolled over after the 60-day period generally will be taxed (and also may be subject to a 10% premature withdrawal penalty tax). (Code Sec. 72(t)) Only one tax-free IRA-to-IRA rollover per IRA account can be made within a one-year period. (Code Sec. 408(d)(3)(B))

IRS may waive the 60-day rule if an individual suffers a casualty, disaster, or other event beyond his reasonable control, and not waiving the 60-day rule would be against equity or good conscience (i.e., hardship waiver). (Code Sec. 408(d)(3)(l)) The Code does not provide for a hardship waiver of the Code Sec. 408(d)(3)(B) one-IRA-rollover-per-year rule.

Rev Proc 2003-16, 2003-1 CB 359, establishes a letter-ruling procedure for taxpayers to apply for a waiver of the 60-day rollover requirement and sets out several factors that IRS considers in determining whether to waive the 60-day rollover requirement. These factors include time elapsed since the distribution and inability to complete the rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, postal error, errors committed by a financial institution, etc.

Facts. On Mar. 10, 2015, a taxpayer we’ll call Mr. Smith took a distribution from IRA B and, on Mar. 12, 2015, deposited the amount of the distribution into a non-IRA savings account which was maintained by Financial Institution E. On Mar. 30, 2015, Smith took another distribution from IRAB, which he also deposited into a non-IRA account with Financial Institution E. Both distributions have not been used for any other purpose.

Due to memory loss and confusion, Smith says he did not understand the implications of taking the two withdrawals from IRA B and depositing them into a non-IRA account. Smith had medical documentation that his symptoms of cognitive impairment began in 2010 and became more prominent beginning in January of 2015.

Via PLR request, Smith asked IRS to waive the 60-day rollover requirement for the two distributions from IRA B.

Effective Aug. 24, 2016, taxpayers no longer have to submit PLR requests for waiver of the 60-day rollover deadline. Under Rev Proc 2016-47, 2016-37 IRB, there’s a a new self-certification procedure designed to help recipients of retirement plan distributions who, due to one or more specified reasons, inadvertently miss the 60-day time limit for properly rolling these amounts into another retirement plan or individual retirement arrangement (IRA).

Split decision. IRS said that the information and documentation submitted were consistent with Smith’s claim that his failure to accomplish a rollover of the first distribution within the 60-day period prescribed by Code Sec. 408(d)(3)(A) was due to cognitive impairment. Thus, pursuant to Code Sec. 408(d)(3)(l), IRS waived the 60-day rollover requirement for the first distribution from IRA B. Provided all other requirements of Code Sec. 408(d)(3), except the 60-day requirement, will be met for the contribution of the first distribution amount to an IRA, IRS said that the contribution will be treated as a rollover contribution within the meaning of Code Sec. 408(d)(3).

However, IRS couldn’t help with the second distribution from Smith’s IRA, because Code Sec. 408(d)(3)(B) imposes a 1-year limitation on IRA-to-IRA rollovers. Thus, IRS ruled that the second distribution amount cannot be rolled over into an IRA.

T.D. 9799, 12/02/2016, Reg. § 1.6695-2T, Preamble to Prop Reg 12/02/2016, Prop Reg § 1.6695-2

IRS has issued temporary regs that implement recent law changes that expand the tax return preparer due diligence penalty under Code Sec. 6695(g) so that, in addition to the earned income credit (EIC), it applies to the child tax credit (CTC), the additional child tax credit (ACTC), and the American Opportunity Tax Credit (AOTC). The regs also reflect that the penalty is adjusted for inflation. The text of the temporary regs also serves as the text of the proposed regs.

Background. Prior to recent amendments (see below), Code Sec. 6695(g) imposed a penalty on an income tax return preparer who failed to meet the EIC due diligence requirements set out in regs

Former Reg §1.6695-2 implemented Code Sec. 6695(g) by imposing due diligence requirements on persons who were tax return preparers under Code Sec. 7701(a)(36) with respect to determining eligibility for, or the amount of, the EIC.

Under the due diligence requirements set out in the regs, a preparer must:

• (1) Complete and submit Form 8867, “Paid Preparer’s Earned Income Credit Checklist” (as the form was termed prior to its revision, see below);
• (2) Complete the Earned Income Credit Worksheet (Worksheet), as contained in the Form 1040 instructions or record the preparer’s computation of the credit, including the method and information used to make the computation;

• (3) Not know or have reason to know that any information used by the preparer in determining eligibility for, and the amount of, the EIC is incorrect and make reasonable inquiries when required, documenting those inquiries and responses contemporaneously (knowledge requirement); and

• (4) Retain, for three years from the applicable date, the Form 8867, the Worksheet (or alternative records), and the record of how and when the information used to determine eligibility for, and the amount of, the EIC was obtained by the preparer, including the identity of any person furnishing information and a copy of any document relied on by the preparer.

To comply with the knowledge requirement under Former Reg §1.6695-2(b)(3), the tax return preparer may not ignore the implications of information furnished to or known by him, and must make reasonable inquiries if the information furnished to him appears to be incorrect, inconsistent, or incomplete. Examples in the regs illustrate this requirement.

A tax return preparer is required to submit the Form 8867 to IRS when the preparer electronically files the tax return. If a tax return preparer required to complete the Form 8867 is not electronically filing the taxpayer’s return with IRS, the regs provides rules for submission of the form. If the tax return preparer required to complete the Form 8867 is not the signing tax return preparer, the preparer satisfies the submission requirement by providing a copy of the completed Form 8867 to the signing tax return preparer. If the tax return preparer required to complete the Form 8867 is the signing tax return preparer but the taxpayer is not electronically filing the return, the preparer must provide a copy of the completed Form 8867 to the taxpayer to be attached to the return being filed with IRS.

Code Sec. 6695(h), which was added by Sec. 208(c), Div. B of the Tax Increase Prevention Act of 2014 (the 2014 Act, P.L.113-295), provides that the penalty amount is indexed for inflation, effective for returns or claims for refund filed after Dec. 31, 2014. As inflation-adjusted, the penalty was $505 for 2015, and is $510 for 2016 and 2017.

Code Sec. 6695(g) was amended by Sec. 207, Div. Q of the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act, P.L. 114-113) to expand the scope of the due diligence requirements to also include claims of the CTC/AOTC under Code Sec. 24 and the AOTC under Code Sec. 25A(a)(1), effective for tax years beginning after Dec. 31, 2015.

Temporary regs. The final Reg. § 1.6695-2 regs are amended to cross refer them to the temporary regs, which reflect the changes made to Code Sec. 6695(g) by the PATH Act. The temporary regs also conform the regs to the 2014 Act, reflecting that the penalty is to be adjusted for inflation.

As a result of the PATH Act changes, one return or claim for refund may contain claims for more than one credit subject to the due diligence requirements. Each failure to comply with the due diligence requirements set out in regs results in a penalty. The Code Sec. 6695(g) requirements apply to each credit claimed, meaning more than one penalty could apply to a single return or claim for refund. Examples in the temporary regs show how multiple penalties could apply when one return or claim for refund is filed.

Form 8867, Paid Preparer’s Due Diligence Checklist, has been revised for the 2016 tax year and is a single checklist to be used for all applicable credits (EIC, CTC/ACTC, and/or AOTC) on the return or claim for refund subject to the Code Sec. 6695(g) due diligence requirements. Form 8867 was streamlined to eliminate unnecessary redundancy with other forms and schedules. Reg. § 1.6695-2T(b)(1)(ii) clarifies that the completion of Form 8867 can be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained or previously known by the preparer.

Reg. § 1.6695-2T(b)(3)(ii) provides updated examples to give more insight into when a tax return preparer has satisfied the due diligence knowledge requirement, including for purposes of the CTC and AOTC. The updates to the examples in Reg. § 1.6695-2T(b)(3)(ii) illustrate that the knowledge requirement for purposes of due diligence can be satisfied in conjunction with a tax return preparer’s information gathering activities done for the purpose of accurately completing other aspects of a tax return or claim for refund. New Example 2 and Example 4 have also been added to illustrate that in certain circumstances a tax return preparer may satisfy the knowledge requirement based on existing knowledge without having to make additional reasonable inquiries. New Example 7 provides an example of due diligence for purposes of the AOTC.

Reg. § 1.6695-2T(a) reflects that IRS is required to index the penalty for inflation for returns or claims for refund filed after Dec. 31, 2014.

2017 Standard Mileage Rates for Business, Medical and Moving Announced

The Internal Revenue Service issued the 2017 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2017, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 53.5 cents per mile for business miles driven, down from 54 cents for 2016
- 17 cents per mile driven for medical or moving purposes, down from 19 cents for 2016
The business mileage rate decreased half a cent per mile and the medical and moving expense rates each dropped 2 cents per mile from 2016. The charitable rate is set by statute and remains unchanged.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or for a vehicle after using any depreciation method under the Internal Revenue Code after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for more than four vehicles used simultaneously.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for more than four vehicles used simultaneously.

### Plan now to Use Health Flexible Spending Arrangements in 2017; Contribute up to $2,600; $500 Carryover Option Available to Many

The Internal Revenue Service reminded eligible employees that now is the time to begin planning to take full advantage of their employer’s health flexible spending arrangement (FSA) during 2017.

FSAs provide employees a way to use tax-free dollars to pay medical expenses not covered by other health plans. Because eligible employees need to decide how much to contribute through payroll deductions before the plan year begins, many employers this fall are offering their employees the option to participate during the 2017 plan year.

Interested employees wishing to contribute during the new year must make this choice again for 2017, even if they contributed in 2016. Self-employed individuals are not eligible. An employee who chooses to participate can contribute up to $2,600 during the 2017 plan year. Amounts contributed are not subject to federal income tax, Social Security tax or Medicare tax. If the plan allows, the employer may also contribute to an employee’s FSA.

Throughout the year, employees can then use funds to pay qualified medical expenses not covered by their health plan, including co-pays, deductibles and a variety of medical products and services ranging from dental and vision care to eyeglasses and hearing aids. Interested employees should check with their employer for details on eligible expenses and claim procedures.

Under the use or lose provision, participating employees often must incur eligible expenses by the end of the plan year, or forfeit any unspent amounts. But under a special rule, employers may, if they choose, offer participating employees more time through either the carryover option or the grace period option.

Under the carryover option, an employee can carry over up to $500 of unused funds to the following plan year—for example, an employee with $500 of unspent funds at the end of 2017 would still have those funds available to use in 2018. Under the grace period option, an employee has until 2½ months after the end of the plan year to incur eligible expenses—for example, March 15, 2018, for a plan year ending on Dec. 31, 2017. Employers can offer either option, but not both, or none at all.

Employers are not required to offer FSAs.

### Safeguarding Taxpayer Data – Avoid Scams

Tax return preparers should beware of various ruses and schemes used by cybercriminals. These scams allow criminals to gain access to passwords or computer systems which allows them to steal taxpayer data. Many schemes are currently making the rounds.

Protect your clients and yourself from these ongoing and increasingly sophisticated efforts to steal data.

How serious is this threat? Here are a few examples of criminal scams and schemes intent on stealing your information from just the past few months:

- In April and August of 2016, the IRS sent emergency alerts to tax professionals about criminals using remote access technology to gain control of preparers’ computers. The criminals used the preparers’ systems to complete client tax returns, file them with the IRS and then direct the refunds to their personal bank accounts. How the criminals gained control of preparers’ computers is under investigation. However, the incident shows the value of strong passwords, not only to access computers and each client file but also to password-protected wireless systems.

- One successful scheme aimed at payroll professionals could easily have migrated to tax preparers. A criminal created a “spoofing” email to appear as though it came from a company executive. The email requested Form W-2 information for each employee. Because of this scam, tens of thousands of Forms W-2 were sent to identity thieves.

- One ruse tries to make tax preparers think a client is emailing with follow-up information from a previous discussion. The included attachment doesn’t contain tax information; it contains malware designed to infect computers. The conversational tone of the phishing email tries to trick the preparer into thinking he had an earlier conversation with this client and now the ‘client’ is following up with requested tax information.

- Cybercriminals often pose as the IRS and request...
information that the IRS would never ask for via email or text. One popular scam tries to trick preparers into providing their password information for IRS e-Services accounts. The email to tax preparers asks them to update their e-Services accounts. It either infects the preparers' computers with malware that tracks keystrokes or it sends preparers to a fake e-Services page where they enter password information. If you are in doubt about an e-services or IRS Quick Alert communication, go directly to the application through IRS.gov. Do not click on any link or attachment from a suspicious email.

Scams aimed at tax preparers evolve each year. Tax professionals must be aware that any email can be a possible ploy from a clever criminal. This is just a sampling of scams.

**Final Regs Require Reporting By Foreign-owned Domestic Disregarded Entities**

T.D. 9796, 12/12/2016; Reg. § 1.6038A-1, Reg. § 1.6038A-2, Reg. § 301.7701-2

IRS has issued final regs that treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner, but only for the reporting, record maintenance, and associated compliance requirements that apply to 25% foreign-owned domestic corporations under Code Sec. 6038A. These changes are intended to provide IRS with improved access to information that it needs to satisfy its obligations under U.S. tax treaties, tax information exchange agreements and similar international agreements, as well as to strengthen the enforcement of U.S. tax laws.

Reg. § 301.7701-1 through Reg. § 301.7701-3 (the entity classification regs) classify a business entity with two or more members as either a corporation or a partnership, and a business entity with a single owner as either a corporation or an entity disregarded as separate from its owner (disregarded entity). Certain domestic business entities, such as limited liability companies (LLCs), are classified by default as partnerships (if they have more than one member) or as disregarded entities (if they have only one owner) but are eligible to elect for federal tax purposes to be classified as corporations.

When an entity, such as an LLC, is classified as a corporation or a partnership for tax purposes, general ownership and accounting information is available to IRS through the return filing and EIN application requirements. However, a disregarded entity isn’t subject to a separate income or information return filing requirement. Its owner is treated as owning directly the entity’s assets and liabilities, and the information available with respect to the disregarded entity depends on the owner’s own return filings, if any are required.

For a disregarded entity that is formed in the U.S. and wholly owned by a foreign corporation, foreign partnership, or nonresident alien individual, generally no U.S. income or information return must be filed if neither the disregarded entity nor its owner received any U.S. source income or was engaged in a U.S. trade or business during the tax year. Moreover, if a disregarded entity only receives certain types of U.S. source income, such as portfolio interest or U.S. source income that is fully withheld upon at source, its owner may not have a U.S. return filing requirement. Even in cases when the disregarded entity has an EIN, as well as in cases when income earned through a disregarded entity must be reported on its owner’s return (for example, income from a U.S. trade or business), it may be difficult to associate the income with the disregarded entity based solely on the owner’s return.

In general, Code Sec. 6038A imposes reporting and recordkeeping requirements (together with certain procedural compliance requirements) on domestic corporations that are at least 25% foreign-owned. They are required to file an annual return on Form 5472 (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business) with respect to each related party with which the reporting corporation had any reportable transactions. (Reg. § 1.6038A-2) These corporations must keep the permanent books of account or records as required by Code Sec. 6001 that are sufficient to establish the accuracy of the federal income tax return of the corporation, including information, documents, or records to the extent they may be relevant to determine the correct U.S. tax treatment of transactions with related parties. (Reg. § 1.6038A-3)

In May, 2016, IRS issued proposed regs that would amend Reg. § 301.7701-2(c) to treat a domestic disregarded entity that is wholly owned by one foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting and record maintenance requirements (including the associated procedural compliance requirements) under Code Sec. 6038A. (Prop Reg § 301.7701-2(c)(2)(vi)) The proposed regs didn’t alter the framework of the existing entity classification regs, including the treatment of certain entities as disregarded entities. (Preamble to Prop Reg 05/06/2016)

Final regs expand upon proposed regs. The final regs keep the provisions from the proposed regs, add some new ones, and change the effective date of the regs.

Because the final regs treat the affected domestic entities as foreign-owned domestic corporations for Code Sec. 6038A, they are reporting corporations under Code Sec. 6038A. (Reg. § 1.6038A-1(c)(1)) Accordingly, they are required to file Form 5472 with respect to reportable transactions between the entity and its foreign owner or other foreign related parties (transactions that would have been regarded under general U.S. tax principles if the entity had been, in fact, a corporation for U.S. tax purposes). They also are required to maintain records sufficient to establish the accuracy of the information return and the correct U.S. tax treatment of such transactions. In addition, because these entities would have a filing obligation, they would be required to obtain an EIN by filing a Form SS-4 (Application for Employer Identification Number) that includes responsible party information. (Preamble to Prop Reg 05/06/2016)

As under the proposed regs, to ensure that such entities are
required to report all transactions with foreign related parties, the final regs specify as an additional reportable category of transaction any transaction under Reg. § 1.482-1(i)(7) (with such entities being treated as separate taxpayers for the purpose of identifying transactions and being subject to requirements under Code Sec. 6038A) to the extent not already covered by another reportable category. (Reg. § 1.6038A-2(b)(3)(x)) The term “transaction” is defined in Reg. § 1.482-1(i)(7) to include any sale, assignment, lease, license, loan, advance, contribution, or other transfer of any interest in or a right to use any property or money, as well as the performance of any services for the benefit of, or on behalf of, another taxpayer.

And, as under the proposed regs, the exceptions to the record maintenance requirements for small corporations in Reg. § 1.6038A-1(h) (i.e., for reporting corporations that have less than $10 million in U.S. gross receipts for a tax year) and for de minimis transactions in Reg. § 1.6038A-1(h) (i.e., for any tax year in which the aggregate value of gross payments that the reporting corporation makes to and receives from foreign related parties with respect to related party transactions isn’t more than $5 million and is less than 10% of its U.S. gross income) do not apply to these entities. (Reg. § 1.6038A-1(h), Reg. § 1.6038A-1(i))

The final regs make the final additions to the proposed regs:

The proposed regs did not address the exception provided in Reg. § 1.6038A-2(e)(3), under which a reporting corporation is not required to file Form 5472 with respect to a related foreign corporation when a U.S. person that controls the related foreign corporation files a Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, containing required information with respect to reportable transactions between the reporting corporation and the related foreign corporation for the tax year. Similarly, the proposed regs did not address the exception provided in Reg. § 1.6038A-2(e)(4), under which a reporting corporation is not required to file Form 5472 with respect to a related foreign corporation that qualifies as a foreign sales corporation for a tax year for which the foreign sales corporation files Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation.

The final regs provide that, for the entities covered by the regs, the exceptions under Reg. § 1.6038A-2(e)(3) and Reg. § 1.6038A-2(e)(4) do not apply. (Reg. § 1.6038A-2(e)(3), Reg. § 1.6038A-2(e)(4))

To facilitate entities’ compliance with the requirements of Code Sec. 6038A, including the obligation of reporting corporations to file Form 5472, the final regs provide that these entities have the same tax year as their foreign owner if the foreign owner has a U.S. return filing obligation. If the foreign owner has no U.S. return filing obligation, the final regs provide that the tax year of these entities is the calendar year unless otherwise provided in forms, instructions, or published guidance. (Reg. § 301.7701-2(c)(2)(vi)(C))

Effective/applicability date. The proposed regs had provided that the regs would be applicable for tax years ending on or after the date that is 12 months after the date the regs were published as final regs. (Prop Reg § 1.6038A-1(n), Prop Reg § 301.7701-2(e)(9)) However, the final regs provide that they apply to tax years of entities beginning on or after Jan. 1, 2017, and ending on or after Dec. 13, 2017. (Reg. § 1.6038A-1(n), Reg. § 301.7701-2(e)(9))

IRS, Partners Move to Strengthen Anti-Fraud Effort with Form W-2 Verification Code

When you get your Form W-2 in early 2017, you may notice a new entry – a 16-digit verification code. This is part of an effort conducted by the Internal Revenue Service to protect taxpayers and strengthen anti-fraud efforts.

The expanded use of the W-2 Verification Code is a way to validate the wage and tax withholding information on the tax form. For taxpayers, taking a moment to add this code when filling out their taxes helps the IRS authenticate the information. This in turn helps protect against identity theft and unnecessary refund delays.

For 2017, the IRS and its partners in the payroll service provider industry will place the code on 50 million Forms W-2. This is up from two million forms in 2016.

The IRS, state tax agencies and the nation’s tax industry – partners in combating identity theft – ask for your help in their efforts. Working in partnership with you, we can make a difference.

That’s why we launched a public awareness campaign that we call Taxes. Security. Together. We’ve also launched a series of security awareness tips that can help protect you from cybercriminals.

One area where we need your help is with the W-2 Verification Code. If your W-2 contains the code, please enter it when prompted if using software to prepare your return. Or, please make sure your tax preparer enters it.

If the code is not included, your tax return will still be accepted. However, initial results indicate the verification code shows promise in reducing tax fraud. It helps IRS processing systems authenticate the real taxpayer. Identity thieves sometimes file false Forms W-2 to support their fraudulent tax returns.

This initiative will affect only those Forms W-2 prepared by payroll service providers. The verification code’s location on the form will vary. Enter the code on electronically filed returns only. Most software providers will prompt you to enter the code.

IRS Pondering Update To Circular 230

On November 16, 2016, the Internal Revenue Service Advisory Council (IRSAC) issued its 2016 Public Report. In that report,
the IRSAC made two recommendations related to the Office of Professional Responsibility (OPR). The IRSAC recommended that the Commissioner request Congress to enact legislation expressly affirming the Treasury Department’s authority under 31 USC 330 to establish and enforce professional standards for both paid tax return preparers and tax ‘practice’ broadly defined.

The IRSAC has made similar recommendations in its two previous reports. The IRSAC also made a series of recommendations for revisions to Treasury Circular 230, to delete obsolete references, provide authority to address some topics currently contained in Circular 230 through revenue procedures or other administrative guidance, add references to appraisers, and delete outdated language.

OPR Director Stephen Whitlock thanked the IRSAC for its thorough analysis of these issues, and committed to work with IRS, Treasury and tax professional groups to determine whether additional topics should be addressed in a revision of Circular 230.

IRS Strengthens Web Tool Access, Offers Tips for Use

As part of a wider effort to protect taxpayers, the Internal Revenue Service took steps this year to strengthen access to several IRS.gov applications, including adding requirements for the use of security codes texted to mobile phones to access certain tools.

This security code process is part of a two-factor or two-step authentication process that is becoming increasingly commonplace, especially in the social media, financial and tax areas. The two steps to access accounts are your credentials (username and password) plus a security code often sent as a text.

The IRS, state tax agencies and the nation’s tax industry – partners in combating identity theft - ask for your help in their efforts. Working in partnership with you, we can make a difference.

That’s why we launched a public awareness campaign that we call “Taxes. Security. Together.” We’ve also launched a series of security aware

To protect taxpayers, the IRS developed a new process it calls “Secure Access” following efforts by cybercriminals to impersonate taxpayers. Criminals are amassing more and more taxpayer data stolen from sources outside the tax system. They use the data to file fraudulent tax returns or to attempt access to taxpayer accounts.

The more rigorous Secure Access process supports the IRS Get Transcript Online and Get an IP PIN tools.

Here’s what you need to be successful:

- A email address;
- Your Social Security number;
- Your filing status and address from your last filed tax return;
- Your personal account number from a:
  - credit card, or
  - home mortgage loan, or
  - home equity (second mortgage) loan, or
  - home equity line of credit (HELOC), or
  - car loan
- A readily available mobile phone. Only U.S-based mobile phones may be used. Your name must be associated with the mobile phone account to complete the process in one session. If you have a Google Voice or similar virtual phones or a pay-as-you-go plan, you can opt for an activation code by mail, which will take five to 10 days for delivery. Landlines and Skype may not be used.

Each time you access your IRS.gov accounts, you must have your username, password and your mobile phone handy to receive a security code.

You may be familiar with similar two-factor authentication options. Social media and financial institutions use this option to provide additional protection. For example, these sites may send a security code should they fail to recognize your computer device, there’s an attempt to change your password or there’s an attempt to transfer money.

The purpose of two-factor authentication is to ensure that you and only you are able to access your accounts.

The IRS, state tax agencies and the tax industry joined as the Security Summit to enact a series of initiatives to help protect you from tax-related identity theft. You can help by taking these basic steps.

IRS, Security Summit Partners, Remind Taxpayers to Protect Themselves Online

The Internal Revenue Service, the states and the tax industry urged taxpayers to take steps to protect themselves online to help in the fight against identity theft.

Scammers, hackers and identity thieves are looking to steal taxpayers’ personal information and ultimately their money. But, there are simple steps taxpayers can take to help protect themselves, like keeping computer software up-to-date and being cautious about giving out their personal information.

Here are some best practices taxpayers can follow to protect their tax and financial information:

Understand and Use Security Software. Security software helps protect computers against the digital threats that are prevalent online. Generally, the operating system will include security software or you can access free security software from well-known companies or Internet providers. Essential tools include a firewall, virus/malware protection and file encryption if you keep sensitive financial/tax documents on your computer. Do not buy security software offered as an
unexpected pop-up ad on your computer or email. It’s likely from a scammer.


Look for the “S.” When shopping or banking online, always look to see that the site uses encryption to protect your information. Look for “https” at the beginning of the web address. The “s” is for secure. Unencrypted sites begin with an http address. Additionally, make sure the https carries through on all pages, not just the sign-on page.

Use Strong Passwords. Use passwords of eight or more characters, mixing letters, numbers and special characters. Don’t use your name, birthdate or common words. Don’t use the same password for several accounts. Keep your password list in a secure place or use a password manager. Don’t share passwords with anyone. Calls, texts or emails pretending to be from legitimate companies or the IRS asking to update accounts or seeking personal financial information are almost always scams.

Secure Wireless Networks. A wireless network sends a signal through the air that allows it to connect to the Internet. If your home or business Wi-Fi is unsecured, it also allows any computer within range to access your wireless and potentially steal information from your computer. Criminals also can use your wireless to send spam or commit crimes that would be traced back to your account. Always encrypt your wireless. Generally, you must turn on this feature and create a password. Be Cautious When Using Public Wireless Networks. Public Wi-Fi hotspots are convenient but often not secure. Tax or financial information you send though websites or mobile apps may be accessed by someone else. If a public Wi-Fi hotspot does not require a password, it probably is not secure. Remember, if you are transmitting sensitive information, look for the “s” in https in the website address to ensure that the information will be secure.

Avoid E-mail Phishing Attempts. Never reply to emails, texts or pop-up messages asking for your personal, tax or financial information. One common trick by criminals is to impersonate a business such as your financial institution, tax software provider or the IRS, asking you to update your account and providing a link. Never click on links even if they seem to be from organizations you trust. Go directly to the organization’s website. Legitimate businesses don’t ask you to send sensitive information through unsecured channels.

To learn additional steps you can take to protect your personal and financial data, visit Taxes. Security. Together. Also, read Publication 4524, Security Awareness for Taxpayers.

**IRS Offers Tips on Validating Your Identity on Your Tax Return**

You should always keep a copy of your tax return. It is even more important for 2017, as the Internal Revenue Service moves to strengthen its e-signature validation process.

You must use your 2015 adjusted gross income or your 2015 self-select PIN to validate your identity on your federal electronic tax return this tax season. The electronic filing PIN is no longer available as an option.

The IRS, state tax agencies and the nation’s tax industry – partners in combating identity theft - ask for your help in their efforts. Working in partnership with you, we can make a difference.

That’s why we launched a public awareness campaign that we call “Taxes. Security. Together.” We’ve also launched a series of security awareness tips that can help protect you from cybercriminals.

As part of the IRS efforts to protect taxpayers, the e-signature validation change mostly affects those taxpayers who have used tax software in the past but are changing software brands in 2017.

Here are a few important steps:

1. Find a copy of your 2015 tax return; the original return filed with the IRS.
2. Create a five-digit Self-Select PIN to serve as your electronic signature. It can be any five numbers except all zeros.
3. If married filing jointly, each taxpayer must create a self-select PIN.
4. Provide your date of birth when prompted.
5. Provide either your 2015 adjusted gross income or your 2015 self-select PIN as the “shared secret” between you and the IRS. Either number, along with your date of birth, will serve to help validate your identity and verify your e-signature.
6. On your 2015 tax return, your adjusted gross income (AGI) is on line 37 of the Form 1040; line 21 on the Form 1040-A or line 4 on the Form 1040-EZ.

This change will not affect most taxpayers. For example, if you are a returning customer, your software generally will automatically populate your date of birth and “shared secret” information. Those of you who switched software products generally must enter the “shared secret” information yourself. If you don’t have a copy of your 2015 tax return, you may be able to get a copy from your prior-year software provider. If your software account is still active, you may be able to view your 2015 federal return to find your AGI. Or, you may ask your prior-year tax preparer for a copy if you had your return prepared professionally. If those are not options, you may use a Get Transcript self-help tool on IRS.gov to get a Tax Return Transcript showing your AGI.
IRS Launches New Online Tool to Assist Taxpayers with Basic Account Information

The Internal Revenue Service announced the launch of an online application that will assist taxpayers with straightforward balance inquiries in a safe, easy and convenient way.

This new and secure tool, available on IRS.gov allows taxpayers to view their IRS account balance, which will include the amount they owe for tax, penalties and interest. Taxpayers may also continue to take advantage of the various online payment options available by accessing any of the payment features including: direct pay, pay by card and Online Payment Agreement. As part of the IRS vision for the future taxpayer experience, the IRS anticipates that other capabilities will continue to be added to this platform as they are developed and tested.

“This new tool is part of the IRS’s commitment to improve and expand taxpayer services by providing additional online taxpayer options,” said IRS Commissioner John Koskinen. “The new ‘balance due’ feature, paired with the existing online payment options, will increase the availability of self-service interactions with the IRS. This will give taxpayers another way to take care of their tax obligations in a fast and secure manner.”

Before accessing the tool, taxpayers must authenticate their identities through the rigorous Secure Access process. This is a two-step authentication process, which means returning users must have their credentials (username and password) plus a security code sent as a text to their mobile phones.

Taxpayers who have registered using Secure Access for Get Transcript Online or Get an IP PIN may use their same username and password. To register for the first time, taxpayers must have an email address, a text-enabled mobile phone in the user’s name and specific financial information, such as a credit card number or specific loan numbers. Taxpayers may review the Secure Access process prior to starting registration.

As part of the security process to authenticate taxpayers, the IRS will send verification, activation or security codes via email and text. The IRS warns taxpayers that it will not initiate contact via text or email asking for log-in information or personal data. The IRS texts and emails will only contain one-time codes.

Wrongful-Incarceration Exclusion Reminder: Dec. 19 is Deadline for Many Older Refund Claims; Use Special Address for All Back-Year Claims

The Internal Revenue Service reminded wrongfully-incarcerated taxpayers, wishing to take advantage of the special retroactive tax exclusion now available to them, that in many cases, they must file their refund claims by Dec. 19. This income tax exclusion applies to any civil damages, restitution or other monetary award received in connection with a taxpayer's incarceration. The wrongful-incarceration exclusion was included in the Protecting Americans from Tax Hikes (PATH) Act enacted last December.

This legislation provides a special one-year window during which an eligible wrongfully-incarcerated individual can file a refund claim based on any civil damages, restitution or other monetary award received and reported in a prior tax year, even if the normal statute of limitations had already expired for that year. Without this special provision, refund claims for tax-years 2012 and earlier would be barred in most cases. The deadline for mailing a claim under this special rule is Dec. 19, 2016.

Taxpayers who in the past received payments related to their wrongful incarceration and included those payments in taxable income can file a refund claim for any income tax paid. To do this, eligible taxpayers must file Form 1040X for each year these payments were reported and write “Incarceration Exclusion PATH Act” at the top of each Form 1040X they submit.

To ensure efficient, consistent processing, the IRS has established a special filing address for amended returns claiming the wrongful-incarceration exclusion. Send these Forms 1040X, along with any supplemental documentation, to:

Internal Revenue Service
333 W. Pershing
Stop 6503 5th Floor
Kansas City, MO 64108.

Allow up to 16 weeks for processing. In most cases, taxpayers can then use the Where’s My Amended Return? application on IRS.gov to track the status of their refund claims.

Under the new law, there are no reporting requirements for receipt of an award qualifying for the wrongful-incarceration exclusion. This award on their return (Form 1040) or submit any documentation to the IRS.

A set of frequently-asked questions, available on IRS.gov, provides further details on who qualifies for the exclusion, payments that qualify and the documentation and recordkeeping requirements that apply.

Tax Records – What to Keep

As tax filing season approaches, the Internal Revenue Service has information for taxpayers who wonder how long to keep tax returns and other documents.

Generally, the IRS recommends keeping copies of tax returns and supporting documents at least three years. Some documents should be kept up to seven years in case a taxpayer needs to file an amended return or if questions arise. Keep records relating to real estate up to seven years after disposing of the property.

Health care information statements should be kept with other
tax records. Taxpayers do not need to send these forms to IRS as proof of health coverage. The records taxpayers should keep include records of any employer-provided coverage, premiums paid, advance payments of the premium tax credit received and type of coverage. Taxpayers should keep these – as they do other tax records – generally for three years after they file their tax returns.

Whether stored on paper or kept electronically, the IRS urges taxpayers to keep tax records safe and secure, especially any documents bearing Social Security numbers. The IRS also suggests scanning paper tax and financial records into a format that can be encrypted and stored securely on a flash drive, CD or DVD with photos or videos of valuables.

Now is a good time to set up a system to keep tax records safe and easy to find when filing next year, applying for a home loan or financial aid. Tax records must support the income, deductions and credits claimed on returns. Taxpayers need to keep these records if the IRS asks questions about a tax return or to file an amended return.

It is even more important for taxpayers to have a copy of last year’s tax return as the IRS makes changes to authenticate and protect taxpayer identity. Beginning in 2017, some taxpayers who e-file will need to enter either the prior-year Adjusted Gross Income or the prior-year self-select PIN and date of birth. If filing jointly, both taxpayers’ identities must be authenticated with this information. The AGI is clearly labeled on the tax return. Learn more at Validating Your Electronically Filed Tax Return.

Taxpayers who need tax information can request a free transcript for the past three tax years. The ‘Get Transcript’ tool on IRS.gov is the fastest way to get a transcript.

If taxpayers are still keeping old tax returns and receipts stuffed in a shoebox in the back of the closet, they might want to rethink that approach. Keep tax, financial and health records safe and secure whether stored on paper or kept electronically. When records are no longer needed for tax purposes, ensure the data is properly destroyed to prevent the information from being used by identity thieves.

If disposing of an old computer, tablet, mobile phone or back-up hard drive, keep in mind it includes files and personal data. Removing this information may require special disk utility software. More information is available on IRS.gov at How long should I keep records?

User Fees for IRS Installment Agreements Finalized

Regulations on new user fees for IRS installment payment agreements are now final. The new fees go into effect Jan. 1. The lowest cost, lowest fee option for taxpayers needing an installment agreement is the IRS Online Payment Agreement application with payments made by direct debit. The new fee for that option is $31, down from $52. The fee for low-income taxpayers using other options to set up an installment agreement remains at $43.

Interest Rates Remain the Same for the First Quarter of 2017

The interest rates announced today are computed from the federal short-term rate determined during October 2016 to take effect November 1, 2016, based on daily compounding.

Revenue Ruling 2016-28, announcing the rates of interest, is attached and will appear in Internal Revenue Bulletin The Internal Revenue Service announced that interest rates will remain the same for the calendar quarter beginning January 1, 2017. The rates will be:

- four (4) percent for overpayments [three (3) percent in the case of a corporation];
- 1 and one-half (1.5) percent for the portion of a corporate overpayment exceeding $10,000;
- six (6) percent for large corporate underpayments.

Under the Internal Revenue Code, the rate of interest is determined on a quarterly basis. For taxpayers other than corporations, the overpayment and underpayment rate is the federal short-term rate plus 3 percentage points.

Generally, in the case of a corporation, the underpayment rate is the federal short-term rate plus 3 percentage points and the overpayment rate is the federal short-term rate plus 2 percentage points. The rate for large corporate underpayments is the federal short-term rate plus 5 percentage points. The rate on the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the federal short-term rate plus one-half (0.5) of a percentage point.

Soil Grading and Compaction Were Home Construction Under Long Term Contract Rules

PLR 201650014

In a Technical Advice Memorandum (TAM), IRS has concluded that some of a construction contractor’s soil grading and compaction with respect to the development of dwelling units should be considered construction of a portion of the dwelling units for purposes of the home construction contract exception to the requirement that the percentage-of-completion method (PCM) be used to account for long-term contracts.

Code Sec. 460(a) generally requires use of PCM to account for long-term contracts, as that latter term is defined in Code Sec. 460(f). Code Sec. 460(e)(1)(A), however, exempts “any home construction contract” from the general rule. A taxpayer performing construction services pursuant to a “home construction contract” may report income from that construction activity using the completed contract method.
Under PCM, contract price is reported as contract costs are incurred, based on the proportion of incurred to estimated total costs. (Code Sec. 460(b)(1)(A)) Under CCM, contract price and costs are reported upon contract completion. (Reg. § 1.460-4(d))

Under Code Sec. 460(e)(4), a construction contract is “any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, or improvements of, real property.” Code Sec. 460(e)(6)(A) defines “home construction contract” as any construction contract if 80% or more of the estimated total contract costs are reasonably expected to be attributable to construction activities with respect to “(i) dwelling units (as defined in Code Sec. 168(e)(2)(A)(iii)) contained in buildings containing 4 or fewer dwelling units (as so defined), and (ii) improvements directly related to such dwelling units and located on the site of such dwelling units.” This test is often referred to as “the 80-percent test.”

For purposes of Code Sec. 460(e)(6)(A), a “dwelling unit” is defined at Code Sec. 168(e)(2)(A)(ii) as “a house or apartment used to provide living accommodations in a building or structure.” For purposes of the 80-percent test, Reg. § 1.460-3(b)(2)(iii) allows taxpayers to include in the costs of dwelling units their allocable share of the costs of common improvements that taxpayer is required to build, by contract or by law, on the tract of land containing the dwelling units.

Facts. Taxpayer, a C Corporation, actively participates in private sub-division housing projects. It enters into contracts that require Taxpayer to make a variety of heavy construction improvements necessary for the development of a housing sub-division, including grading and compacting soil for construction of homes.

Taxpayer’s grading activities include rough grading of the sub-division and fine grading of the “pad” area of an individual lot where the foundation of a house will be constructed. State and county building codes require the testing of soil in a sub-division, in some cases on a lot-by-lot basis. Taxpayer performs grading and soil compaction of the pad area to required densities and depths in accordance with engineering surveys that are completed in order to comply with these requirements. In some cases, clay or organic soil must be replaced with more stable soil. The specific grading and compaction of the pad area required are based on the structure that will be built on the lot and environmental factors such as water runoff. Taxpayer’s work is covered by home warranties, and Taxpayer has paid claims related to its work on pad areas. Taxpayer’s contracts generally do not exceed four years in duration.

Pad area soil grading and compaction is construction of dwelling units. IRS concluded that grading and soil compaction of the pad area necessary for the construction of foundations for houses are construction activities with respect to dwelling units per Code Sec. 460(e)(6)(A). Taxpayer’s work is regulated by state and local building codes and is the subject of home warranties. The grading and soil compaction of the pad area necessary for the construction of the foundations are as essential to support of the houses as the foundations themselves and should be considered construction of a portion of the dwelling units.

IRS found further support for its conclusion in authorities addressing the issue of whether the cost of land preparation can be included in the basis of a building used in a trade or business or held for the production of income, and therefore is depreciable. Courts have found and IRS has ruled that when grading (that is, land preparation) is so closely associated with a specific depreciable structure that the land preparation would be retired, abandoned, or replaced contemporaneously with that depreciable structure, the cost of the land preparation is depreciable and may be part of the cost basis of the structure. (Eastwood Mall, Inc., (DC OH 1995) 75 AFTR 2d 95-2291; Rev Rul 2001-60, 2001-2 CB 587; and Rev Rul 68-193, 1968-1 CB 79)

In addition, IRS observed that, in all likelihood, replacement of a rental house and its foundation would require the contemporaneous physical destruction of the pad, so that the cost of the pad is part of the cost basis of the rental house. For purposes of Code Sec. 460(e)(6)(A), the pad therefore may be considered part of the dwelling unit.

IRS also noted that rough grading of the lot or clearing trees would not qualify as construction of a dwelling unit because those are non-depreciable improvements to land.

Caution: IRS said that temporary or final regs pertaining to one or more of the issues addressed in this memorandum have not yet been adopted. Therefore, this memorandum will be modified or revoked by the adoption of temporary or final regs to the extent the regs are inconsistent with any conclusions in the memorandum.

**IRS Extends Provision Allowing Automatic Tangible Property Method Changes**

Notice 2017-6, 2017-3 IRB

In a Notice, IRS has extended the period during which a rule that precludes the use of automatic accounting method changes is waived, with respect to accounting method changes that are made to comply with the tangible property regs that were promulgated in 2013 and 2014. As extended, the waiver applies for any tax year that begins before Jan. 1, 2017.

Background—tangible property regs. In September 2013, IRS published final tangible property regs (final tangible property regs); in July 2014, it published corrections to those regs. The final tangible property regs provide guidance on the treatment of amounts paid to acquire, produce, or improve tangible personal property.

In August 2014, IRS published additional tangible property
Background—accounting method changes to comply with tangible property regs. Under Code Sec. 446(e), taxpayers must obtain IRS’s consent before changing a method of accounting for federal income tax purposes. In most cases, a taxpayer that wishes to change its method of accounting must apply and secure the prior consent of IRS. For some accounting method changes, IRS provides an automatic procedure for obtaining its consent to the change. In general, a taxpayer uses Form 3115 (Application for Change in Accounting Method) for an accounting method change.

A taxpayer seeking to change its method of accounting under the above-described regs must secure the consent of IRS in accordance with Reg. § 1.446-1(e) and follow the administrative procedures issued under Reg. § 1.446-1(e)(3)(ii).

Rev Proc 2015-13, 2015-5 IRB 419, provides the general procedures under Code Sec. 446(e) for a taxpayer to obtain the automatic or non-automatic consent of IRS to change a method of accounting. Rev Proc 2016-29, 2016-21 IRB 880, provides the list of automatic changes in methods of accounting to which the automatic change procedures of Rev Proc 2015-13 apply.

Rev Proc 2016-29 provides for certain automatic changes to utilize the final tangible property regs and the final depreciation and disposition regs.

Rev Proc 2015-13, Sec. 5.01(1)(f), provides that the automatic change procedures may not be utilized if the taxpayer has made or requested a change for the same item during any of the five tax years ending with the year of change. This rule generally precludes a taxpayer from using the automatic change procedures to change the treatment of the same item more than once within a 5-year period. However, in order to facilitate the transition to the final tangible property regs and the final depreciation and disposition regs, several sections of Rev Proc 2016-29 specifically provide that the eligibility rule in Rev Proc 2015-13, Sec. 5.01(1)(f), does not apply to a taxpayer that makes one or more of the changes in method of accounting permitted under that section for any tax year beginning before Jan. 1, 2016.


IRS is aware that taxpayers continue to request consent to change their methods of accounting to utilize the final tangible property regs and final depreciation and disposition regs. To continue to ease taxpayers’ transition to these final regs and to reduce the administrative burden that would result from requiring taxpayers to apply for non-automatic changes of accounting methods for each of the changes specified above, Notice 2017-6 extends the waiver.

Transition rule. If, before Dec. 20, 2016, a taxpayer properly filed a Form 3115 under the non-automatic change procedures in Rev Proc 2015-13, that requested IRS’s consent for a change in method of accounting described in Notice 2017-6, and the Form 3115 is pending with the IRS national office on Dec. 20, 2016, the taxpayer may choose to make the change of accounting method under the automatic change procedures in Rev Proc 2015-13 by following the requirements and procedures in subsection .02(1) of the Effective Date section in Rev Proc 2016-29 with the following modifications: (1) The references to the date, “May 5, 2016,” are replaced with the date, “Dec. 20, 2016”; and (2) The references to the date, “June 6, 2016,” are replaced with the date, “Jan. 19, 2017.”

For example, under the rules in subsection .02(1) of the Effective Date section in Rev Proc 2016-29, as modified by Notice 2017-6, if before Dec. 20, 2016, a taxpayer properly filed a Form 3115 under the non-automatic change procedures in Rev Proc 2015-13, that requested IRS’s consent for a change in method of accounting described in Rev Proc 2016-29, and the Form 3115 is pending with the national office on Dec. 20, 2016, the taxpayer may choose to make the change in method of accounting under the automatic change procedures in Rev Proc 2015-13 if the taxpayer is otherwise eligible to use Rev Proc 2016-29 and the automatic change procedures in Rev Proc 2015-13. The taxpayer must notify the national office contact person for the Form 3115 of the taxpayer’s intent to make the change in method of accounting under the automatic change procedures in Rev Proc 2015-13 before the later of (a) Jan. 19, 2017, or (b) the issuance of a letter ruling granting or denying consent for the change.

Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard)

How to file

To electronically submit Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990EZ, use the Form 990-N Electronic Filing System (e-Postcard).

- The Form 990-N electronic-filing system moved from Urban Institute’s website to IRS.gov in February. All filers must register at IRS.gov prior to filing their next Form 990-N. This is a one-time registration; you won’t be asked to register again when filing next year.
  - Form 990-N must be completed and filed electronically. There is no paper form.
  - Form 990-N filers may choose to file a complete Form 990 or Form 990-EZ instead.
  - Use the Form 990-N Electronic Filing System (e-Postcard) User Guide while registering and filing.
Reminder to Businesses: Special Tax Benefits Still Available in 40 Designated Empowerment Zones

Eligible businesses can still claim Empowerment Zone tax benefits through the end of this year. Empowerment Zones are certain urban and rural areas where employers and other taxpayers qualify for special tax benefits.

The Department of Housing and Urban Development and the Department of Agriculture designated 40 economically distressed locations as empowerment zones. Find a list of them in the instructions to IRS Form 8844.

Key Empowerment Zone tax benefits include:

• Empowerment Zone Employment Credit. Eligible employers can claim this credit on Form 8844. It is worth up to $3,000 and is available to businesses based on wages paid to each qualified employee who both lives and works in an empowerment zone,

• Increased expensing for qualifying depreciable property,

• Tax-exempt bond financing,

• Deferral of capital gains tax on the sale of qualified assets sold and replaced, and

• Partial exclusion of capital gains tax on certain sales of qualified small business stock.

Parent Allowed Worthless Stock Loss In Year That Sub Changed Its Entity Classification

Chief Counsel Advice 201650013

In Chief Counsel Advice (CCA), IRS has determined that a parent corporation was entitled to deduct its loss on the worthlessness of the stock of a subsidiary in the year that the parent elected to change the classification of the subsidiary from a corporation to a disregarded entity. The CCA reasoned that the classification change caused the subsidiary to cease to be a member of the parent’s consolidated group, which was an identifiable event that fixed the loss and allowed the parent to deduct it in that year.

Background. A taxpayer may claim as a deduction any loss sustained during the year and not compensated for by insurance or otherwise. (Code Sec. 165(a)) To be allowable as a deduction under Code Sec. 165(a), a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and, with certain exceptions, actually sustained during the tax year. (Reg. § 1.165-1(b), Reg. § 1.165-1(d))

If any security which is a capital asset becomes worthless during the tax year, the resulting loss is treated as a loss from the sale or exchange, on the last day of the tax year,
Any security in a corporation affiliated with a taxpayer that is a domestic corporation is not treated as a capital asset by that taxpayer. (Code Sec. 165(g)(3)) A corporation is treated as affiliated with the taxpayer only if: (i) the taxpayer directly owns stock of the corporation that meets the requirements of Code Sec. 1504(a)(2), and (ii) more than 90% of the corporation’s gross receipts for all tax years are from sources other than royalties, certain rents, dividends, certain interest, annuities, and gains from sales of stocks and securities.

Whether a loss due to worthlessness actually is sustained during the tax year is a factual determination. (Boehm v. Comm., (Sup Ct 1945) 34 AFTR 10) A taxpayer must prove with objective evidence that the stock in question became worthless during the tax year. (Id.)

Stock becomes worthless in the tax year in which it has some value at the beginning of the year and has no value at the end of the year. In Morton, 38 BTA 1270, affd (CA 7 1940) 25 AFTR 76, the Court denied a taxpayer’s worthless stock deduction because it had become useless in a prior year.

In the event of a corporate liquidation, the stock of the corporation is worthless if the shareholders do not receive payment for their stock. (H.K. Porter Co., (1986) 87 TC 689) Additionally, the liquidation is an identifiable event that fixes the loss with respect to the stock.

In Rev Rul 2003-125, 2003-2 CB 1243, an eligible entity treated as a corporation for U.S. federal income tax purposes elected to change its classification from a corporation to a disregarded entity, and IRS determined that the shareholders were allowed a worthless security deduction under Code Sec. 165(g) if the fair market value of the assets of the entity, including intangibles, did not exceed the entity's liabilities such that on the deemed liquidation of the entity, the shareholders received no payment on its stock. (Id.)

Under Reg. § 1.1502-80(c)(1), subsidiary stock is not treated as worthless under Code Sec. 165 until immediately before the earlier of the time (i) the stock is worthless within the meaning of Reg. § 1.1502-19(c)(1)(iii), or (ii) the subsidiary for any reason ceases to be a member of the group. Reg. § 1.1502-19(c)(1)(iii) provides three different identifiable events, the occurrence of which can be used to prove worthlessness:

- (1) Substantially all of the subsidiary’s assets are treated as disposed of, abandoned, or destroyed for Federal income tax purposes, or, if the subsidiary’s asset is stock of a lower-tier member, the stock is treated of as disposed of under Reg. § 1.1502-19(c).

- (2) The indebtedness of a subsidiary is discharged, if any part of the amount discharged is excluded from gross income and is not treated as tax-exempt income under Reg. § 1.1502-32(b)(3)(ii)(C) (i.e., applied to reduce tax attributes).

- (3) A group member takes into account a deduction or loss on account of the uncollectibility of a subsidiary’s indebtedness, and the deduction or loss isn’t matched in the same tax year by the subsidiary’s taking into account a corresponding amount of income or gain from the debt in determining consolidated taxable income.

Facts. Taxpayer is the common parent of a consolidated group of corporations that join in the filing of a consolidated federal income tax return. Taxpayer is wholly owned, directly and indirectly, by Foreign Parent, which historically was part of the Historic Parent group and was separated from the Historic Parent group as part of a restructuring in Year 2. Foreign Parent directly and indirectly owns all of the stock of FSub. Prior to Date 4, Year 4, Taxpayer owned all of the stock of Sub, but on that date Taxpayer sold a percentage of the common stock of Sub to FSub for nominal consideration. On Date 2, Year 6, FSub sold the interest in Sub back to Taxpayer for nominal consideration.

Prior to its acquisition, Sub was publicly traded. Historic Parent purchased Sub from its public shareholders on Date 1, Year 1. As part of the acquisition transaction, Sub became liable on intercompany loans that were used to finance the acquisition transaction. After various assignments of debt, most of Sub’s intercompany debt was owed to FSub.

Between Years 2 and 3, Sub sold various non-core assets to third parties and used a portion of the proceeds to repay intercompany debt. After the various restructurings of Sub’s operations and the repayment of debt, as of the end of Year 3, Sub still had outstanding debt to FSub and also owed a very small amount to Taxpayer.

According to documentation provided by Taxpayer, Taxpayer determined that the value of Sub’s assets had declined by the end of Year 3 and that, because of this decline and the sales of operating assets to pay intercompany debt, Sub had a negative net worth. Additional documentation provided by Taxpayer indicated that Taxpayer determined that Sub had a negative net worth at the end of both Years 4 and 5.

Because of Sub’s reduced scope of operations, among other reasons, Foreign Parent determined that part of the remaining debt Sub owed to FSub should be forgiven. Thus, on Date 5, Year 4, FSub forgave a portion of the Sub debt and forgave an additional amount one year later. Taxpayer treated the cancellation of debt as a contribution to the capital of Sub under Code Sec. 108(e)(6).

On Date 3, Year 6, Taxpayer filed a Form 8832 to elect to treat Sub as an entity disregarded as separate from the Taxpayer. On its federal income tax return for Year 6, Taxpayer claimed a loss on the stock of Sub under Code Sec. 165(g)(3) and Rev Rul 2003-125.

Conclusion. The CCA found that, assuming the Sub stock was in fact worthless for Code Sec. 165 purposes as of the end of
Year 3 and at all times during the years at issue, the deduction of Taxpayer’s loss on its worthlessness was deferred until one of four identifiable events occurs: the three events listed in Reg. § 1.1502-19(c)(1)(iii), or Sub’s ceasing to be a member of Taxpayer’s group for any reason.

In this case, none of the identifiable events in Reg. § 1.1502-19(c)(1)(iii) (described above) applied. While Sub disposed of subsidiaries and non-core lines of business, substantially all of its assets were not treated as disposed of, abandoned or destroyed for federal income tax purposes. And, no member of Taxpayer’s group has taken a deduction or loss on the uncollectability of the debt of Sub; and FSub’s contribution of its assets were not treated as disposed of, abandoned or destroyed for federal income tax purposes. And, no member of Taxpayer’s group has taken a deduction or loss on the uncollectability of the debt of Sub; and FSub’s contribution of the Sub indebtedness to capital under Code Sec. 108(e)(6) did not produce cancellation of indebtedness income.

However, the CCA concluded that the change in Sub’s classification in Year 6, from a corporation to an entity disregarded as separate from Taxpayer, caused Sub to cease to be a member of the Taxpayer’s consolidated group. Accordingly, based on Reg. § 1.1502-80(c)(1)(ii) and Rev Rul 2003-125 Taxpayer could recognize its loss on the Sub stock in Year 6.

Chief Counsel: IRS Should Limit Its Acceptance of Electronic Signatures

Chief Counsel Advice 201650019

In email Chief Counsel Advice, IRS has advised its auditors that an electronic signature should only be accepted by IRS when there is published guidance or Internal Revenue Manual (IRM) provisions that specifically authorize use of an electronic signature for the specific form involved.

Code Sec. 6061(a) provides the general rule that any return, statement, or other document required to be made under any provision of the internal revenue laws or regs must be signed in accordance with forms or regs prescribed by IRS. Although the Code does not define the term “signature,” 1 USC 1 provides that a “signature” includes a mark when the person declaring the same intended it as such, and Code Sec. 6061(b)(1) provides that IRS must establish procedures for accepting signatures in digital or other electronic form. The Code does not provide detailed rules for the use of electronic signatures beyond authorizing their use in Code Sec. 6061.

The use of electronic signatures in transactions involving almost all federal organizations other than IRS is primarily governed by the Government Paperwork Elimination Act, Pub. L. No. 105-277, Div. C, Title XVII (codified at 44 USC 3504) (GPEA). GPEA by its terms does not apply to IRS. (GPEA § 1709)

Facts. IRS auditors asked Chief Counsel whether IRS may accept a Form 2678, Employer/Payer Appointment of Agent, that displays an electronic signature. The employer will fill out the Form 2678 online and sign it with a mouse or stylus. The signature will be created by the person with a live signature, but IRS will receive a digital image of the actual signature. The Form will be mailed to IRS, and a vendor will maintain a digital image of the completed form.

Chief Counsel says not to accept the signature. Chief Counsel says that an electronic signature should only be accepted by IRS when there is published guidance or IRM provisions that specifically authorize use of an electronic signature for the specific form involved. Since there is no guidance or IRM provisions authorizing the use of an electronic signature on Forms 2678, Chief Counsel recommended that IRS not accept Forms 2678 signed electronically until IRS authorizes its use for Forms 2678 either in published guidance or in the IRM.

Chief Counsel said that, although GPEA by its terms does not apply to IRS, its provisions are useful in analyzing the legal and policy underpinnings of the use of electronic signatures by governmental agencies. GPEA defines the term “electronic signature” as “a method of signing an electronic message that -- (A) identifies and authenticates a particular person as the source of the electronic message; and (B) indicates such person’s approval of the information contained in the electronic message.” (GPEA § 1710) It is a generic, technology-neutral term that refers to the universe of all of the various methods by which one can sign an electronic record. An electronic signature is legally equivalent to a handwritten signature and may not be denied legal effect, validity, or enforceability solely because it is in electronic form. (GPEA § 1707)

However, Chief Counsel said, all signatures, whether paper or electronic, are subject to challenge for other reasons, such as claims of forgery, lack of authority, mistake, or duress. Accordingly, although electronic signatures are legally valid, the utility of using electronic signatures must be balanced against the risk of disavowal by the signer. In the case of signatures signed by IRS employees, the risk of disavowal is extremely low. Taxpayers or agents, by contrast, may challenge an electronic signature, especially in the case of documents that may fix the taxpayers’ or agents’ liability and may be introduced in court proceedings. In those cases dealing with high-risk documents, taxpayers should either be required to sign by non-electronic means or IRS should institute heightened authentication, security procedures, and electronic signing processes to protect IRS against the risk of disavowal by the taxpayer.

Consequently, Chief Counsel said, if IRS should make the business decision to accept electronic signatures on Forms 2678, it recommends that IRS adopt procedures that not only are consistent with GPEA but also incorporate security procedures to protect IRS from taxpayer challenges either that the taxpayer did not sign the form or that the electronic signature process is invalid. Accordingly, for purposes of creating a valid and enforceable electronic signature, IRS should adopt electronic signing procedures that satisfy the following signing requirements:

1. A person (i.e., the signer) must use an acceptable electronic form of signature;

2. The electronic form of signature must be executed or
adopted by a person with the intent to sign the electronic record, (e.g., to indicate a person’s approval of the information contained in the electronic record); 

3. The electronic form of signature must be attached to or associated with the electronic record being signed; 

4. There must be a means to identify and authenticate a particular person as the signer; and 

5. There must be a means to preserve the integrity of the signed record.

These guidelines are consistent with those issued by the Office of Management and Budget in 2013.

Finally, Chief Counsel said, should IRS choose to authorize use electronic signatures on Form 2678, the appropriate IRM provision and Form instructions should be revised to set forth the procedures under which that form can be electronically signed.

IRS Warns Taxpayers of Numerous Tax Scams Nationwide; Provides Summary of Most Recent Schemes

As tax season approaches, the Internal Revenue Service, the states and the tax industry reminded taxpayers to be on the lookout for an array of evolving tax scams related to identity theft and refund fraud.

Every tax season, there is an increase in schemes that target innocent taxpayers by email, by phone and on-line. The IRS and Security Summit partners remind taxpayers and tax professionals to be on the lookout for these deceptive schemes.

“Whether it’s during the holidays or the approach of tax season, scam artists look for ways to use tax agencies and the tax industry to trick and confuse people,” said IRS Commissioner John Koskinen. “There are warning signs to these scams people should watch out for, and simple steps to avoid being duped into giving these criminals money, sensitive financial information or access to computers.”

This marks the fourth reminder to taxpayers during the “National Tax Security Awareness Week.” This week, the IRS, the states and the tax community are sending out a series of reminders to taxpayers and tax professionals as part of the ongoing Security Summit effort.

Some of the most prevalent IRS impersonation scams include:

Requesting fake tax payments: The IRS has seen automated calls where scammers leave urgent callback requests telling taxpayers to call back to settle their “tax bill.” These fake calls generally claim to be the last warning before legal action is taken. Taxpayers may also receive live calls from IRS impersonators. They may demand payments on prepaid debit cards, iTunes and other gift cards or wire transfer. The IRS reminds taxpayers that any request to settle a tax bill using any of these payment methods is a clear indication of a scam. (IR-2016-99)

Targeting students and parents and demanding payment for a fake “Federal Student Tax”: Telephone scammers are targeting students and parents demanding payments for fictitious taxes, such as the “Federal Student Tax.” If the person does not comply, the scammer becomes aggressive and threatens to report the student to the police to be arrested. (IR-2016-107)

Sending a fraudulent IRS bill for tax year 2015 related to the Affordable Care Act: The IRS has received numerous reports around the country of scammers sending a fraudulent version of CP2000 notices for tax year 2015. Generally, the scam involves an email or letter that includes the fake CP2000. The fraudulent notice includes a payment request that taxpayers mail a check made out to “I.R.S.” to the “Austin Processing Center” at a Post Office Box address. (IR-2016-123)

Soliciting W-2 information from payroll and human resources professionals: Payroll and human resources professionals should be aware of phishing email schemes that pretend to be from company executives and request personal information on employees. The email contains the actual name of the company chief executive officer. In this scam, the “CEO” sends an email to a company payroll office employee and requests a list of employees and financial and personal information including Social Security numbers (SSN). (IR-2016-34)

Imitating software providers to trick tax professionals: Tax professionals may receive emails pretending to be from tax software companies. The email scheme requests the recipient download and install an important software update via a link included in the e-mail. Upon completion, tax professionals believe they have downloaded a software update when in fact they have loaded a program designed to track the tax professional’s key strokes, which is a common tactic used by cyber thieves to steal login information, passwords and other sensitive data. (IR-2016-103)

“Verifying” tax return information over the phone: Scam artists call saying they have your tax return, and they just need to verify a few details to process your return. The scam tries to get you to give up personal information such as a SSN or personal financial information, including bank numbers or credit cards. (IR-2016-40)

 Pretending to be from the tax preparation industry: The emails are designed to trick taxpayers into thinking these are official communications from the IRS or others in the tax industry, including tax software companies. The phishing schemes can ask taxpayers about a wide range of topics. E-mails or text messages can seek information related to refunds, filing status, confirming personal information, ordering transcripts and verifying PIN information. (IR-2016-28)

If you receive an unexpected call, unsolicited email, letter or text message from someone claiming to be from the IRS, here are some of the tell-tale signs to help protect yourself.
The IRS Will Never:

- Call to demand immediate payment using a specific payment method such as a prepaid debit card, gift card or wire transfer or initiate contact by e-mail or text message. Generally, the IRS will first mail you a bill if you owe any taxes.

- Threaten to immediately bring in local police or other law-enforcement groups to have you arrested for not paying.

- Demand that you pay taxes without giving you the opportunity to question or appeal the amount they say you owe.

- Ask for credit or debit card numbers over the phone.

If you get a suspicious phone call from someone claiming to be from the IRS and asking for money, here’s what you should do:

- Do not give out any information. Hang up immediately.

- Search the web for telephone numbers scammers leave in your voicemail asking you to call back. Some of the phone numbers may be published online and linked to criminal activity.

- Contact TIGTA to report the call. Use their “IRS Impersonation Scam Reporting” web page or call 800-366-4484.

- Report it to the Federal Trade Commission. Use the “FTC Complaint Assistant” on FTC.gov. Please add “IRS Telephone Scam” in the notes.

- If you think you might owe taxes, call the IRS directly at 800-829-1040.

If you receive an unsolicited email that appears to be from either the IRS or an organization closely linked to the IRS, such as the Electronic Federal Tax Payment System (EFTPS), report it by sending it to phishing@irs.gov.

IRS Face-To-Face Help Now By Appointment

As the tax filing season approaches, the Internal Revenue Service reminds taxpayers that an appointment is required for in-person tax help at all IRS Taxpayer Assistance Centers (TAC). IRS TACs continue to be a vital part of the service IRS provides when a tax issue cannot be resolved on-line or by phone. All IRS TACs now provide face-to-face service by-appointment. Instead of taxpayers going directly to their local TAC, they can call 844-545-5640 to reach an IRS representative, who is trained to either help them resolve their issue or schedule an appointment for them to get the help they need.

Tax Pros in Trouble

Delray Beach Tax Return Preparers Plead Guilty to Falsifying Tax Returns

Devonne Herrington, her son Lorenzo Wright, and Joyce Walker pleaded guilty to their roles in a false federal income tax return scheme, according to the U.S. Attorney’s Office for the Southern District of Florida.

The three Delray Beach residents, all tax return preparers, pleaded guilty to one count of conspiracy to defraud the U.S. Herrington also pleaded guilty to one count of failure to file personal tax returns, and Walker also pleaded guilty to one count of filing false personal tax returns.

Herrington founded and operated a Delray Beach tax preparation business, initially known as Devonne’s LLC and later known as Wright’s & Family LLC, according to the U.S. Attorney’s Office. Herrington hired her son and Walker to help with the tax preparation business. The trio met with clients in the office.

The problem was that, although the clients did not claim to be eligible or provide documentation for certain tax credits or income deductions, the trio of tax return preparers prepared tax returns that said that the clients were eligible, according to the U.S. Attorney’s Office. The tax credits falsely claimed were for things like first-time home purchases and education expenses.

Clients were later audited by the IRS and now have to pay back refunds that resulted from the fraudulent credits and deductions, according to the U.S. Attorney’s Office.

Herrington and Wright are scheduled for sentencing on Feb. 17. Walker is scheduled to be sentenced Jan. 27.

EDH Woman Headed to Prison for Tax Scheme

U.S. District Judge Garland E. Burrell Jr. sentenced Barbara Antonucci, an unlicensed tax preparer, to three years and six months in prison and ordered her to pay $1,895,833 in
restoration for conspiring to file false claims and filing false claims, United States attorney Phillip A. Talbert announced Dec. 2.

Antonucci and her co-conspirator, Sherry Taggart, 56, of El Dorado Hills prepared tax returns for clients seeking to maximize their refunds from the Internal Revenue Service, according to court documents. In 2008 Antonucci began a scheme to obtain false refunds by preparing and filing false claims on behalf of clients with the IRS. After May 2010 Taggart joined Antonucci’s scheme and together the two conspired to prepare and file hundreds of false claims with the IRS between June 2012 and March 2014, seeking refunds totaling approximately $1.4 million.

As a result of the conspiracy, the IRS issued more than $757,000 in illegitimate refunds. In total, including the period in which Antonucci operated the scheme by herself, the IRS issued more than $1.8 million in illegitimate refunds from more than $2.5 million illegitimate claims filed during the scheme. On Aug. 19 Antonucci pleaded guilty to conspiracy to file false claims and filing false claims.

The fraudulent returns Taggart and Antonucci prepared and caused to be filed reported false wages and dependents for their clients and, in many cases, qualified the clients for the refundable Earned Income Credit when the client’s true wages or family situation would have qualified the client for no credit or a lower credit. Most of the fraudulent returns listed wages associated with self-employment not documented by a Form W-2, such as “housekeeper.” The defendants obtained the names, Social Security numbers and other personal identifying information of minors and falsely listed those minors as dependents on tax returns for clients who were unrelated to those minors.

Taggart and Antonucci also filed false claims on their own behalf. They filed the false federal tax returns with the IRS through the mail and via the internet from Sacramento, Yuba and Placer counties.

“As we approach tax filing season next month it is important that this sentence represents adverse consequences for those tax return preparers who file false tax returns for their clients,” said Michael T. Batdorf, special agent in charge, IRS Criminal Investigation. “It is important for tax return preparers to follow the law and guidance set forth by IRS on preparing tax returns. It is also very important for taxpayers to review their tax return with their tax return preparer to verify it has been prepared correctly before it is filed with the IRS and ask questions when they do not understand what has been prepared.”

San Francisco Division Inspector in Charge Rafael Nunez of the U.S. Postal Inspection Service stated, “We are working closely with the U.S. Attorney’s Office and our partners in law enforcement to arrest and prosecute those responsible for complex identity fraud schemes and to protect the public and their personal information from theft.”

Antonucci was ordered to surrender to begin serving her sentence on Feb. 17, 2017. Taggart is scheduled to be sentenced on Dec. 9.

This case is the product of an investigation by the Internal Revenue Service — Criminal Investigation, the United States Postal Inspection Service and the Sacramento County Sheriff’s Office. Assistant United States attorney André M. Espinosa is prosecuting the case.

Georgia Begins to Recoup $6.4M After Tax Fraud Investigation

Georgia taxpayers are beginning to repay what they owe the state after a Channel 2 Action News - Atlanta Journal-Constitution investigation exposed a local elected official who inflated thousands of tax returns.

It’s the largest case of its kind in state history; Georgia could recover more than $6 million.

“Those taxes are rightfully owed to the state,” said Georgia Department of Revenue Commissioner Lynne Riley, “So anyone who isn’t paying their fair share is compromising everybody else.”

Taxpayer after taxpayer told investigative reporter Jodie Fleischer they thought they could trust Ruth Barr.

After all, she didn’t just run a Hapeville tax business, she was also an elected official serving on the city council.

But earlier this year, Channel 2 and the AJC revealed a trail of unhappy customers stuck with IRS audits and bogus tax returns.

“Obviously they’re upset, they feel like they were duped,” said Department of Revenue chief investigator Josh Waites. “It doesn’t matter who’s doing your taxes, you need to look.”

Georgia Department of Revenue investigators immediately opened a criminal investigation, raiding Barr’s tax business, and alleging she inflated the value of her clients’ refunds.

Now the state is sending Barr’s clients letters asking for that money back, plus they have to pay what they would have owed had their taxes been done properly.

“It’s disappointing when any taxpayer is compromised and if there is information on a return that a taxpayer can substantiate, then we’re providing them that opportunity to do so,” said Riley.

The first 100 letters were sent to the taxpayers who appear to owe the state the most money: approximately $872,000.

Investigators said in all, there are nearly 8,000 suspicious tax returns filed through Barr’s office during tax years 2013, 2014 and 2015, for an estimated $6.4 million.
The only explanation she was able to offer was that she suffered a computer problem that may have incorrectly populated certain fields on the returns.

Investigators then spoke with numerous Mobile clients and found that they were unaware of the fraudulent returns submitted on their behalf. Investigators also determined that Jones would prepare a written return with the proper information and would present the correct return to the taxpayer for their signature and records.

Jones would then e-file a fraudulent return to the Mississippi Department of Revenue and the U.S. Treasury where she would increase the amount of the refund owed to the taxpayer. Jones would then direct the state and federal government to deposit the additional funds into her business account.

Investigators found that for 2013 and 2014 Jones had illegally collected more than $300,000 in overstated refunds, that she used the funds for personal expenses, and that she failed to claim the amount on her personal income tax returns.

Xenia, Ohio: Preparer Robert Coates, 42, has been sentenced to 18 months in prison and three years of supervised release and been ordered to pay $445,450 restitution to the IRS for filing false claims for income tax refunds, according to published reports.

Between January and July 2012 Coates filed false claims for income tax refunds with the IRS and filed fraudulent returns on behalf of individuals referred to Coates by other taxpayers or for those who responded to a flyer Coates distributed in and around Xenia, according to cited IRS information.

Coates enticed individuals to allow him to file their returns by explaining that they would receive a refund even if they did not work or were receiving disability payments, the IRS reportedly added. Unbeknownst to the taxpayers, Coates reportedly included fraudulent amounts of income in the form of household help income to maximize the Earned Income Tax Credit and generate a refund. In addition, news outlets said, Coates included fraudulent amounts of qualified educational expenses to generate a refundable education credit.

Coates reportedly filed these returns knowing that the household help income amounts and qualified education expenses were fraudulent and the claimed income tax credits and refunds were fraudulent. He collected his fee by diverting a portion of the income tax refund into one or more bank accounts that he controlled, reports added.

In total, Coates reportedly filed at least 170 false income tax returns for the 2011 income tax year, causing a tax loss of $445,450, of which $167,422.63 was directed into his bank accounts.

Phoenix: Preparer Paula Anthony has been convicted of multiple charges in a fraud scheme that authorities told news outlets netted more than $312,000.
1099-MISC Deadline (1099-MISC Due Dates) for 2016 / 2017

Send Copy B and Copy 2 of the 1099-MISC form to the recipient by February 1, 2017. The due date is extended to February 16, 2017, if you are reporting payments in boxes 8 or 14.

Important: New filing date. Public Law 114-113 requires Form 1099-MISC to be filed with the IRS on or before January 31, 2017, when you are reporting nonemployee compensation payments in box 7 (this applies for BOTH paper and electronic filing).

File Copy A of the 1099-MISC form with the IRS by February 28, 2017.

If you file electronically, the due date is March 31, 2017. To file electronically, you must have software that generates a file according to the specifications in Pub. 1220. Our W2 Mate software can be used to generate the electronic filing submissions you need. Penalty: If you are required to file electronically but fail to do so, and you do not have an approved waiver, you may be subject to a penalty of $50 per return for failure to file electronically unless you establish reasonable cause.

2016 / 2017 1099 Deadline Penalty - 1099-MISC Deadline Penalty

If you fail to file a correct 1099 information return by the due date and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to file timely, you fail to include all information required to be shown on a 1099 return, or you include incorrect information on a return. The 1099 penalty also applies if you file on paper when you were required to file 1099s electronically, you report an incorrect TIN (Tax Identification Number) or fail to report a TIN, or you fail to file paper 1099 forms that are machine readable. The amount of the 1099 deadline penalty is based on when you file the correct information return. The penalty is:

- $15 per information return if you correctly file within 30 days (by March 30 if the due date is March 2); maximum penalty $75,000 per year ($25,000 for small businesses).
- $30 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty $150,000 per year ($50,000 for small businesses).
- $50 per information return if you file after August 1 or you do not file required information returns; maximum penalty $250,000 per year ($100,000 for small businesses).

1099 DIV Filing Deadline (1099-DIV Due Dates) for 2016 / 2017

Send Copy B of the 1099-DIV form to the recipient by February 1, 2017.

File Copy A of the 1099-DIV form with the IRS by February 28, 2017.

If you file 1099's electronically, the due date is March 31, 2017.

1099-INT Deadline (1099-INT Due Dates)

Send Copy B of the 1099-INT form to the recipient by February 1, 2017.

File Copy A of form 1099-INT with the IRS by February 28, 2017.

If you are required to file 1099 INT forms electronically, the due date is March 31, 2017.

1099-R Due Dates (1099-R Filing Deadline)

Send Copies 1, B and C of the 1099-R form to the recipient by February 1, 2017.

File Copy A of form 1099-R with the Internal Revenue Service by February 28, 2017.

If you are required to file 1099-R forms electronically, the due date is March 31, 2017.

Change is 8in the air! Be ncpe “aware”!

Jerry

Taxpayer Advocacy

9 Tax Audit Red Flags for the IRS

The end of the year is nearly here, which means consumer spending is in full swing and people, in general, are acting a
little bit cheerier than normal. However, that cheeriness could disappear once the calendar ticks over to January, because it officially means that tax time is just around the corner.

Preparing your taxes isn’t a lot of fun -- according to the Pew Research Center, 72% of Americans believe the federal tax code is too complex. For instance, the Tax Foundation found that the U.S. tax code is approaching 10.1 million words in length, not counting the lengthy court documents that help describe some of the tax laws on the books. Furthermore, the instructions to complete a basic Form 1040 are more than 100 pages long.

Yet for all the grief that preparing our taxes gives us, more often than not it’s worth it. Most Americans wind up netting a refund from the Internal Revenue Service, with the average refund last year totaling more than $2,700. For most Americans that’s a nice chunk of change that could go toward paying down debt, starting an emergency fund, or adding to an investment account.

But for some American taxpayers, it’s not the preparation process that’s a headache -- it’s the potential of being audited by the IRS. Though just 14% of Americans feared being audited by the IRS in a Feb. 2016 Rasmussen poll, and historically the IRS only audits about 1% of all returns it processes, there are some clear red flags the federal tax authority looks for when processing returns that’ll give you a higher chance of being audited. There is no way to guarantee you’ll avoid an audit, nor a surefire way to assure you will be audited, but if any of these situations sound familiar, it would be wise to have all documentation and your ducks in a row in case the IRS comes calling.

1. You filed a paper return

Possibly the easiest way to draw an audit from the IRS is to file a paper return. Paper returns give you a much greater chance of making a math error than online software, and even something as simple as illegible handwriting can send your tax return to the pile of those getting a closer inspection. According to TurboTax, paper returns have a 21% error rate compared to just 0.5% of e-filed returns. That’s a 41-times-greater chance of making an error and thus being audited by the IRS.

2. You claimed a home-office deduction

Probably one of the most abused tax deductions is the home-office deduction used by people with home-based businesses. While you may think that taking a home-office deduction is a guaranteed tax audit trigger, that’s not the case. However, the IRS will look for deductions that don’t make sense. Generally speaking, the home-office deduction is only allowed for space dedicated entirely to your work and not your personal life. Thus, if you claim the largest room in your home as your office, but this is also the same room you and your friends watch football in on Sundays, it could draw the attention of the IRS.

3. You received the EITC and/or have no adjusted gross income

Believe it or not, low-income folks are considerably more likely to draw tax audits from the IRS than middle-class individuals or families. Individuals and couples with no adjusted gross income are occasionally put under the magnifying glass due to the fraud associated with the Earned Income Tax Credit (EITC). The IRS estimates that between 21% and 26% of EITC payments made each year are fraudulent, while the Treasury Inspector General for Tax Administration found that the IRS made $15.6 billion in erroneous EITC payments in 2015. In the upcoming year, the IRS will be delaying the tax refund checks of EITC recipients in an effort to reduce the amount of inherent fraud with EITC payments. Though only 1.8% of returns in 2014 reported no adjusted gross income, 5.26% of those were audited by the IRS.

4. You make more than $200,000

Conversely, if you earn a lot of money you’ll also fall on the IRS’ radar. The IRS clearly has more to win by finding errors in high-income tax returns than those with low income, so it does tend to focus its efforts on higher-income individuals and couples when performing audits. In 2014, there was a threefold jump in the audit rate between the $100,000-$199,999 adjusted gross income range and the $200,000-$499,999. Furthermore, audit rates for those earning more than $1 million, $5 million, and $10 million were 6.21%, 10.53%, and 16.22%, respectively, in 2014.

5. You report a laundry list of Schedule C losses

For the self-employed, filing a Schedule C can be either a savior or a red flag for the IRS. Reporting a loss is expected from relatively new businesses, but write-offs that result in ongoing losses could draw the attention of the IRS. According to NerdWallet, the IRS considers a business to be engaged in for-profit activities if it reports a profit in three out of the last five years. A business that regularly posts losses year after year may be classified as a hobby, which would wipe out the net loss on your original tax return and leave you to pay additional taxes, penalties, and interest.

6. You claim too many business expenses

Additionally, the IRS will look to see if your business expenses are considered “ordinary and necessary.” For example, if
you pay rent for your business, or you’re an accountant and need to buy tax software, these are ordinary and necessary expenses to do your job. However, if you buy new cookware and are a tax professional, that’s not a necessary expense that you can write-off. The easiest way to determine if it’s a deductible expense is simply to answer the question, “Is this good or service necessary for me to do my job?” If the answer is yes, then you probably can write it off.

7. Your charitable contributions are disproportionately high compared to your income

Giving to your favorite charity or charities is a double-bonus for taxpayers. Not only does it further a cause you believe in, but it also provides a deduction that’s proportionate with your highest marginal income tax bracket. Thus, it’s a deduction that tends to favor well-to-do Americans. What’ll draw the attention of the IRS and possibly trigger an audit is if you’re donating an abnormally large amount of your income annually. For example, if you make $50,000 annually, but are claiming $15,000 in charitable contributions, that’s liable to draw the attention of the IRS. As one extra note, make sure you have documentation for every charitable contribution you make in case the IRS comes calling.

8. You failed to include Form 1099 income

If you’re thinking about overlooking any of the income you received as a freelancer or via Form 1099, don’t! Nonwage income earned via Form 1099, such as freelance income, dividend income, or interest earned, is automatically reported to the IRS, meaning that if you fail to include this income it’ll probably be just a matter of time before the IRS catches on. If you fail to report income, your chance of an IRS tax audit go way up.

9. Your numbers look a little too perfect

Finally, if your tax figures look a little too perfect, it could result in a call from the IRS. For example, if you don’t have the appropriate documentation and your business expenses total a round number such as $1,500, it could be a red flag. It’s pretty uncommon for expenses, deductions, and income to all land on easily added and subtracted whole round numbers. If this happens on your tax return, the IRS may question it.

Who Must File Tax Returns?

All US Citizens & GC holders must file tax returns annually if above minimum filing thresholds.

You must report your worldwide income. If spouse is not a GC holder/US citizen – you do not need to report their income.
FBAR

- ‘Foreign Bank Account Report’ (FBAR) – aka FINCEN 11
- Not a declaration of tax, but an informational return
- Required if your aggregate non-US financial accounts total over $10K USD at any point during the year:
  - Examples: Checking account, savings account, non-US brokerage account, non-US mutual fund, non-US life insurance with cash value
  - If you have 3k each in 4 bank accounts, the aggregate value is $12k – you must file.
- Very high penalties if not filed
- Maximum penalty for failure to file FBAR is either $100K or 50% of taxpayer assets – whichever is larger

FATCA

- FATCA – Foreign Account Tax Compliance Act
- Informational report, but part of tax return – Form 8938
- Required to file:
  - Single - $200k at the end of the year, or $300k at any point during the year
  - Married Filing Jointly - $400k at the end of the year, or $600k at any point during the year
- Very high penalties if not filed
- $10k fine, and up to $50k if continued failure to file

How Far Back Do I Need to File?

- In 2014, the IRS introduced ‘Streamlined Foreign Offshore Procedure’ – Amnesty from Penalties
  - 3 years tax returns, 6 years FBAR. Currently 2013-2015. All years in question must be ‘delinquent’.
  - No ‘failure to file’ penalties. No ‘failure to pay tax’ penalties.
  - Most importantly - amnesty from FBAR penalties
  - No ‘deadline’ – but risk is that the IRS may change or discontinue this program

Will I owe Tax?

- Now the good news. If you are abroad, the first $100k of wages is tax free in the US
  - Foreign Earned Income Exclusion (FEIE)
  - Physical presence test – spend at least 330 full days
calendar days during a period of 12 consecutive months outside the US

- Bona-Fide Residency – Establish “residency” in a foreign country. Requires full calendar year abroad to start.

- Self-Employment qualifies for FEIE, but self employment tax requires additional exclusion. If filed properly – for Ireland you are only liable for self-employment taxes to Ireland, not the US.

- Foreign Tax Credit – income tax paid to another country will reduce or offset your US tax obligations

- Foreign Housing Exclusion - exclude cost of rent and utilities from taxable earnings on top of the first $100K

- Each city has a different limit (i.e – Dublin is more expensive than Bucharest)

Pakistan to Exchange Bank Accountholders’ Details With OECD

Karachi: Pakistan’s tax authorities decided to start exchanging information of bank accountholders with the member countries of the Organisation for Economic Cooperation and Development (OECD) from the mid of the next year to jointly combat tax evasion, officials said.

“The FBR (Federal Board of Revenue) is discussing modalities with the banks to set up a system for exchanging information with member countries of OECD,” a senior tax official said, requesting anonymity. “This system will be applicable from the tax year 2018 (July 2017-June 2018).”

Pakistan, in September, signed the OECD multilateral convention against offshore tax evasion and avoidance. The convention provides all forms of administrative assistance in tax matters, including on-request, spontaneous and automatic information exchange, tax examination and collection assistance. The cabinet has ratified the multilateral convention.

The official said all the three regulators, including FBR, State Bank of Pakistan (SBP) and Securities and Exchange Commission (SECP) are putting in their efforts to make this system workable from the next year onwards.

The FBR official said the tax authorities held meetings with executives of banks to discuss the new changes and automatic exchange of information of non-resident accountholders.

The official said the new system would enable OECD members to receive information about bank accounts of their nationals in Pakistan. “Likewise, we will also able to get information of our citizens having bank accounts abroad.”

“An important meeting was held in Islamabad with the officials of HM Revenue and Customs (UK’s tax authority) to resolve the issues pertaining to online dissemination of information about account holders,” the official added.

The government, in the budget 2015/16, introduced amendments into the income tax laws. Under these changes, financial institutions, including banks, are required to provide information about non-resident persons to the FBR for the purpose of automatic information exchange under a bilateral agreement or multilateral convention.

Similarly, the government also brought changes into the Anti-Money Laundering Act 2010. A new corporate law – Companies Ordinance 2016 – was also introduced to improve corporate governance. The law went in abeyance after the senate disapproved the ordinance and referred it to the parliament for an approval.

Tax official said FBR, SECP and SBP are working on various projects to check money laundering by both individuals and corporate entities.

Switzerland and Information Exchange: Tweak, Tweak and Something Will Always Remain

In less than a year data will start to flow under a new scheme for countries to share information automatically across borders, to help each other collect taxes from their taxpayers and fight financial crimes and abuses. The scheme is the Common Reporting Standard (CRS) which was set up by the OECD, a club dominated by rich countries. The scheme will start to deliver global automatic exchange of information from 2017.

We have generally welcomed this development, but we have also warned about many loopholes, especially ones preventing access to necessary information by developing countries, which are the most vulnerable to state looting and offshore hiding.

The CRS basically works like the dating app Tinder (or perhaps LinkedIn): exchanges of information are only possible between countries that have ‘liked’ each other. The OECD recently published the lists of matches, and among other things we observed that Switzerland, that long-standing rogue in global transparency efforts, only had agreements with EU countries.*
But a week after we wrote our blog on the CRS’ dating system, Switzerland signed agreements with other developing countries including Argentina, Mexico and Uruguay to automatically exchange information. Of course, Switzerland’s motivation wasn’t necessarily transparency: the aim may have been to ensure that the Swiss financial industry will get something:

"Aside from the signing of the AEOI by State Secretary Jörg Gasser for Switzerland, both countries also conducted negotiations on the framework conditions for investments and market access for financial services and the basic principles of Swiss financial market policy."

But the Swiss have, inevitably, tweaked the rules unilaterally, in a characteristic ‘screw-you’ gesture to the OECD and the community of responsible nations. Even though Switzerland appears in the OECD webpage as promising to exchange information in 2018, at least with these developing countries, it has now said that it will only start collecting information in 2018, while exchanges will only start in 2019.

Why is this a problem?

First, the obvious: these countries will need an extra year before they receive much-needed information on their crooks and miscreants. As a sign of how serious this is, Switzerland in March 2016 rejected a request of information by Argentina on 3,000 accounts related to the HSBC leaks.

Second, tax dodgers will have extra time to rearrange their affairs, especially to exploit a loophole for some “pre-existing” bank accounts, for which no reporting of any information is to happen at all. Bear in mind that for most Early Adopters (that is, countries exchanging information from 2017) an account was considered pre-existing if it was opened before December 31st 2015 (though they announced this in 2014, so many “new” accounts actually benefited from this “pre-existing” status). In the case of Switzerland, accounts will still be considered pre-existing if opened before December 31st 2017! The same applies to currently existing accounts that will have plenty of time to be closed, without any information being disclosed (the CRS doesn’t require much information on closed accounts, anyway).

This makes little sense, especially for Switzerland

If a developing country like Argentina can exchange information with other countries by 2017, why can’t a far more sophisticated country like Switzerland do the same? Not only that, but it is asking for two more years. It could comply, but its banking industry simply doesn’t want to.

In fact, Argentina (like most countries) only found out about the CRS’ details between February and July of 2014, and still managed to get their legislation ready. Switzerland found out even earlier, since it was responsible for designing the CRS:

Thanks to our constructive and well-founded suggestions, and thanks to the support of the Swiss authorities, the OECD made allowances in the standard for the Swiss financial industry’s key concerns (particularly in the commentary). Switzerland’s constructive contribution to the development of the standard was expressly acknowledged by the OECD

This also allowed Switzerland to impose more obstacles, such as requiring full reciprocity** and thus preventing many low income developing countries from joining the CRS (because they don’t have the capacity to provide information, and don’t generally have much useful information to provide – who would stash their hidden wealth in Nigeria for safekeeping?). But developing countries would have benefitted enormously from receiving information from financial centres like Switzerland.

Switzerland also required the principle of “speciality”, which pretty much means that information cannot be used to tackle corruption or money laundering, but only to collect more taxes. It is perfidious behaviour by the Swiss, as we’ve long come to expect.

Finally, the suspension of AEOI until 2019 makes no sense because Switzerland already has the information it needs to exchange. Most of the burden of AEOI lies on financial institutions that need to collect and report information on all of their account holders. Authorities simply aggregate this information, sort it by country of residence, and exchange it.***

All Early Adopters (countries exchanging information in 2017) chose the wider approach, so their banks will have already collected information on all of their account holders (regardless if they are resident in a jurisdiction joining the CRS or not). Among jurisdictions exchanging information in 2018, most countries also chose the wider approach except for well-known tax havens: Nauru (with one of the highest secrecy scores in the Financial Secrecy Index or FSI), Hong Kong and Switzerland (the second and top FSI jurisdictions respectively).
State News of Note

Many States Announce Their 2017 Unemployment Taxable Wage Base Amounts

So far, 17 states have announced that they will increase the amount of wages that are subject to unemployment tax (taxable wage base; TWB) in the 2017 tax year. One state will decrease its TWB.

Taxable Wage Base Increases

Alaska. A spokesperson for the Alaska Department of Labor and Workforce Development has told Thomson Reuters Checkpoint that the TWB will increase from $39,700 to $39,800 in 2017.

Colorado. A spokesperson for the Colorado Department of Labor and Employment has told Thomson Reuters Checkpoint that the TWB will increase from $12,200 to $12,500 in 2017.

Iowa. The TWB will increase from $28,300 to $29,300 in 2017.

Minnesota. The TWB will increase from $31,000 to $32,000 in 2017.

Montana. A spokesperson for the Montana Department of Labor and Industry has told Thomson Reuters Checkpoint that the TWB will increase from $30,500 to $31,400 in 2017.

Nevada. The TWB will increase from $28,200 to $29,500 in 2017.

New Jersey. The TWB will increase from $32,600 to $33,500 in 2017.

New Mexico. The TWB will increase from $24,100 to $24,300 in 2017.

New York. The TWB will increase from $10,700 to $10,900 in 2017.

North Carolina. The TWB will increase from $22,300 to $23,100 in 2017.

Oklahoma. A spokesperson for the Oklahoma Employment Security Commission has told Thomson Reuters Checkpoint that the TWB will increase from $17,500 to $17,700 in 2017.

Oregon. The TWB will increase from $36,900 to $38,400 in 2017.

Pennsylvania. The TWB will increase from $9,500 to $9,750 in 2017.

Rhode Island. The TWB will increase from $22,000 to $22,400 (from $23,500 to $23,900 for employers in the highest unemployment tax rate class) in 2017.

Utah. A spokesperson for the Utah Department of Workforce Services has told Thomson Reuters Checkpoint that the TWB will increase from $32,200 to $33,100 in 2017.

Vermont. A spokesperson for the Vermont Department of Labor has told RIA that the TWB will increase from $16,800 to $17,300 in calendar year 2017.

Washington. The TWB will increase from $44,000 to $45,000 in 2017.

Kentucky and Wyoming

The Kentucky taxable wage base will remain at $10,200 in the 2017 tax year. It is scheduled to increase $300 each year until it reaches $12,000. The scheduled increase, however, may be suspended if the unemployment insurance trust fund balance reaches $200 million. The taxable wage base will not increase in 2017 because the balance in the unemployment trust fund on Sept. 30, 2016 was States have long been waiting for Congress to act on the Marketplace Fairness Act, which would allow them to collect sales taxes that are already legally due on online purchases from multi-state retailers such as Amazon.com. With no progress on that front, states such as Colorado have attempted to take action by requiring retailers to collect and remit – or at least report to the consumer – taxes due. These state-based efforts received a boost recently when the U.S. Supreme Court opted not to hear a challenge to Colorado’s law. The momentum may continue to grow. A rule in Tennessee is moving closer to implementation; Virginia’s Gov. McAuliffe is pushing for such a measure to help plug that state’s revenue shortfall, and Alabama is looking to mimic the Colorado approach. Other states, including Nebraska and South Dakota, may follow suit as revenue experts identify uncollected online sales taxes as a contributing factor to those state’s revenue woes as well.

Oklahoma’s state finance secretary announced that the state did not experience enough revenue growth to trigger another income tax rate cut (this time from 5 to 4.85 percent). The possibility of triggering yet another rate cut, despite a projected budget gap exceeding half a billion dollars, rightly worried many Oklahomans.

Alaska Gov. Bill Walker released his FY 2018 budget without any broad-based revenue options. Rather, it includes a gas tax increase, suggested restructuring of the state’s Permanent Fund, and an $890 million revenue gap. Walker anticipates working with the legislature to fill the remaining revenue shortfall.

Virginia Gov. McAuliffe’s budget amendments use a variety of means to start addressing the state’s $1.5 billion shortfall but rely heavily on the state’s rainy day fund, which could put the state in a worse bind when the next recession hits.

Soda purchasers in Philadelphia, Penn., will ring in the New Year with a new tax. A city judge dismissed the beverage industry’s attempt to block the city’s planned tax on sugary and sweetened beverages, despite claims that the tax is unconstitutional on the grounds of duplicate taxation.
An audit of Tax Increment Financing (TIF) projects in Nebraska is strengthening calls for reform of how localities are using the tax break, which is intended to spur local economic development but is carried out with “remarkably little monitoring and oversight” and can push property taxes upward.

The push continues, largely from conservation groups, to raise Iowa’s state sales tax 3/8ths of a cent to support water quality improvements.

One legislator in Tennessee is advocating for diverting sales tax revenue to local governments to help them deal with budget woes. The state could consider instead cancelling its decision from earlier this year to phase out the Hall Tax on dividend and interest income for high-income Tennesseans, which is shared with local governments and is one of the few progressive pieces of the state’s tax code.

The District of Columbia City Council has passed a paid family and medical leave policy that allows all workers in the district access to time off for illness, child-bearing, and assistance with family medical issues. The system will be funded much like unemployment insurance, via a payroll tax that goes into a district-wide pool.

The Wyoming TWB will decrease from $25,500 to $25,400 2017.

Upcoming Announcements

Hawaii, Idaho, and North Dakota have not yet announced their TWBs for 2017. The TWBs in these states often increase from year to year.

Four New States Set To Increase Minimum Wage

Four more states passed legislation to increase minimum wage following last night’s 2016 General Election. Here’s a look at which states, and what their propositions entail:

Arizona

Starting January 1, thousands of Arizonans will get a wage increase, thanks to the passing of Proposition 206. The current $8.05 minimum wage will increase to $10 in January, with other increases eventually leading up to $12 by 2020.

The incremental increases will be:

- $10.50 in 2018.
- $12 in 2020.

Those who earned tip income will to continue earn $3 an hour less than the minimum wage if his or her employer can prove the employee is earning at or more than the minimum wage after tips are counted. Proposition 206 always included measures to increase paid sick leave – notably: Employers with fewer than 15 employees must provide 24 hours of paid sick time a year. Employers with 15 or more employees must provide at least 40 hours a year.

Colorado

Colorado passed Amendment 70 last night, which will raise its minimum wage from the current $8.31 to $9.30 in 2017 (beginning January) and gradually increase it to $12.00 per hour in 2020. By 2020, the increase will take a full-time minimum-wage worker’s pay from $17,285 a year to $24,960.

Maine

Maine’s current minimum wage is just barely above the federal level - $7.50 – but voters backed its measures to increase it to $12 per hour by 2020 last night. Question 4 – the measure that brought the issue to the table – was passed at 55%. Direct wages for tipped workers were increased from half of the minimum wage to $5 an hour in 2017. The minimum wage for tipped workers will continue to increase by $1 per year until it is equal to the general minimum wage in Maine, with a deadline of 2024.

Washington

A “yes” vote on Washington’s Initiative 1433 supported incrementally raising its minimum wage from $9.47 to $13.50 by 2020 and mandating paid sick leave. A 59% vote in Initiative 1433’s favor will bring this all to fruition starting January 2017. Employees can now accrue one hour of paid sick leave for every 40 hours worked, beginning in January 2018. The tiered system for Washington’s increase of its minimum wage will look like:

- $11.50 in 2018.
- $12 in 2019.
- $14.23 in 2022.

Two Year ‘Tax Transparency Gap’ Prevents Missourians From Finding Missing Tax Refunds

Missouri State Auditor Nicole Galloway says an audit of the Department of Revenue’s tax division has revealed an oversight that’s keeping Missourians in the dark about millions of dollars owed back to taxpayers each year. The problem is
in a two-year tax transparency gap where refunds owed to taxpayers are only searchable online within the first year the money is due. The refund listings are then removed and made available online again two years later when the money is turned over to the state’s unclaimed property rolls. This amounts to an estimated $3 million in refunds that are currently due but hidden from public view.

“Regardless of the reason a tax refund check is not cashed, whether it’s due to a move, a wrong address in the system, or lost or stolen mail, these circumstances do not change the fact that this money belongs to the taxpayer,” Galloway said. “State government should work together, at the bare minimum, to ensure taxpayers looking for past due refund amounts have a simple, easily accessible way to search for money that is rightfully theirs.”

Galloway and her team reviewed the Department of Revenue’s procedures for tax refund checks that are mailed out, but never cashed. If a check is returned as undeliverable, the information is added to the department’s Returned Refund Checks web page. After one year the check is voided and the information is removed from the website and forwarded to the State Treasurer’s Office. After three years from issue date, and if the State Treasurer’s Office is unable to find the individual, the money goes into the Unclaimed Property Database. That means for those two years between the time the check is voided at the one-year mark and entered into the Unclaimed Property Database at the three-year mark, the records are not publicly available to anyone looking to claim their past tax refunds.

During the time of the audit, 6,000 undelivered tax refund checks totaling nearly $1.3 million were listed on the Department of Revenue’s website, and about 30,000 uncashed refunds totaling nearly $4.5 million were turned over to the State Treasurer’s Office.

The audit calls on the Department of Revenue to address this lapse and ensure the information is publicly available throughout the process, so individuals can search for and find money due back to them at any point in the process.

Wayne’s World

The Cures Act Brings Relief to Small Business Owners

H.R. 34 containing provisions that establish Small Business HRAs (SBHRA) was signed into law by President Obama, December 13, 2016.

Beginning January 1, 2017, qualified businesses that establish SBHRAs will be able to use tax advantaged funds to reimburse employees for individual health insurance premiums and family out-of-pocket medical expenses. (Note: This change does not affect one-employee, integrated, or Limited Purpose HRA Plans that are already compliant with federal law.)

SBHRAs provide a tremendous opportunity to small employers (defined as those with more than one but fewer than 50 eligible employees) that do not offer Group health but want to assist their employees with ever rising healthcare costs.

SBHRA Facts:

- Employer annual contributions will be capped at $4,950 for a single employee and $10,000 for an employee with a family. These numbers will be indexed annually for inflation.
- Participation in the SBHRA will not disqualify participants from Marketplace subsidies (i.e. premium tax credits), but monthly HRA reimbursements will be included in income calculations for determining eligibility for any subsidy.
- Generally, employers must make the same contributions to all eligible employees; amounts may vary based on family status (single vs. family).
- Employees must have minimum essential coverage in order to participate.
- HRAs are solely funded by an eligible employer; they are employer-sponsored and reimbursed benefits. The employee is not allowed to contribute pre-tax dollars via salary reduction.
- HRAs are not pre-funded.
Employers can write off insurance premiums beginning the first of the year in which they enroll.

Out-of-pocket medical expenses can be written off beginning the first of the month in which the small business owner establishes the SBHRA.

Unused elected amounts can be carried over to reimburse medical expenses in future years OR can be offered as a use it or lose it feature to limit the employer’s liability to the current Plan Year.

Medical expenses of adult children and their families may be reimbursed through an employee’s HRA up until the year in which the adult child turns 26.

A traditional One Employee HRA health & welfare benefit Plan can still be implemented yet this year—resulting in federal, state, and FICA tax savings on insurance premiums for the entire year; and on out-of-pocket medical expenses for the month of December.

History

IRS Notice 2013-54 issued in September 2013 limited the ability of small business owners to utilize stand-alone HRAs. Prior to this guidance, many had used HRAs to reimburse their employees for certain medical expenses using pre-tax dollars. As a result of IRS Notice 2013-14, a company with more than one eligible employee could no longer receive a tax advantage through an HRA unless it sponsored Group insurance (an expense that’s beyond many small companies’ reach) —or offered a Limited Purpose HRA (which can only provide coverage for dental, orthodontia, vision and long-term care). This new legislation overturns guidance issued in IRS Notice 2013-54 and once again allows employers with fewer than 50 employees (companies not subject to the ACA’s Employers Mandate) to utilize HRAs as a pre-tax health & welfare benefit.

The Small Business Healthcare Relief Act was first introduced to congress in June 2015 (H.R. 2911 and S. 1698). In June 2016, the House and Senate re-introduced amended bills (H.R. 5447 and S.3060 respectively). H.R. 5447 was ultimately incorporated into the Cures Act which was passed by the House and Senate as part of the 2016 year-end health package containing mental health initiatives, Medicare provisions, and medical research funding.

ncpe and the Fellowship, in fact, all tax professionals who serve small business taxpayers owe TASC for their legislative efforts on behalf of our taxpayers. Todd Kuehn, Regional Sales Director-Scottsdale Region Office, has kept us informed each step of the way in the legislative process and we are in his debt.

Letters to the Editor

Hey Beanna – I appreciate all the Fellowship does. I hit a bump when I tried to validate my identity for e-services that the members might find helpful to know in advance. If you have a credit freeze in place, it must be lifted before the authentication can occur. Once the freeze was temporarily lifted, the process was smooth.

Thanks for all you do for our profession and Merry Christmas!

Alice G. Linville, EA, ARA, ATA, ATP

Receiving the note from Alice, I asked her what was a “credit freeze” not understanding the term. She responded:

Beanna – a credit freeze allows an individual to “lock down” access to their credit so NO ONE (even legitimate creditors) can make an inquiry. It is recommended as the ultimate in credit protection. If you decide you need credit for some reason, you can temporarily lift the freeze for a period of time or for a specific creditor to allow them to review your report and issue credit then when you are done with the transaction, the freeze goes back in place. You can now also freeze the credit of a minor to protect it from being stolen. There is information on the websites of the 3 credit reporting agencies.

What a pain!

I followed their instructions on the letter.

I got to the part for them to text a code to my cellphone. It’s been 2 days and still no text.

I ended up calling the number and revalidated manually.

However when I log into e-services, it can get all the way to the products, but I cannot see the transcripts. I see the link, but I cannot click on them. The wait time was over 60 minutes so I don’t have this resolved.

It would be so nice to bring back Electronic Account Resolution and Disclosure Authorization.

Curious to hear about other members’ experiences.

I look forward to your next newsletter!

Best regards,

Larry Pon

Wayne
Tax Jokes and Quotes

Today was the first day you could file a tax return. If you filed a tax return today, congratulations, nerd.

People who file their taxes on the first day are the grown-up version of the kids who ask the teacher for extra homework in school.

The IRS suggests filing early to reduce the chance that someone will steal your identity and file before you. Honestly, if somebody wants my identity so badly they’ll file my tax return for me, go crazy. You can mow my lawn while you’re at it, too.
-- Jimmy Kimmel

“It’s income tax time again, Americans: time to gather up those receipts, get out those tax forms, sharpen up that pencil, and stab yourself in the aorta.”
-- D. Barry

“Collecting more taxes than is absolutely necessary is legalized robbery.”
-- Calvin Coolidge

“The hardest thing in the world to understand is the Income Tax.”
-- Albert Einstein

“I want to find out who this FICA guy is and how come he’s taking so much of my money.”
-- Professional Hockey Player

“It would be nice if we could all pay our taxes with a smile, but normally cash is required.”
-- Anonymous

“The government deficit is the difference between the amount of money the government spends and the amount it has the nerve to collect.”
-- Sam Ewing

“[Suggested simplified tax form:] How much money did you make last year? Mail it in.”
-- Stanton Delaplane

“If you get up early, work late, and pay your taxes, you will get ahead -- if you strike oil.”
-- J. Paul Getty

“Taxes: Of life’s two certainties, the only one for which you can get an automatic extension.”
-- Anonymous

“Blessed are the young, for they shall inherit the national debt.”
-- Herbert Hoover
American Academy of Tax Practice

New Practice Products

1. How to Use the Internal Revenue Manual

Knowing what the IRS knows is possible when you know how to use the official IRS instructions to staff (the IRM) and is essential when you represent taxpayers before the IRS. It's all there: knowing how to use it is the key!

2. A World of IRS Acronyms

“I hate acronyms!” But I know I must master the IRS monsters: ACS, OIC, IMF, BMF, and dozens more… A World of Acronyms is the answer!

3. Policies of the IRS

Official Policy Statements of the IRS

… the most important IRS policy statements from the pages of the Internal Revenue Manual compiled into a handy reference manual designed for your desktop.

To order one or all, email: bryan@americanacademyoftaxpractice.com

Tell us which products you are ordering and where you want them mailed. We will invoice you via Pay Pal.

(American Academy of Tax Practice Website, Click Here)

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Learn More. Contact Shelley Cvek, Underwriter, scvek@TargetProIns.com or 331-333-8240.
For product information, visit TargetProIns.com (Click Here)

GET THE CYBER COVERAGE YOU NEED - INCLUDED WITH OUR TAX PREPARERS E&O POLICY.

As a tax preparer or bookkeeper, you increasingly rely on technology to do business. Information technology is essential to everyday tasks - it decreases operational costs, increases speed to market, improves customer service and opens the door to opportunity. However, it can also lead to risks to your business.

Know the risks and the potential damages.

Hackers, malicious software, rogue employees and hardware loss or theft are all very real risks to your business, and the damages can be significant. Should a cyberevent occur, The Hartford’s new endorsement is designed to cover your business for the damages that typically result. What’s more, this endorsement is automatically included with all Tax Preparers E&O policies at no additional premium.

COVERAGES INCLUDED IN THE ENDORSEMENT

NETWORK SECURITY WRONGFUL ACT

Helps protect against claims alleging negligence in connection with the performance or failure to perform tax preparation and bookkeeping services, which result in

- Denial of services. The inability of an authorized third party to gain access to the insured’s online marketplace, to conduct e-commerce, transmit email or to affect file transfers.

Fictional Scenario: A disgruntled client is unhappy with the manner in which his taxes have been handled. To exact revenge, he brings down the tax preparer’s website. Employees can’t send emails or files. Other clients sue the tax preparer for damages incurred as a result of their inability to access the website and submit information via email.

Prepare. Protect. Prevail.

("Sponsors" continues next page)
Target Professional Program

NETWORK SECURITY, DATA BREACH AND THEFT OF DATA COVERAGE

- Inadvertent transmission of malicious code.
  
  **Fictional Scenario:** A tax preparer sends confidential information via email to a client. Unknowingly, the tax preparer's computer was infected with a virus that was sent along with the email. When the client opens the email, the virus is activated and infects the client's server, damaging their computer system. The client sues the tax preparer for damages incurred from the inadvertent transmission of a malicious code to their network.

- Identity theft. Unauthorized taking or misuse of nonpublic personal information from the insured's computer.
  
  **Fictional Scenario:** A tax preparer visits the office of one of his clients. En route, he leaves his laptop unattended and it's stolen. The thief sells the laptop, downloads all of the files and steals the identity of all of the tax preparer's clients, who then sue the tax preparer for damages incurred from identity theft.

- Unauthorized access to an entity's information utilized in e-commerce, email and file transfers.
  
  **Fictional Scenario:** A hacker uses a security deficiency to enter a tax preparer's server and steals data from emails and files. The hacker then sells the data to third parties who use the data to steal identities. An irate client sues the tax preparer for damages that result from having their identity stolen.

- Crisis Management Expenses
  
  Provides reimbursement of expenses incurred for services performed by a public relations firm, crisis management firm or law firm to minimize potential harm to the insured's reputation in the event of a Network Security Wrongful Act.

- Credit Monitoring and Notification Expenses
  
  Provides reimbursement for credit monitoring and notification expenses in connection with statutory or regulatory mandate requiring credit monitoring or notice to specified individuals in compliance with state or U.S. federal data privacy laws.

- Cyber Investigation Expenses
  
  Provides reimbursement of expenses to the insured to conduct an investigation of its computer system by a third party to determine the source or cause of Network Security Wrongful Acts.

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LEARN MORE: Contact Shelley Cawk, Underwriter, scawk@TargetProIns.com or 331-333-0240. For product information, visit TargetProIns.com.

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In Texas, the insurance is underwritten by The City of Texas Insurance Company.

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Renew Your Membership Online (If Your Membership is due in December and January)