


Center for Agricultural Law & Taxation

The Scoop

August 16, 2017



Agenda

- New Appeals FAQ on cycle audits
- Audit of Pass through Entities
- Letters for ITINS
- Brain Drain
- Allocation of Estimated Tax Payments
- Form 8886- Reportable Transaction Disclosure Statement
- TIGTA Report - Potential Employer Underreported Tax Not Being Addressed
- CAWR Matching Process
- IRS staffing issues
- Planned Outage for all e-Services Users

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Agenda

- Iowa Accountancy Examining Board Rule Changes
- Reminder: Letter Ruling, etc. Fees Will Have to be Paid Electronically after August 15
- IRS Frequently Asked Questions Can Be a Trap for the Unwary
- North Dakota and Michigan disasters

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New Appeals FAQ's

- On May 1, 2017, the IRS Office of Appeals implemented an initiative in which some Appeals Team Case Leaders will hold Appeals conferences with representatives from Compliance Examination teams in attendance.
- For many years, Appeals Officers have had the discretion to invite IRS Compliance personnel to Appeals conferences
- This initiative will make Compliance attendance routine for certain cases
- The goals for this initiative are to improve conference efficiency, reach case resolution sooner, and offer earlier certainty for issues in future years

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New Appeals FAQ's

- As in the past, settlement negotiations will be held between Appeals and the taxpayer without Compliance present
- This initiative relies on taxpayers and Compliance participating in focused joint discussions to identify and, where possible, narrow the factual and legal differences, to assist Appeals Officers in evaluating the hazards of litigation
- The insight that all parties may gain from an open discussion of positions could facilitate resolution of the same or similar issues in subsequent cycles

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New Appeals FAQ's

- <https://www.irs.gov/pub/irs-utl/atclfaqs.pdf>
- 13 questions are addressed

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Audit of Pass-Through Returns

- Audits conducted in 2016
 - 46% of partnership returns no change
 - 31% S corporation – no change
 - 30% C Corporations – no change
 - 8% individuals
- Reported by Kiplinger

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Letters for ITINs

- The IRS began mailing letters this month to more than 1 million taxpayers with expiring Individual Taxpayer Identification Numbers and urges recipients to renew them as quickly as possible to avoid tax refund and processing delays
- ITINs with middle digits 70, 71, 72 or 80 are set to expire at the end of 2017
- The notice being mailed -- CP-48 Notices advises to renew the Individual Taxpayer Identification Number (ITIN) to file the U.S. tax return 2018

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Brain Drain

- Over 30% of IRS workforce is of retirement age
- 122 workers are under age 26
- Head count 77,000
- Kiplinger

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Allocation of Estimated Tax Payments

- Estimated Tax Payments - Separate Declaration - CCA 201727007
- Estimated tax payments made in a separate declaration are the separate property of the spouse making the declaration
- Janus v. United States, 557 F.2d 1268,1269-70 (9thCir. 1977); Morris v. Commissioner, T.C. Memo. 1966-245 - each spouse filed individual declarations of estimated tax and neither was entitled to any portion of the others payments
- For those estimated tax payments made in a joint declaration of estimated tax for a year in which the taxpayers wind up filing separate returns, the taxpayers may allocate the payment in any consistent manner that they may agree upon
 - Treas. Reg. 1.6654-2(e)(5)(ii)(A)

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Allocation of Estimated Tax Payments

- If the taxpayers cannot agree, the payment "shall be allocated between them" in proportion to the tax liability reported on the separate tax return for the current year
 - Treas. Reg. 1.6654-2(e)(5)(ii)(B)
- This estimated tax payment allocation rule had been set out in Rev. Rul. 76-140 under obsolete Treas. Reg. 1.6015(b)-1(b)
- That ruling addressed taxpayers who had had made a credit elect for an overpayment on a joint return, but divorced in that subsequent year and filed separate returns dividing the overpayment; the separate returns were determined to reflect an agreement and in the absence of evidence to the contrary, the allocation method in Treas.Reg.1.6015(b)-1(b) was not applicable

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Allocation of Estimated Tax Payments

- The instructions for Form 4868 reflect this part of the estimated tax payment procedure:
- "If you and your spouse jointly file Form 4868 but later file separate returns for -----, you can enter the total amount paid with Form 4868 on either of your separate returns
- Or you and your spouse can divide the payment in any agreed amounts"
- Taxpayers are directed not to make a joint payment of estimated tax if they are separated under a decree of divorce or of separate maintenance
 - Treas. Reg. 1.6654-2(e)(5)(i)

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Allocation of Estimated Tax Payments

- Under IRM 21.6.3.4.2.3.3 (10-01-2012) ES Joint Allocation, documentation of contact with either the husband or the wife is needed
- ("IF Taxpayer has been previously advised the payments must be allocated; AND both taxpayers cannot agree on an allocation of the joint payments; the IRS is required to advise taxpayer to submit a computation indicating the allocation of the ES credit in proportion to each spouse's separate tax")
- The IRM requires that if the payments cannot be applied to an account a disallowance letter would be issued

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Form 8886- Reportable Transaction Disclosure Statement

- Failure to Disclose Listed Transaction on Form 8886 Prevented Statute from Running
- U.S. v. May, 2017 PTC 241 (9th Cir. 2017)
- Failure to disclose a listed transaction to the IRS resulted in a delay in the statute of limitations beginning

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TIGTA Report - Potential Employer Underreported Tax Not Being Addressed

- 2017-40-038, July 26, 2017
- The Combined Annual Wage Reporting (CAWR) Program compares the employee wage and withholding information reported to the IRS on employment tax forms to withholding documents filed with the Social Security Administration
- The purpose of the IRS-CAWR Program is to ensure that employers report the proper amount of employment taxes and Federal income tax withholding on their employment tax returns

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TIGTA Report - Potential Employer Underreported Tax Not Being Addressed

- Billions of dollars of potential employer underreported taxes are not being addressed because most discrepancy cases are not worked
- TIGTA's analysis of 137,272 Tax Year (TY) 2013 discrepancy cases found that the IRS worked only 23,184 (17 percent)
- The remaining 114,088 (83 percent) discrepancy cases that were not worked had a potential underreported tax difference of more than \$7 billion

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Volume and Potential Underreported Tax Amounts for TY 2013 Discrepancy Cases Not Worked by the IRS

Unworked Discrepancy Cases	Amount of Potential Underreported Social Security Tax	Amount of Potential Underreported Medicare Tax	Amount of Potential Underreported Withholding	Total Potential Underreported Tax ¹²
114,088	\$2,272,280,275	\$626,278,424	\$4,115,401,256	\$7,013,959,955

Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of TY 2013 BMF data.

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TIGTA Report - Potential Employer Underreported Tax Not Being Addressed

- In addition, discrepancy case selection processes do not ensure that priority is given to working discrepancy cases with the highest potential tax assessment
- TIGTA analyzed the 114,088 discrepancy cases that were not worked to identify those 23,184 with the highest potential underreported tax amounts by case type
- It turned out that these had total potential underreported tax of more than \$6.8 billion

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TIGTA Report - Potential Employer Underreported Tax Not Being Addressed

- TIGTA recommended an evaluation of the current agreement and workload processes with the Social Security Administration to determine if changes could be made
- Revise its case selection criteria to include auto-generated cases with the highest potential tax assessment
- Coordinate with the Information Technology organization to review and prioritize programming enhancements
- Take actions necessary to implement the proposed upgrade to include prior year discrepancy cases when current year discrepancy cases are selected for the same employer

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CAWR Matching Process

Figure 1: Hypothetical Example of CAWR Document Matching Process

	Amount Reported on the Employment Tax Return	Amount Reported on Form W-3	Amount Reported on Forms W-2	Difference in Amounts on the Employment Tax Return and Form W-3	Potential Underreported Tax (Calculated)
Social Security Wages and Tips	\$93,000	\$130,000	\$130,000	\$37,000	\$4,588
Medicare Wages	\$93,000	\$130,000	\$130,000	\$37,000	\$1,073
Federal Income Tax Withheld	\$9,000	\$13,000	\$13,000	\$4,000	\$4,000
TOTAL					\$9,661

Source: Hypothetical IRS-CAWR discrepancy case.

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IRS Staffing Issue

- The Annual Wage Reporting Reconciliation is an automated matching process that creates a CAWR module for each employer on the Business Master file (BMF)

Figure 4: CAWR Program FTE Allocation for Fiscal Years (FY) 2013 Through 2016**

Category	FY 2013	FY 2014	FY 2015	FY 2016
IRS-CAWR	57	43	22	14
SSA-CAWR	57	62	71	68
Total FTEs Allocated to the CAWR Program	114	105	92 ¹⁸	82

Source: The IRS's Campus Operations Business Results Reports through September 2016.

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Planned Outage for all e-Services Users

- The IRS is in the final stages of a technology upgrade for e-Services
- Plan ahead as there will be some temporary use issues that will occur as we make this transition:
- 1. There will be a complete outage of all e-Services tools, including Registration, Transcript Delivery System (TDS), and TIN Matching, from 6 p.m. EDT, Thursday, Aug. 17, until 6 a.m. EDT, Monday, Aug. 21
- Applications also will be offline and resume Aug. 22, except for state users

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Planned Outage for all e-Services Users

- E-Services must be taken offline to complete the platform transition and to perform testing
- This outage will affect all users, including bulk users such as IVES and TIN Matching
- 2. All State tax agency users will be unable to submit new e-file and TDS applications for state coordinators or change existing e-file and TDS applications for state coordinators from Aug. 17 until late October
- This temporary issue will not affect state access to transcripts

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Planned Outage for all e-Services Users

- If there is a critical need to add or remove an individual from a state application, states may contact their IRS government liaison representative who will notify appropriate IRS personnel
- 3. Affordable Care Act Information Return (AIR) filers may resume submission of applications for Transmitter Control Codes starting on Aug. 22
- The application process for AIR users has been offline since July because of the e-Services platform transition
- 4. A redesigned e-Services landing page will launch Aug 21

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<https://www.webcaster4.com/Webcast/Page/445/22121>

- Aug. 30 webinar: Reporting Foreign Bank and Financial Accounts on the Electronic FBAR
- Identifying who must file the FBAR
- Determining what accounts must be reported on the FBAR
- Knowing when to file the FBAR
- Explaining how to file the FBAR
- Sharing answers to frequently asked questions
- The webinar will feature a live question and answer session at the end of the presentation

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Iowa Accountancy Examining Board Rule Changes

- The Iowa Accountancy Examining Board is proposing amendments to IAC 193A governing Iowa CPA/LPA individuals and firms
- The proposed amendments to IAC193A are the result of Senate File 237 which was signed by Governor Branstad on April 20, 2017
- The bill received positive support, with a House vote of 49-0 and 98-0 in the Senate
- Over the past year the Iowa Society of CPAs and the AICPA have been working with State Representatives to help introduce the mobility bill

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Iowa Accountancy Examining Board Rule Changes

- What is Mobility?
- Practice mobility for CPAs is the general ability of a licensee in good standing from a substantially equivalent state to gain practice privilege outside of their home state without getting an additional license in the state where they will be serving a client or an employer

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Iowa Accountancy Examining Board Rule Changes - Mobility

- Why is Mobility important?
In the digital age, many of the organizations requiring the professional services of CPAs transact business on an interstate and international basis
As a result, the practice of CPAs typically extends across state lines and international boundaries
Differing requirements for CPA certification, reciprocity, temporary practice, and other aspects of state accountancy legislation in the 55 American licensing jurisdictions (the 50 states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands) constitute artificial barriers to the interstate practice and mobility of CPAs

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Horizontal lines for notes

Iowa Accountancy Examining Board Rule Changes - Mobility

- A uniform mobility system allows licensed CPAs to provide services across state lines without burdens that do not provide additional public protection
This approach is endorsed by the AICPA and the National Association of State Boards of Accountancy (NASBA), the national organization of state boards of accountancy, through a provision in the AICPA/NASBA Uniform Accountancy Act (UAA)

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Horizontal lines for notes

Reminder: Letter Ruling, etc. Fees Will Have to be Paid Electronically after August 15

- The Pay.gov electronic payment website will become the only permissible payment method for the fees that taxpayers must pay when they request letter rulings, closing agreements, and certain other rulings from IRS
To submit a user fee, visit www.pay.gov and use the "IRS Chief Counsel User Fees (or Supplemental User Fees) for Form 1128, Form 2553, Form 3115, Form 8716, Private Letter Rulings and Closing Agreements" form
This form can be found by entering "IRS Chief Counsel User Fees" in the "Search the Forms" box or by clicking on the "Agency List" link under "What Federal Agencies Can I Pay?" and choosing "Internal Revenue Service"

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Horizontal lines for notes

Reminder: Letter Ruling, etc. Fees Will Have to be Paid Electronically after August 15

- Once payment is made, a taxpayer should print a copy of the completed form and the receipt and include these with the letter ruling request
- IR 2017-102 provides a mailing address and an address for hand delivery or private courier service delivery

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IRS Frequently Asked Questions Can Be a Trap for the Unwary

- Generally speaking, there are three buckets of tax guidance:
- 1. Regulations – Treasury (tax) regulations are subject to a public notice-and-comment period pursuant to the Administrative Procedures Act (APA). Accordingly, Treasury regulations are deemed to be binding on both the IRS and taxpayers, except in rare instances where a taxpayer is able to persuade a court to invalidate the regulation
- 2. Other “Official” Tax Guidance – The IRS publishes various forms of guidance in the Internal Revenue Bulletin (IRB)
 - This is referred to as “published guidance” and includes revenue rulings, revenue procedures, notices, and announcements
- 3. Other “Unpublished” Guidance
 - The IRS provides guidance in many other forms

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Other Published Guidance

- It issues tax forms and instructions as well as publications. It issues press releases
- Posts Frequently Asked Questions (FAQs) and answers on IRS.gov
- These forms of guidance are generally not reviewed by the Treasury Department, and sometimes do not even go through an internal review process
- For that reason, the IRS takes the position that taxpayers may not rely on them and that the IRS may change its position at any time

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FAQ's

- If an FAQ is not published in the IRB, the IRS may change its position at any time
- IRS recently reminded its examiners that FAQs "and other items posted on IRS.gov that have not been published in the Internal Revenue Bulletin are not legal authority . . . and should not be used to sustain a position unless the items explicitly indicate otherwise or the IRS indicates otherwise by press release or by notice or announcement published in the Bulletin"

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North Dakota to Get Extended Disaster Relief in Some Counties

- 15 North Dakota counties have been designated federal disaster area due to drought

Adams	Golden Valley	Oliver
Billings	Hettinger	Slope
Bowman	McLean	Stark
Burleigh	Mercer	Ward
Divide	Morton	Williams

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Continuous Counties that are Applicable

Burke	Grant	McKenzie	Sheridan
Dunn	Kidder	Mountrail	Sioux
Emmons	McHenry	Renville	

Contiguous Counties in Adjacent States:

Montana	(5)	
Fallon	Roosevelt	Wibaux
Richland	Sheridan	

South Dakota	(3)	
Corson	Harding	Perkins

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Michigan Disaster Relief

- Victims of the severe storms and flooding that took place beginning on June 22, 2017 in parts of Michigan may qualify for tax relief from the IRS
- The President has declared that a major disaster exists in the State of Michigan and the IRS announced that affected taxpayers in Michigan will receive tax relief
- Individuals who reside or have a business in Bay, Gladwin, Isabella, and Midland Counties, and the Saginaw Chippewa Tribe within Isabella County may qualify for tax relief

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Michigan Disaster Relief

- Certain deadlines falling on or after June 22, 2017, and before Oct. 31, 2017, are granted additional time to file through Oct. 31, 2017
- This includes taxpayers who have valid extension to file their 2016 return
- It also includes the estimated tax payment due on Sept. 15, 2017 and the quarterly payroll tax returns due on July 31, 2017
- Affected taxpayers will not be subject to penalties for failure to pay estimated tax as long as these payments are made on or before Oct. 31, 2017

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Michigan Disaster Relief

- In addition, penalties on employment and excise tax deposits due on or after June 22, 2017, and before July 7, 2017, will be abated as long as these deposits were made by July 7, 2017
- If an affected taxpayer receives a late filing or late payment penalty notice from the IRS that has an original or extended filing, payment or deposit due date that falls within the postponement period, the taxpayer should call the telephone number on the notice to have the IRS abate the penalty
- IRS disaster hotline at 866-562-5227

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The Scoop – Upcoming Dates

- August 30
- September 13
- October 4
- October 18
- November 1
- December 13, 2017
- Held at 8:00 am and 12:00 pm Central time

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Up Coming Webinars

<http://www.calt.iastate.edu/calendar-node-field-seminar-date/month>

- Reconstructing Records for Tax Compliance August 17
- Uber/Lyft Drivers and Business Expenses August 22
- Self-Rental August 23
- Ethics Part 1 and 2 September 1
- Ethics Part 1 and 2 October 6, 2017
- Tax Reform and New Law Update October 17
- New Partnership Audit Rules October 19
- Iowa Farm Leases (Legal Issues) October 12
- Iowa Rural Property (Legal Issues) October 13
- The New Partnership Audit Regime October 19, 2017
- Farm Expenses October 24, 2017
- Farm Income October 26, 2017

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Upcoming Seminars – Mark Your Calendar – Final Dates

- September 21, 2017 Ag Law Seminar, Live and Webinar
- September 22, 2017 Farm and Estate Tax Review, Live and Webinar
- Retirement and Social Security Issues(Webinar) = October 10-11, 2017

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The Schedule is Finalized for the 44th Annual Federal Income Tax Schools

- November 2-3, 2017 – Maquoketa, Iowa – Centerstone Inn and Suites
- November 6-7, 2017 – Le Mars, Iowa – Le Mars Convention Center
- November 8-9, 2017 – Atlantic, Iowa – Cass County Community Center
- November 9-10, 2017 – Mason City, Iowa – North Iowa Area Community College
- November 16-17, 2017 – Ottumwa, Iowa – Indian Hills Community College
- November 20-21, 2017 – Waterloo, Iowa – Hawkeye Community College
- December 11-12, 2017 – Ames, Iowa and Live Webinar – Quality Inn and Suites

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