Center for Agricultural Law & Taxation

44th Annual Federal Income Tax Schools

Ames, Iowa
December 11-12, 2017

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Ethics

Chapter 1 pp. 1-38

Chapter 5 pp. 153-169

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Introduction
p. 1

- Confidentiality and Privilege
- Disclosure to Contractors
- Confidentiality and Misdeeds
- Sale, Transfer, or Discontinuance of a Tax Practice

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Confidentiality and Privilege
p. 2

- **Confidentiality** is duty to protect client information from disclosure to third parties

  vs.

- **Privilege** is right to prevent other persons from disclosing confidential information

Confidentiality
pp. 2-3

- I.R.C. § 7216 states tax professionals cannot disclose or (in certain cases) use a client’s tax return information without prior consent
- But with anything IRS there are exceptions
- Limited exceptions for:
  - Disclosure to IRS
  - Disclosure to prepare return
  - Disclosure per court order, etc.

Tax Return Information
p. 2

- All information you obtain from clients
- Other sources or manner to prepare a tax return
- Obtained in connection with preparing a return
- Includes:
  - Computations
  - Worksheets
  - Printouts created via software
  - Correspondence
  - Filing and correction of returns
  - Statistical information
  - Tax Software registration information

List of Permissible Disclosures
p. 3

Most Other Information
p. 3

- Can be disclosed with a written consent from the client
- Must be in writing – cannot be verbal
- Requirements detailed in Treas. Reg §301.7216-3
  - Identity of recipient
  - Tax return information to be disclosed
  - Purpose of the disclosure
  - The particular use authorized

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Confidentiality
p. 4

- Remember state laws (pages 33-36 of text) and professional organization rules – examples on page 4
- May require a consent even if § 7216 allows
- Limited exceptions:
  - Professional obligations
  - Subpoena, etc.
  - Check state requirements

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Required Disclosures & Privilege Information: Treas. Reg. §301.7216-2 pp. 4-5

- Circular 230: Information requests from the IRS
  - 10.20 – information to be furnished
- IRS Summons
  - Gives IRS broad authority - information that may be relevant
  - Produce books and records
  - Give testimony
  - Interview the taxpayer – Representative who has first hand knowledge and can answer IRS questions in an audit can possibly avoid a summons
- IRS cannot compel privileged communication § 7525
  - Even with a summons

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§ 7525 Confidentiality Privileges Relating to Taxpayer Communications p. 6

- Applies only to authorized persons (CPAs, attorneys, enrolled agents, enrolled actuaries)
- Applies only to tax advice (not business or financial advice)
- Applies only in noncriminal proceeding
- Attorney Client Privilege - US v. Kovel
- Extends attorney client privilege to someone attorney retained to provide accounting-related services (pp. 7-8)

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Disclosure to Contractors
pp. 9-11

- § 7216 tax practitioner nondisclosure
- AICPA Confidential Client Information Rule
  - Demonstrate that safeguards were applied that eliminated or reduced significant threats of unauthorized disclosure to an acceptable level
  - Required for certain software and equipment service providers
  - Advisable for all other contract workers
  - Sample agreement on page 11

Confidentially and Misdeeds - What Should I Do? p. 12

- Errors and omissions the tax return
- Failure to file a return
- Fraud
- Theft
- Other issues that you run across

Errors and Omissions
p. 12

- Out of statute – need to correct error?
- What are the rules of the state?
- What about Circular 230?
  - Due Diligence
    - Advise client of error or omission/noncompliance
    - Consequences of the issue
    - Penalties associated if not corrected
    - You cannot perpetuate the error – carry forward into other years or other returns

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Errors and Omissions
p. 12-13

- Client's Decision Process
  - What's the chance of IRS finding the error?
  - What does it cost to amended the return?
  - Let's wait and see
  - Let's amended I want it to be right
  - Ignore advice
- AICPA standards address the overall issue
  - Do you withdraw from taking on the client?

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Badges of Fraud

- Understatement of income (e.g., omissions of specific items or entire sources of income, failure to report substantial amounts of income received)
- Fictitious or improper deductions (e.g., overstatement of deductions, personal items deducted as business expenses)
- Accounting irregularities (e.g., two sets of books, false entries on documents)
- Obstructive actions of the taxpayer (e.g., false statements, destruction of records, transfer of assets, failure to cooperate with the examiner, concealment of assets)

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Badges of Fraud

- A consistent pattern over several years of underreporting taxable income
- Implausible or inconsistent explanations of behavior
- Engaging in illegal activities (e.g., drug dealing), or attempting to conceal illegal activities
- Inadequate records
- Dealing in cash and
- Failure to file returns

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International Ethics Standards Board

- Gain understanding in the matter
- Address the issue
- Assess the appropriateness of the client's response
- Determine whether to disclose, if allowed, and appropriate
- Document, Document, Document
  - Suggest a written letter to client of actions

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Sale, Transfer, Discontinuance of Tax Practice

pp. 15-22

- Confidentiality- watch federal and state laws as well as professional organization rules
  - Written confidentially agreement
- § 7216 allows for the compiling of a list but limits what information can be complied in the case of a sale
  - Person receiving list is bound by the § 7216 non disclosure rules
  - Information concerning the nondisclosure agreement pages 16-18
    - Sample: Fig 1.2

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Client Notification and Consent to Transfer Records

p. 19

- Sale of a tax practice
  - NO obligation to notify clients or obtain their consents to transfer records to another practitioner within the same firm – Federal law
  - State laws very by state as noted in the text
  - **Client notification is still important to address any confidentiality or conflict of interest concerns to facilitate the transition in ownership**
  - Professional standards may also require notification and consent

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§ 301.7216-2 Permissible Disclosures or Uses Without Consent of the Taxpayer

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§ 7216

- Tax return preparers are allowed to transfer lists or statistical compilations "in conjunction with the sale or other disposition of the compiler's tax return preparation business" (Reg. § 301.7216-2(n))

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§301.7216(n)(1)

- The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the <u>sale or other disposition of the compiler's tax return preparation business</u>
- "Due diligence" must be performed in contemplation of a sale or other disposition of a tax return preparation business
- The regulations also clarify that tax return information made available to a potential purchaser for due-diligence purposes constitutes a <u>disclosure</u> of that information and <u>not a transfer of that information</u>

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§301.7216(n)(1)

- The section expressly prohibits the further disclosure or use of the tax return information for any purpose other than that related to the purchase of the tax return preparation business
- A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business falls under the provisions of this paragraph
- The term list, includes any record or system whereby the types of information expressly authorized for inclusion in a taxpayer list are retained
- It also applies to the transfer of any records and related papers

Death of the Tax Professional

- Section (r)
- Disclosure of tax return information due to a tax return preparer's incapacity or death
- In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased tax return preparer's estate) in operating the business
- Any person receiving tax return information under the provisions of this paragraph (r) is a tax return preparer for purposes of § 7216(a) and §6713(a)

Sale of the Assets of a Tax Practice

- AICPA
- The limited federal and state exceptions for transfer of records within the same firm do not apply to transferring records to a firm that bought the assets of the practice
  - Submit a written request to each client subject to the sale or transfer, requesting the clients consent to transfer its files to the successor firm
  - Arrange to return files not subject to the sale or transfer
  - If not able to return, retain and preserve confidentiality
  - Should confirm that seller has made required notifications

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The Discontinuation of a Tax Practice -AICPA

- Notify each client in writing of the discontinuance of the practice
- Retain evidence of the notification
- Arrange to return any client records unless the tax practitioner and client agree to another arrangement
- Have a plan in place

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Notification and Consent to Transfer Records

pp. 19-22

- Entity sale: no duty to notify or get consent but still should
- Asset sale: notify and get consent to transfer
- Discontinuance: notify and return records
- Seek assurance that the buyer or other transferee will maintain client files in compliance with applicable record retention requirements

Closing Out IRS Authorities

p. 22

Deceased practitioner

- No need to notify of PTIN
- Written request to close out CAF
- Written request to close out EIN
- Contact e-Help to close out EFIN

Ethics, Part 2

Chapter 5 pp. 153-169

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Introduction

p. 153

- Cybersecurity
  - Risk of a cyberattack
  - Cybersecurity breaches
  - Cost of a cybersecurity breach
  - Risk management

Legal Requirements
p. 154

- Tax practitioners are subject to privacy and security obligations under professional-association, state, and federal law, including:
  - IRC §§ 6713 and 7216
  - IRS E-File Security and Privacy Standards,
  - FTC Privacy of Consumer Financial Information Rule (the Financial Privacy Rule), and
  - FTC Standards for Safeguarding Customer Information Rule (the Safeguards Rule)

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Continuing Education
p. 154

- The duty to safeguard client privacy and security is an ethical duty
- Per the IRS, identity theft and data security programs that focus on enhancing tax professional awareness of protecting client data can also qualify for continuing education credit in the federal tax law, ethics and representation topics categories

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Risk of Cyberattack
p. 154

- Data breaches increased 40% in 2016
- Small businesses at greater risk because less time, money, and expertise to defend against cyberattack
- As big businesses become more secure, attackers target small businesses
- Attackers specifically targeting tax practices

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Cybersecurity Breaches pp. 155-157

1. Hacking
2. Phishing
3. Denial-of-Service (DOS)
4. Malicious Code
5. Theft or Loss of Device
6. Employee/Vendor Error

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Hacking

p. 155

- Exploiting vulnerabilities to gain unauthorized access
  - Download virus
  - Unsecure wireless
  - Unauthorized access to password
- Steal info or shut down the system

Example 5.1

p. 155

- Hackers broke into retail credit card system of T.J. Maxx and Marshalls
- Intercepted wireless transfers
- Stole more than 90,000,000 credit and debit card numbers

Phishing

p. 155

- Email that looks legit but designed to steal confidential information
- In 2016 IRS saw 400% increase in phishing and malware incidents

Example 5.2

p.155

- New hire at the bank got a welcome email
- Appeared to come from Human Resources
- Asked for Date of Birth and and SSN
- Really from third party trying to get confidential info

Denial-of-Service Attacks p. 155

- Sends flood of requests to a web page so that the server crashes
- Legit users cannot access the system or the website

Example 5.3 pp. 155-156

- DoS attackers hit Dyn Data Center and overwhelmed systems with junk data traffic
- Started on the East Coast and then international
- Disrupted access to Twitter, Netflix, and PayPal

Malicious Code
p. 156

- Gives the computer incorrect or destructive instructions
- Designed to damage, disrupt, steal
- Comes from infected drive, spam email, hacked webpage

Example 5.4
p. 156

- Attackers planted malware on Hannaford Brothers servers
- Intercepted payment card data
- Forwarded up to 4.2M stolen card numbers overseas

Other Malware
p. 156

- Viruses – alter, replicate, and damage
- Trojan Horses – loss or theft of data
- Ransomware – blocks access to data

Example 5.5
p. 156

- 2017 Ransomware attack began in Europe and Asia, then spread
- Attackers encrypted files, locking more than 200K computers in over 150 countries
- Display screen demanded $300 in Bitcoin to restore the files

Spyware and Adware
p. 157

- Spyware - may display advertising, collect personal information, or change the configuration of a computer
- Adware - displays unwanted advertisements (like pop-ups), redirects search requests to advertising websites, and collects marketing data

Theft or Loss of Device
p. 157

Breach because of theft or loss of

- Laptops
- Smart phones
- Tablets
- Removable media

Employee Errors
p. 157

- Unknowingly download malware
- Use an unsecure computer network
- Inadvertently release personal information

Costs of Cybersecurity Breach pp. 158-159

- **Internal Costs** to investigate and respond
- **External Costs** like lost business and damaged equipment

Internal Costs of Breach

p. 158

1. Detect and deter: IT guy or other security
2. Investigate: forensic accountant to determine what, if anything, was taken
3. Containment: shut down unsecure applications and stop an attack
4. Recovery: back up and restore data
5. Response: improve system to deter future attack

External Costs of a Breach pp. 158-159

1. Information loss or theft: attorneys, reporting, identity repair, penalties and fines, lawsuits
2. Business disruption: downtime
3. Equipment damage: repair or replace software and systems
4. Lost revenue: damage to reputation, lost customers

Risk Management pp. 159-161

Reduce likelihood of breach

- IT management
- Employee training and awareness
- System security, encryption, passwords
- Intrusion prevention and detection system
- Separate guest network, etc.
- Reduce the size of a loss
  - Response plan
  - Cybersecurity insurance

Cybersecurity Insurance pp. 162-163

Transfers cost of loss to insurance company

Look closely at what is covered:

- Loss of income
- Equipment damage
- Attorney, forensic investigator, PR person
- Third party claims and defense
- Ransom money
- Regulatory fines or penalties, etc.

Coverage Limits and Cost

p. 163

- Coverage limits depend on:
  - Size and scope of business
  - Number of customers
  - Presence on the Internet
- Coverage cost depends on:
  - Number of clients
  - Loss history
  - Selected coverage

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Appendix 2

pp. 166-169

Sample Information Security Plan

Every tax practice should have one

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Business Entity Issues

Chapter 6 pp. 171 - 204

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Quote

“Never a simple answer in a complex society if you wish to be fair”

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Business Entity Issues pp 171 - 204

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Business Entity Issues pp 171 - 204

- BRIDGE
- CHECKERS
- CHESS
- POKER
- FIGHTER COMBAT
- GUERRILLA ENGAGEMENT
- DESERT WARGARE
- BUSINESS ENTITY JEOPARDY
- GLOBAL THERMONUCLEAR WAR

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Business Entity Issues pp 171 - 204

How about Global Thermonuclear War?

YOU PREFER A GOOD GAME OF BUSINESS ENTITY JEOPARDY?

Let's play…………

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Business Entity Issues pp 171 - 204

}} LAUNCH {{

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Homeowners' Associations

- What is a Homeowners' Association under 528?
  - A} A Sharing Economy
  - B} Organization consisting of real property owners
  - C} I Do Not Care

Homeowners' Associations

- B} HOA is an organization that is a condominium management association, residential real estate management association, or timeshare if organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property

- {Give yourself 5 points if you answered C}

Homeowners' Associations

- Generally when do HOAs, which are not electing tax exempt status, file their annual Form 1120-H?
  - A} 15th Day of the Third Month after the end of its tax year
  - B} 15th Day of the Fourth Month after the end of its tax year

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Homeowners' Associations

- B} 15th Day of the Fourth Month after the end of its tax year

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Homeowners' Associations

- How does a HOA make an election to take advantage of the § 528 tax benefits?
  - A} Filing Form 1120-H
  - B} Filing Form 990

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Homeowners' Associations

- A} Filing on Form 1120-H within the time provided for filing federal income tax return for the year for which the election is made, including any extensions
- Once made, the election is not revocable without IRS approval

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Homeowners' Associations

- What is the tax rate imposed on HOA's electing § 528 status?
  - A} 15%
  - B} 30%
  - C} 25%

Homeowners' Associations

- B} 30%

- The section imposes a 30% tax unless it is a timeshare association, than the rate increases to 32%.

Homeowners' Associations

- Does a Tax Exempt HOA under § 501(c)(4) or § 501(c)(7) have to file an application to be tax exempt?
  - A} Yes
  - B} No

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Homeowners' Associations

- B} NO. They may wish to file Form 1024 to receive a determination letter of IRS recognition of exempt status

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Tax-Exempt Entities Update

- What is a IDR?
  - A} Information Data Retrieval
  - B} Initial Document Request
  - C} Information Document Request

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Tax-Exempt Entities Update

- C} Information Document Request

IRS uses the IDR to solicit specific information and documents that may be relevant to the examination of a return

Effective 04/01/2017 IRS is using a new process for the Tax Exempt/Government Entities examiners

Intended to speed up resolution of examinations Taxpayer must adhere to strict timelines responding to IDRs

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Tax-Exempt Entities Update

- What types of Enforcement can the IRS use if the taxpayer does not reply or cooperate with the IDR?
  - A} Summons
  - B} Proposal of Adjustments
  - C} Proposal of Revocation of tax-exempt status
  - D} All of the above

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Tax-Exempt Entities Update

- D} All of the Above

  Bottom line…..Comply with the IDR or at least ensure you and your client discuss with the agent if you believe a particular item on the IDR is outside the scope of the audit

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Tax-Exempt Entities Update

- What are the penalties for failure to File Form 990 for three (3) consecutive years?
  - A} $100 a day penalty up to a maximum of $10,000.00
  - B} Lesser of 5% of organization's gross receipts or $10,000.00
  - C} Lose its tax-exempt status

Tax-Exempt Entities Update

- C} The organization will automatically lose its tax-exempt status

Tax-Exempt Entities Update

- What did the IRS do to make it easier to file the Form 990-EZ and ensure that there were less errors?
  - A} Develop a interactive Form with help icons
  - B} Changed the Forms instructions

Tax-Exempt Entities Update

- A} Develop a interactive Form with help icons

33% of paper filed forms contained errors where only 1% of the e-filed forms had errors

Tax-Exempt Entities Update

- What else besides the new interactive Form 990-EZ icons has the IRS done to assist in preventing errors on these forms
  - A} Provided a Direct Telephone Hot Line
  - B} Made the Form easier to understand
  - C} Provided commentary on common errors and filing precautions to take when filing

Tax-Exempt Entities Update

- C} Provided commentary on common errors and filing precautions to take when filing

Proposed Partnership Audit Regulations

- Why were the these audit rules developed?
  - A} IRS had nothing better to do
  - B} Assist IRS Auditors
  - C} Simplify the IRS administrative costs

Proposed Partnership Audit Regulations

- C} Simplify the IRS administrative costs

  These audit rules were designed to simplify the IRS administrative costs to ensure partnership compliance

  Hence, look for an increase number of 1065's to be audited

Proposed Partnership Audit Regulations

- Joe's Garage has 51 partners:
  - 50 partners are individuals and one partner is a S Corporation with 50 shareholders
  - How many partners under the new audit rules does Joe's Garage have?
  - A} 51 partners
  - B} 100 partners
  - C} 101 partners

Proposed Partnership Audit Regulations

- C} 101 partners

- The 50 regular partners + the 1 S Corporation + the number of shareholders inside the S Corporation (50) = 101 partners
- You may elect out of the new rules if your partnership has less than 100 partners
- Old rules than apply if electing out

Proposed Partnership Audit Regulations

- What is a PR under these proposed Regulations?
  - A} Partnership Representative
  - B} Professional Representative
  - C} Tax Matters Person

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Proposed Partnership Audit Regulations

- A} Partnership Representative

  Operating Agreements should designate the PR (Partnership and all partners are bound by the actions of the PR)

  Can be a partner, Lawyer, CPA, POA or anyone assigned by partnership.

  If no PR is Designated – Than IRS will Designated, see page 193 on how

  All Correspondence will go to PR or POA only

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Proposed Partnership Audit Regulations

- Under the these new Audit Rules, what is the “Imputed Underpayment”?
  - A} Civil Penalty
  - B} Push Out Payment
  - C} Adjustment Amount

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Proposed Partnership Audit Regulations

- C} Adjustment Amount

  Adjustment by the IRS is the amount of any item of income, gain, loss, deduction, or credit of the partnership, or any partners distributive share thereof

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Proposed Partnership Audit Regulations

- Joe's Garage is being audited in 2021 for the 2019 tax year. 2021 is called?
  - A} Adjustment Year
  - B} Review Year
  - C} Audited Year

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Proposed Partnership Audit Regulations

- A} Adjustment Year

  2021 would be the Adjustment Year and 2019 is called the Review Year

Review Year = Year Being Audited

Adjustment Year = Year Audit is Taking Place

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Partnership Ownership Changes

- How many partners are needed to form a Partnership?
  - A} Three
  - B} Two
  - C: Four

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Partnership Ownership Changes

- B} Two

  A partnership is an arrangement in which two or more individuals share the profits and liabilities of a business venture

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Partnership Ownership Changes

- Multimember LLC downsizes to one member
- What is this organization now called?
  - A} Disregarded Entity
  - B} Sole member Corporation
  - C} Nothing (Total Termination)

Partnership Ownership Changes

- A} Disregarded Entity

  If the organization was a partnership and not a LLC, than it will become a sole proprietorship

  If LLC than a single member LLC treated as a disregarded entity

Partnership Ownership Changes

- If a partnership is terminated under a technical termination due to a change of 50% of more of the ownership inside a 12 month period, does this partnership need a NEW EIN?
    - A} YES
    - B} NO

Partnership Ownership Changes

- B} NO

  The partnership retains its EIN

  The old partnership terminates and a short tax year MUST be filed

  New Partnership should check the “Technical Termination” and the “Initial Return” checkboxes on Line G of Form 1065

Partnership Ownership Changes

- Does a Retiring Partner usually pay S/E tax on payments if he was a General Partner and Capital was not a material income producing factor

  - A} NO
  - B} YES

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Partnership Ownership Changes

- B} YES

  Unless the partnership agreement specifically provides for a payment for unrealized receivables and goodwill than payments are usually classified as a distributive share of partnership income or a guaranteed payment

  Please review and plan accordingly with a retirement of a partner under § 736

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Partnership Ownership Changes

- When must a Partnership obtain a new EIN?
  - A} It Ends and Becomes a New Partnership
  - B} It Incorporates
  - C} Taken over by a partner and becomes a Sole Proprietorship
  - D} All of the Above

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Partnership Ownership Changes

- D} All of the Above

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BONUS QUESTION 1

- What provides relief for late filing of a partnership return?
  - A} IRS Notice 2017-47
  - B} Revenue Ruling 99-7
  - C} Revenue Procedure 84-35
  - D} A & C
  - E} None of the Above

BONUS QUESTION 1

- D} A & C

Questions?

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Tax Practice

Chapter 14 pp. 505-550

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Tax Practice

p. 505
p. 505

1. Substitute for Return and Superseding Return
2. Nonfilers
3. Collection Statute of Limitations
4. Transferees, Nominees and Alter Egos
5. Offer in Compromise

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p. 506

Issue 1: Substitute for Return - SFR

p. 506

- Nonfiler not responding, IRS prepares SFR
  - Income + personal exemption + standard deduction
  - Single (if last return joint, MFS)
- Results to taxpayer in 30-day letter - options:
  1. Consent to assessment,
  2. File signed complete return
  3. Send statement why filing not required or
  4. Send in other information

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Notice 2566, Notice 2566R - Not in Text

Department of the Treasury
Internal Revenue Service
PO BOX 149338
Austin TX 78714-9338

Notice	2566R
Tax Year	2010
Notice date	January 23, 2017
Social Security number	999-99-9999
To contact us	Phone 1-866-681-4271
Hours of operation	8:00 a.m. to 8:00 p.m.
Your caller ID	123456
Page 1 of 9	
ADR Bar code	

We still have not received your 2010 Form 1040

We may apply your 2012 refund to tax due

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Notice 2566, Notice 2566R - Not in Text

We sent you previous notices asking that you file your tax return Form 1040 for 2010. However, we still have not received any response from you.
You must file your return by February 22, 2017, or we will assess taxes for you using a filing status of "single" or "married filing separate". This means you may not receive certain exemptions, deductions, or credits that you would otherwise receive if you filed your own return.

Summary

Tax you owe (proposed amount)	$3,551.00
Payments you made	-2,349.00
Failure-to-file penalty	270.45
Failure-to-pay penalty	282.47
Interest charges	342.64
Proposed amount due	**$2,097.56**

What you need to do immediately

To avoid the assessment of the proposed amount due, and additional penalty and interest charges, you must file your 2010 tax return by February 22, 2017. You also have the option to accept our proposed amount due and pay immediately. Keep in mind that this amount may be higher than what you would owe if you filed your own return.

To file your 2010 tax return

- Complete, sign, and date the Response form, and mail it to us along with a copy of your 2010 return so we receive it by February 22, 2017. Send this to us in the envelope provided, and please be sure to place your Response form on top of your return.
- If you file a joint return, both taxpayers are required to sign.

If you don't think you had to file a return
Please call 1-866-681-4271 to speak with an IRS representative and explain your situation.

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Notice 2566, Notice 2566R - Not in Text

Proposed tax calculations

This section shows our proposed calculations for tax year 2010. Please review it as you complete your return. Keep in mind we can't accept this page as a return.

Your income

	Reported to IRS
Wages	99,999
Taxable interest	99,999
Ordinary dividends	99,999
Taxable refunds, credits, or offsets of state and local income taxes	99,999
Alimony received	99,999
Business income	99,999
Capital gains	99,999
Other gains	99,999
Total IRA distributions	99,999
Total pensions and annuities	99,999
Rental real estate, royalties, partnerships, corporations, trusts, etc.	99,999
Farm income	99,999
Unemployment income	99,999
Social Security benefits	99,999
Other income	99,999
Total income	99,999

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Notice 2566, Notice 2566R - Not in Text

Proposed tax calculations—**continued**

Your tax and credits

We've calculated the proposed assessment assuming a filing status of "single" or "married filing separate", only one personal exemption, and the standard deduction.

	Reported to IRS
Adjusted gross income	$99,999
Deduction for 65 or older	99,999
Deduction for blind	99,999
Standard deduction	99,999
Personal exemption allowance	99,999
Taxable income	99,999
Self-employment tax	99,999
Tax on IRAs, other retirement plans, and MSAs	99,999
Total tax	**$99,999**

Your payments

	Reported to IRS
Income tax withheld	$99,999
Estimated tax payments	99,999
Total payments	**$99,999**
Net tax due	**$99,999**

Income reported by others

This section shows you what income information the IRS received about you from others (including your employers, banks, mortgage holders, etc.). If all your income is not listed here, you must file a tax return. You can't agree to our proposed amount due.

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Notice 2566, Notice 2566R - Not in Text

IRS

Notice	2566R
Tax year	2012
Notice date	January 23, 2017
Social Security number	999-99-99999
Page 8 of 9	

Response form

s018999546711s
INTERNAL REVENUE SERVICE
PO BOX 149338
AUSTIN TX 78714-9338

Fold here

Please complete this form to indicate whether you're enclosing your return, or agree with the proposed amount due. Attach it to your return, and mail it to us using the enclosed envelope so we receive it by February 22, 2017. Be sure our address shows through the window.

Provide your contact information

If your address has changed, please call 1-866-681-4271.

☐ a.m. ☐ p.m. ☐ a.m. ☐ p.m.

Primary phone number | Best time to call | Secondary phone number | Best time to call

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Notice 2566, Notice 2566R - Not in Text

I'm enclosing my return

☐ I am enclosing a signed and dated copy of my 2010 tax return. If you are filing a joint return, both taxpayers are required to sign.

Signature | Date

Signature | Date

Indicate your payment option

I am enclosing (check all that apply):

- ☐ Full payment of $2,097.56
- ☐ Partial payment of $________
- ☐ No payment
- ☐ A completed Installment Agreement Request (Form 9465)

- Write your Social Security number 999-99-9999, the tax year 2010 and the form number 1040 on your payment and any correspondence.
- Make your check or money order payable to the United States Treasury.

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Letter 950

- IRS Letter 950:
  - 30 Day Letter Straight Deficiency or Over Assessment
  - This letter is sent after IRS field audits
  - It is used for un-agreed, straight deficiency, straight over-assessment
  - This letter will state the findings and if the taxpayer agrees with the assessment then the taxpayer should sign and return the agreement form to the IRS
  - If the taxpayer does not agree with the findings then they will have 30 days to file an appeal/protest
  - Be careful with this notice because many times the information is incorrect

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p. 506

Substitute for Return – SFR

p. 506

- Taxpayer-signed return starts assessment statute
  - Signing 30-day letter form is only consent to assessment of SFR tax
- If taxpayer files a return after SFR
  - Processing takes 6 weeks +
  - Collection activity stayed for that tax year
  - Assessment statute starts

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Substitute for Return - SFR

pp. 506-507

p. ~~506~~

- No response to 30-day letter? Stat notice
  1. Petition Tax Court within 90 days
  2. File an original return
  3. Agree to SFR tax, or
  4. Explain why filing not required
- No response to statutory notice
  - Tax assessed – collection statute does not start (not assessment statute, **an SFR is not a tax return)**

Limitation on Refunds

p. 507

p. ~~507~~

- Time frames for filing for refund – later of
  - 3 years from filing of return or
  - 2 years from payment of tax
- Withholdings and estimates paid on original due date
  - If greater than 3 years from due date, overpayment lost – no refund, not applied to another year
  - If less than 3 years but SFR assessed, consider filing to reduce or eliminate deficiency

p. 507

Limitation on Certain Benefits

p. ~~507~~

- Certain credits cannot be claimed more than 3 years from due date (e.g. EITC)
- Joint return election after filing separate returns can only be made within 3 years of original due date - §6013(b)(2)(A)
- Can revoke joint election only before original due date
- Special limitations periods for credit and NOL carrybacks, capital loss carrybacks

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pp. 507-508

Audit Reconsideration

- Filing return after, SFR falls under audit reconsideration rules
- No consideration will be given if:
  - An executed Appeals settlement agreement was signed
  - An executed closing agreement was signed
  - An Offer in Compromise was accepted
  - A final order of Tax Court was entered

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Substitute for Return Changes

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IRM 5.6.1.9.4.5 (10-01-2010) - Substitute for Return (SFR)

Not in Book

- The Service has authority to prepare and process a tax return when a person fails to file a required return or files a false or fraudulent return
- If the taxpayer signs a SFR return prepared from income information received from the taxpayer, it becomes the taxpayer's return and starts the assessment period of limitations

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IRM 5.6.1.9.4.5 (10-01-2010) - Substitute for Return (SFR)

Not in Book

- If the taxpayer signs a waiver of restriction on assessment it does not constitute a return in accordance with Rev. Rul. 2005–59
- If the Service has processed an unsigned Substitute for Return (SFR), the taxpayer may still file a signed tax return for the same tax year as the SFR return
- The assessment statute period for that tax year will begin with the received date of the taxpayer's signed return

Substitute for Return Program Suspended

Not in Book

- The SFR program, computers (without human involvement)
  - (1) Detected the need to file and the lack of filing
  - (2) Prepared substitutes for returns under § 6020(b) based on the third-party gross income information, and
  - (3) Issue a letter to the taxpayer showing the proposed deficiency and balance due based on that substitute for return (essentially, a 30-day letter)
- The computer would automatically tack on late-filing and late-payment penalties to the tax balance due

Substitute for Return Program Suspended

Not in Book

- On September 26, 2017, Matthew Weir, the Assistant Inspector General of the Office of the Treasury Inspector General for Tax Administration (TIGTA) announced that the IRS had, for lack of sufficient financial resources, suspended its Automated Substitute for Return (ASFR) program

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Social Security Rules – Not in Book

- If a self-employment tax return was filed before the expiration of the time limitation provided the Social Security law (3 years, 3 months, and 15 days after the taxable year in which the SEI alleges to have been derived), SSA will correct its records to include the SEI derived by the person for that year

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Social Security Rules - Not in Text

- § 404.807(b) provides in part:
- (b) Tax Returns of self-employment income --
- (2) Tax returns filed after expiration of time limitation
  - The Administration shall not, pursuant to § § 404.806(f) or 404.806(k), include in its records the amount of self-employment income of an individual for any taxable year if the tax return or portion thereof which evidences such income was filed after the expiration of the time limitation following the taxable year in which such self-employment income was derived or in which a deletion of wages was made

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Social Security Rules – Not in Text

- This provision is not applicable to earnings which are derived in any taxable year ending after 1954 and before 1960 by a minister * * *)
- In the case of a self-employment tax return filed after the expiration of the time limitation, the Administration may only revise its records to reflect a decrease

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Update on Substitute for Returns

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Issue 1 Superseding Return

p. 508

p. 508

- Any return filed after an original return but before the due date is a superseding return
  - Incorporated into original return –overlays original filing – an amended return (also considered a superseding return if filed before the due date) is just a one figure adjustment to the taxpayers records – does not overlay
  - Chance to change income and expenses without risk of interest or penalties
  - Allows taxpayer to revoke irrevocable elections
    - Married Filing Joint
  - Make changes to income like a new For W-2 received or corrected

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p. 508

Assessment Statute of Limitations

p. 508

- Assessment statute of limitation (SOL) runs from date return filed
- If file before original due date considered filed on due date
- If file within extension period considered filed on date received if before date due of extension
- If file within extension period but received after date due, filed on postmark date

p. 508

Assessment Statute of Limitations

p. 508

- If file before extension date, extension remains
  - File 2nd return before due: 2nd return starts SOL
- Ex 14.1 Extension to 10/16/17
  - Filed original 6/4/17
  - Filed 1040X - 8/26/17 (1040X = superseding)
  - Assessment SOL runs from 8/26/17
  - But, if filed 1040X 10/26/17 → amended return
    - SOL would run from 6/4/17 filing

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p. 509

Superseding Returns

p. 509

- Superseding provides opportunity to revoke irrevocable elections or to make elections required by due date
  - Real Estate Professional grouping election
  - Joint return election
  - Election timely made
  - Waiving NOL carryback
- Filing for extension is smart even if to file by original due date if the taxpayer has K-1 income

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Filing Superseding Return

p. 509

- No written instructions available – procedures are detailed in the Internal Revenue Manuel (IRM)
- A complete new return must be filed with all schedules, etc
  - Write on top of Form 1040 – Superseded Return" in red
  - **Note: IRS personnel do not always know what a superseded return is and will not process due to lack of training – in some case correspondence will start**
- IRS advises to wait until original return has been processed
- 1040X best to avoid IRS treating as duplicate return (which delays processing)
- For corporation – electronic filing has superseding indicator (paper does not)

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Issue 2
Non-filers
pp.

p. 509-510

- Civil matter but can be criminal if willful
- Enforcement generally for 6 years back
- Filing past-due returns
  - Determine unfiled years
  - Secure transcripts (check for TC150-SFR)
  - Secure prior year returns for reference
  - Prioritize based on limitation periods

Reconstructing Records

Reconstructing Records p. 510-511

- Income – Direct Methods
  - IRS wage and income transcripts
  - State sales tax returns
  - Receipt books
  - Cash register tapes
  - Invoices
  - Credit card charge slips
  - Bank statements
  - Information from clients/customers – Mark-up?

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Reconstructing Records p. 511

- Income – IRS Indirect Methods
  - Bank Deposit/Cash Expenditure
  - Source and Application of Funds
  - Net Worth
- Expenses
  - Good faith estimates - credit card statements, third parties, calendar, prior-year return (NOTE: not applicable for travel and entertainment)

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Reconstructing Records

p. 512

- Expenses – Figure 14.1 – Using various records to reconstruct expenses
- Other methods
  - Contacting suppliers, payees, lenders
  - Reviewing Forms 941 and 940
  - Reconstruct mileage by:
    - Auto repair receipts
    - Calendar
    - Routine
    - Current records if same business

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Reconstructing Records

p. 513

- Itemized Deductions
  - Contact payees – possibly through websites
  - W-2 for state withholding
  - Form 1098 for interest
  - Bank statements and copies of checks

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Issue 3 Collection Statute of Limitations

p. 513

- Collection statute expiration date (CSED): 10 years after assessment
- Can be extended by agreement
- Certain events will suspend the statute (CSED) beyond 10 years after assessment
- If court proceeding to collect, collection statute expires when judgment paid
- CSED applies to tax, penalties and interest

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Determining the CSED

p. 513-515

- Date assessed – secure IRS transcript
  - Figure 14.2 – transcript transaction codes
  - Document 6209 for more transaction code detail
    - Web address on page 514
- Assessment date + 10 years = original CSED
- Multiple CSEDs for one account possible
- Lien filed: Column (d) – Figure 14.3

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Determining the CSED

p. 515

Ex 14.2

- Filed 4/15/15: $4,200 CSED: 4/15/25
- Audit 7/30/16: $1,200 CSED: 7/30/26 – additional assessment

Extending CSED by Agreement

p. 515

- Before 1/1/2000, IRS could request any time
- § 3461 – extensions allowed only when
  - Taxpayer enters into installment agreement
    - Extends to 89th day after agreed date
    - IRS policy to use this only with Partial Payment Installment Agreement (PPIA)
  - Prior to release of levy
    - Extends to agreed date

Partial Payment Agreement – PPIA p. 515-516

- Taxpayer has ability to pay some but not all of liability
- If enforcement action appropriate, IRS will not grant PPIA
- Form 433-A or Form 433-B required
- IRS will evaluate – compare to prior returns, compare to public records
- Taxpayer must agree to maximum payment based on ability to pay

PPIA p. 516

- Defaulted on IA in last 24 months?
  - Must pay by direct debit/payroll deduction
- Equity in assets? PPIA possible if taxpayer cannot sell or borrow against assets (see list)
- Asset coming to taxpayer at a later timeframe
  - CSED extension based on time needed
  - Extension not to exceed 5 years + 1 year
- Ex 14.3 - 1 year beyond when asset available

Suspension of Collection Statute p. 516

- Certain events suspend (toll) the statute
  - Innocent spouse claims- requesting spouse only
    - Date taxpayer files the claim until 60 days after three possible variables
  - Taxpayer files Form 911 – Request for Taxpayer Advocate Assistance
  - Installment agreement requested
  - Offer in compromise considered
  - Collection Due Process (CDP) hearing
  - Certain military situations

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Suspension of Collection Statute p. 520

- Certain events suspend (toll) the statute
  - Issuance of statutory notice
  - Assets in control or the custody of court
  - Taxpayer outside the US
  - Certain extensions of time for payment
  - Wrongful seizure or lien on third party
  - Bankruptcy

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Suspension Request for Innocent Spouse Relief

p. 516-517

- Innocent spouse relief, separation of liability relief, equitable relief
- Suspended from date filed to 60 days after
  - Taxpayer files a waiver
  - 90-days for petitioning Tax Court expires
  - Tax Court decision becomes final
- Reconsideration request does not qualify

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Suspension
Form 911 – TP Advocate Assistance

p. 517

- Request involving collection action
  - Not applicable if congressional or functional referral
- Suspension begins date received by the Taxpayer Advocate (TARD)
- Suspension ends on Taxpayer Advocate Service (TAS) decision date
  - Date the Form 911 denied
  - Date agreement reached as to action
  - Date the TAS issues the Taxpayer Assistance Order (TAO)
  - Date review of TAO completed

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Suspension - Form 911 – TP Advocate Assistance
p. 517

- TAS informs taxpayer of suspension by letter
- Suspends assessment and collection statutes
  - For tax periods in Form 911 only
  - TARD not counted in suspension

Ex 14.4

- 1/15/16 TARD, 1/22/16 Decision
- Suspension 7 days (Jan 16-22)

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Suspension - Offer in Compromise
p. 518

- Suspension for:
  - Number of days offer pending
  - 30 days following offer rejection
  - Time during Appeals consideration
- Suspension only for the spouse filing the OIC
- OIC to delay collection does not stay collection and does not suspend statute

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Suspension - Installment Agreement p. 518

- Suspension:
  - While Installment Agreement (IA) being considered
  - 30 days after denial or termination of IA
  - While appeal of denial or termination is pending
  - Generally only with PPIA's

Suspension - Collection Due Process Hearing p. 518

- Suspension:
  - Begins date timely filed CDP request received
  - Ends date taxpayer withdraws request or date determination is final (Appeals, Court)
- If less than 90 days remain on the statute when the determination is made final, the statue of limitation is extended by 90 days

Suspension - Collection Due Process Hearing

p. 518

- Applies only if CDP requested timely
  - Within 30 days of final notice - intent to levy
- If request not timely – equivalency hearing
  - CSED not suspended

NOTE: Aging of liability stops during CDP but not equivalency hearing – If bankruptcy possible, equivalency may be preferable

Suspension - Military

p. 519

- Suspension in combat zone
  - While in combat zone + 180 days
- Deferment
  - Collection deferred up to 180 days after termination or release from service
  - Ability to pay materially affected by service
  - Collection statute suspended for period of service + 270 days

Suspension - Military p. 519

- Deferment – Materially affected
  - Current monthly income is less than monthly income immediately prior to active duty
- Eligible: Only initial period of military service
- Must request in writing
- Applies also to spouse if joint return filed

Suspension – Other Issues p. 519

- Suspension due to issuance of statutory notice
  - Runs 90 days (150 if taxpayer outside US)
  - If to Tax Court, runs to decision + 60 days
- Suspension if taxpayer's assets in control or custody of court
  - Period in court's custody + 6 months
  - Must be all or substantially all taxpayer's assets

Suspension - Taxpayer Outside the US p. 519-520

- Suspended for period taxpayer outside US if period is continuous for at least 6 months
  - Temporary visits to US have no effect
- Taxpayer returns to US and less than 6 months remain, CSED no earlier than 6 mos from return date
- Suspension more limited if taxpayer is cooperative
- Taxpayer has not resolved liabilities or is noncooperative, CSED to max length (16 yrs)

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Suspension - Taxpayer Outside the US p. 519-520

- No change to CSED, if taxpayer currently-not-collectible for hardship reasons
- CSED updated as needed to collect if significant collection potential
  - Assets outside US count toward potential
  - Assets may be seized or levied if in country with mutual collection agreement (list p. 520)

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Suspension - Taxpayer Outside the US p. 519-520

New CSED based on:

- Information in signed Form 433-A
- Other written information from taxpayer or agent
- Oral statements by taxpayer or agent
- Tax returns consistently with foreign address
- Other data sources – Accurint, credit reports, 3rd parties, Treasury Enforcement Communication System (TECS) or Department of State

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Suspension- Other Issues

p. 521

Extensions of time for payment of estate tax

- Deferral of payments extends period for collection by equal time period

Wrongful Seizure – 3rd Party

- Suspended from date of wrongful act to:
  - Date property returned + 30 days or
  - Date judgment secured + 30 days
- Applies only to assessment or value of property

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Suspension – Other Issues

p. 521

Wrongful Lien – 3rd Party

- From date any person becomes entitled to certificate of discharge of lien to earlier of:
  - Date on which IRS no long holds deposit or bond or
  - Date judgment becomes final
- Applies only to liability equal to the value of property IRS held + interest + additions to tax and any other amounts attributable

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Suspension – Bankruptcy p. 521-522

- Petition date to discharge date + 6 months
- Applies only to tax not subject to discharge
- Joint return
  - One petition is the suspension for the one
  - Joint petition for each - same suspension
  - Individual petitions requires 2 separate petitions
- Plus time for assets in court custody and control

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Suspension - Multiple Suspensions
p. 522

- Any period of overlap counted only once
- Ex 14.6 - Original CSED*: 06/01/19*
  - Combat zone:
    - In 5/10/14 Out 3/01/15
    - In 5/10/14 to 8/28/15 (3/1/15 + 180 days)
- OIC: Filed 4/20/15, rejected 10/17/15
  4/20/15 to 11/16/15 10/17/15 + 30 days)
- Total suspension: 5/10/14 – 11/16/15
- Suspension = 555 days, New CSED:12/7/20

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Suspension
Multiple Suspensions – Ex 14.7
p. 522

	Suspension	# Days	CSED
Assessment Date:	06/03/02		6/03/12
CDP	11/19/02 – 7/10/03	233	1/22/13
Bank	2/23/04 – 8/11/04 + 6 mos.	170+6mo	1/11/14
Com	9/2/06 – 6/8/07 + 180 days	*(overlap)*	
OIC	5/22/07 – 3/5/08 + 30 days	580 total	8/14/15
Suspension: Combat starts: 9/2/06, OIC ends 4/4/08			
Use Julian dates to recalculate CSED			

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Suspension - Suit for Judgment p. 523

- Gov't may file suit to extend statute
  - Collection statute is expiring
  - All administrative remedies exhausted and
  - Reason to believe can collect in future
- Successful suit?
  - Period for collection runs until judgment satisfied or unenforceable
  - Individual Shared Responsibility Payment (ISRP) not subject to judgment, Employer Shared Responsibility Payment (ESRP is)

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Questions?

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Break

10:15 – 10:30 am

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Individual Issues

Chapter 10 pp. 328-390

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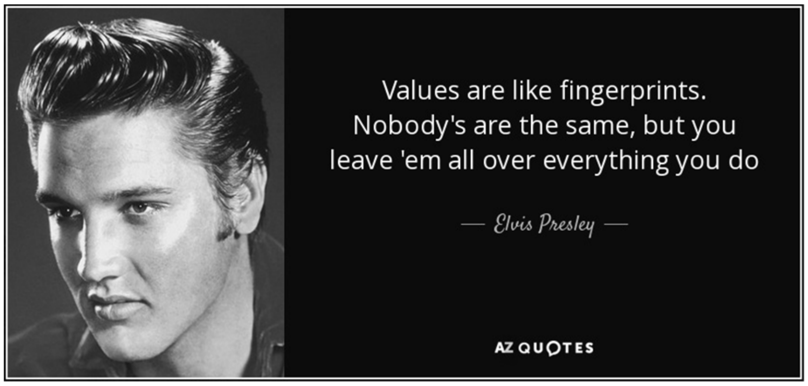
Quote of the Day



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Individual Issues p. 327

1. Affordable Care Act {Kristy will discuss}
2. Net Investment Income Tax
3. Sharing Economy
4. Charitable Contributions
5. AMT
6. OID {Original Issue Discount}
7. Disaster Tax Relief
8. Military Tax Issues

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Issue 2 - NIIT pp. 336-341

Issue 2: Overview of NIIT
Net Investment Income Tax pp 336-341

- First Tax Imposed Outside of the Regular Income tax in Several Decades.
- Impact Most Felt by Higher-income Individuals
- 3.80% x Lesser of Net Investment Income or MAGI over the thresholds based on Filing Status

NIIT - Investment Income/Gain p. 337

- Interest
- Dividends
- Annuities
- Royalties held as Investments
- Rents from properties characterized as passive
  - Not if derived in ordinary course of a trade or business
  - Not if self-rental treated as nonpassive

NIIT - Investment Income/Gain p. 337

- Gain from sale of stocks, bonds, mutual funds {Long Term or Short Term}
- Gain from sale of property not held in a trade or business (Second Home)
- Gain from sale of partnership or S corporation if a passive activity for seller
- Gain from investment of working capital

NIIT - Not Subject to NIIT p. 337

- Subject to SE tax (except trading income)
- Wages
- Unemployment compensation
- Social security benefits
- Alimony
- Tax-exempt interest
- Distributions from certain retirement accts
- Items excluded from gross income (Personal Residence)
- Income from a non-passive trade or business
- Gains from sale of property used in a non-passive trade or business activity

NIIT – Deductions for NIIT p. 337

- Allocable to rent or royalty income
- Allocable to trade or businesses subject to NIIT
- Savings early withdrawal penalties allocable to income subject to NIIT
- NOL allocable to NIIT income
- Allocate with “reasonable method”

NIIT - Deductions for NIIT p. 338

- State and local income taxes
- Investment interest expense
- Investment advisory and brokerage fees
- Rental/royalty related expenses
- Expenses related to tax issues
- Expenses incurred by estate or trust

NIIT – Trade or Business Income p. 338

- Trade or Business
  - Conducted with "continuity & regularity" for the primary purpose of earning income or making profit
  - In Connection with a trade or business or
  - With respect to which expenses are allowable as a deduction under IRC § 212.
- Material Participation
  - IRC § 469(h)
  - Temporary Treasury Regulations § 1.469-5T

NIIT - Real Estate Professionals p. 338

- Real Estate Professional status alone will not exclude rental income from NII
- Exclude if:
  1. Safe harbor: Participated greater than 500 hours current year or greater than 500 hours 5 of last 10 years
  2. Can show rental activity is in ordinary course of a trade or business

NIIT – Grouping p. 339

- Activities = an appropriate economic unit
  - Similarities/differences
  - Extent of common control
  - Extent of common ownership
  - Geographical location
  - Interdependencies between and among activities
- May regroup in 1st year subject to NIIT
  - Rev. Proc. 2013-10: regrouping disclosures

NIIT – Calculation
p. 339-341

- Form 8960
- Subject to estimated tax provisions
- Applies US citizens and residents
- Nonresident spouse
  - If elects to file jointly & does not elect joint for NIIT, MFS threshold applies

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NIIT - Estates and Trusts
p. 340-341

- 3.8% of lesser of
  - Undistributed new investment income or
  - Excess of AGI over dollar amount at which highest tax bracket begins ($12,500 for 2017)
- Form 8960

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Issue 3: Sharing Economy pp 341- 345

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Issue 3: Sharing Economy pp 341- 345

- Approximately 2.5 million taxpayers are now earning income each month in the "gig" economy, also commonly referred to as the "sharing" or "on-demand" economy. Participation continues to swell and is expected to double by 2020, according to the IRS. The IRS opened a "Sharing Economy Tax Center" this year on its website. It also is reportedly stepping up its audit coverage of taxpayers working in the "gig" economy.

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Issue 3: Sharing Economy pp 341- 345

- Temporary, flexible jobs are commonplace and companies tend toward hiring independent contractors and freelancers instead of full-time employees. A "gig" or sharing economy undermines the traditional economy of full-time workers who rarely change positions and instead focus on a lifetime career.
- In the modern digital world, it's becoming increasingly common for people to work remotely or from home.
- Part of a Shifting Cultural & Business Environment.

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Issue 3: Sharing Economy p 341

- Online platform connecting buyers/sellers
  - Lyft or Uber – taxi type service
  - Airbnb or VRBO - online rental companies
  - Etsy and Thumbtack – online marketplaces
- Employee vs Independent Contractor?
  - Generally independent contractor – has the right to direct and control how work is done

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Sharing Economy
Reporting/Payment Requirements p. 341-342

- Form 1099-MISC, Form 1099-K
- Estimated tax payments
  - Owe tax equal to or greater than $1,000 after credits/withholding
  - Withholding/refund credits are less than the smaller of:
    1. 90% of tax shown on the tax return
    2. 100% of prior year tax
- Self Employment Tax

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Sharing Economy
Business Income and Expenses p. 342-343

- Hobby v Business § 183
  - Roberts v. Comm'r 2016 PTC 143 (7th Cir. 2016)
  - Profit?: 3 of 5 years (horse 2 of 7)
  - Hobby: Expenses up to income
    - Itemized subject to 2%
- Ordinary and necessary expenses - § 162
  - Top Five Litigated Areas

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Sharing Economy
Business Income and Expenses p. 343-344

- Business use of home: regular & exclusive
  - Principal place of business
  - Place to meet patients, clients, customers
  - Separate structure: in connection with a trade or business
  - If sole fixed location, storage space, too
- Actual expenses – Form 8829
- Simplified method - $5/sq ft up to $1,500
- Depreciation recapture on sale (not if simplified used)

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Issue 4: Charitable Contributions pp. 345-359

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Issue 4: Charitable Contributions
General Rules

p. 345-346
pp.5-346

- Cash or property to qualified organization
- Reduce by benefit received – ignore if:
  1. Benefits are equal to the lesser of $50 or equal to or less than 2% payment
  2. Payment is greater than or equal to $25 and token item received
- Certain membership benefits ignored
- Quid pro quo – if greater than $75 written statement
  1. Inform donor of deduction rules
  2. Provide good faith estimate of FMV received

Charitable Contributions
General Rules

p. 346-347
p. 346

Ex 10.7 Raffle tickets not deductible

Ex 10.8 Benefit > payment, no deduction

Ex 10.9 Insubstantial item, full deduction

Ex 10.10 Discounts, full deduction

- Donation for right to purchase tickets
  - 80% donation deductible as charitable
  - Example 10.11

Charitable Contributions Property Contributions p. 347

- Deductible if contribution of entire interest
- Appraisal costs for donation – Schedule A, 2%
- Ordinary income property
  - Reduce FMV by ordinary income- short term capital gain
- Capital gain property
  - FMV or FMV less long term capital gain

Charitable Contributions Property Contributions p. 348

Property subject to debt:

- FMV reduced by:
  - Interest expense for taxpayer after contribution and
  - Debt donee assumes
- Gain possible if assumed debt is greater than basis

Charitable Contributions
Property Contributions p. 348

Car, Boat, Airplane

- FMV is greater than $500 deduct lesser of
  - Gross proceeds from donee sale or
  - FMV on date of contribution
- Substantial use before sale, deduct FMV
- Sold for less than FMV to further purpose, deduction FMV

Charitable Contributions
Contribution of Services p. 350

- Deduction: Only unreimbursed expenses
  - Directly connected with services provided
  - Incurred only because of services provided and
  - Not personal, living, family expenses
- Mileage @ 14 cents/mile & meals/lodging
- Ex 10.18 Mileage and meals deductible
- Ex 10.19 Personal benefit – no deduction
- Ex 10.20 Value of services not deductible

Charitable Contributions
Foreign Exchange Student

p. 351

- Written agreement with qualified organization
- Deduct less than or equal to $50 per month for student well-being
  - Books, tuition, food, clothing, entertainment, medical care

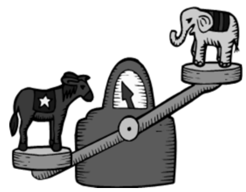
Charitable Contributions

p. 351-352

- Charitable Organization Deduction [501(c)(3)]
  - Religious, charitable, educational, scientific, or literary
  - Organizations that work to prevent cruelty to animals and children
  - Organizations that foster national and international amateur sports events

Charitable Contributions p. 351-352

- Non-Deductible Organization examples
  - Business organizations
  - Civic leagues
  - Political organizations
  - Social clubs
  - Foreign organizations
  - Homeowner’s organizations
  - Communist organizations



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Charitable Contributions Substantiation p. 352-353

- Cash contributions - § 170(f)(17)
  - Cancelled check (bank record)
  - Charity receipt or letter - name, date and amount
- Contribution equal to or greater than $250
  - Contemporaneous written receipt obtained by the date the return is filed

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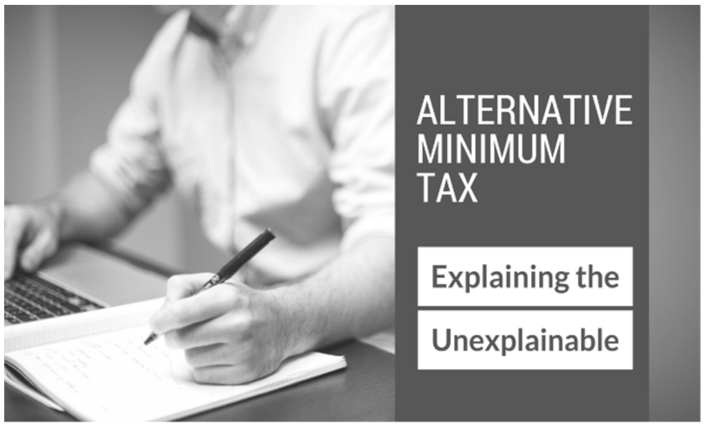
Charitable Contributions
Non Cash p. 353-354

- Less Than $250
- At Least $250 but Not More than $500
- More Than $500 but Not More than $5,000
- More Than $5,000

Charitable Contributions p. 355-359

- Limits On Deductions
  - 50% Limit
  - 30% Limit
  - 30% Limit Capital Gain Property
  - 20% Limit Capital Gain Property
  - 50% Limit Qualified Conservation Property
- Order of Deductions
- Carryovers
- Reporting

Issue 5: Alternative Minimum Tax pp 360-365



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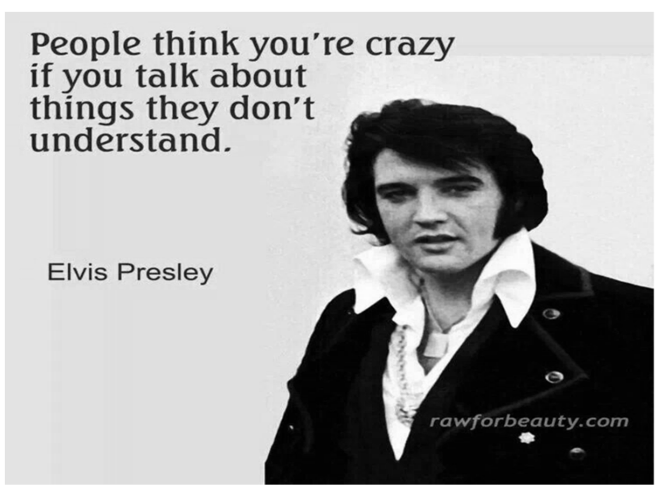
Issue 5: Alternative Minimum Tax pp 360-365



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AMT Basic Calculation

p 360

p. 360

- Regular taxable income +
- Preferences ±
- Adjustments –
- AMT exemption x
- 2-tiered tax rate –
- Foreign tax credit and regular tax =
- AMT

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Alternative Minimum Tax Adjustments/Preferences

p. 360

- State and local taxes (+)
- Personal exemptions (+)
- Private activity bond interest (+)
- Incentive stock options: FMV is greater than the amount paid for stock + (reverses in year stock sold due to ↑ basis)
- Mortgage interest: Not used for 1st or /2nd home (+)
- Medical: no effect for all taxpayers for 2017 onward

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Alternative Minimum Tax Adjustments/Preferences

p. 361

- Miscellaneous itemized subject to 2% (+)
- Standard deduction (+)
- Refund of state and local taxes (-)
- Depreciation (+) or (-)
  - Greater than 2015 Bonus no longer yields adjustment
- AMT exemption (-): Determined based on AMTI – Figures 10.8 and 10.9

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Alternative Minimum Tax Calculation

p. 363

- Personal credits allowed against AMT – other credits limited or disallowed
- Tax rate
  - 26% x $187,800 (MFS $93,900)
  - 28% x amount greater than $187,800 (MFS $93,900)
- Credit for AMT due to deferrals
  - Form 8801
  - Not a refundable credit after 2012

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Alternative Minimum Tax
Reporting AMT p. 363-364

- Form 6251 required if:
  1. AMT line 31 is greater than regular tax on line 34
  2. Has a general business credit (which is not allowed for AMT)
  3. Taxpayer claiming certain credits (p. 364)
  4. Total of lines 8-27 is negative and line 31 is greater than line 34 if lines 8-27 are not considered

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Issue 6: Original Issue Discount pp. 366-371

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Issue 6: Original Issue Discount pp. 366-371

- What is OID
  - Difference between a bond's face value and the amount for which it is sold by the issuer.
  - OID is a form of interest. It usually occurs when companies issue bonds at a price less than their redemption value at maturity. The difference between these two amounts is the OID.
  - OID is the discount from par value at the time a bond or other instrument is issued.
    - Difference between stated redemption price at maturity and the actual issue price.

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Issue 6: Original Issue Discount pp. 366-371

- OID is a type of interest that is not payable as it accrues. OID is normally created when a debt, usually a bond, is issued at a discount. In effect, selling of a bond at a discount converts stated principal into a return on investment, or interest. The accurate determination of principal & interest is necessary in US tax law to determine the basis of property and to determine whether an amount paid is deductible and includible as interest, or simply a nontaxable debt repayment.

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Issue 6: Original Issue Discount pp. 366-371

- Example of Original Issue Discount:
  - Bond Issuance Price $ 8,355
  - Bond Redemption Price $10,000
  - Original Issue Discount $ 1,645
- Short of default, the OID is a guaranteed profit for a bondholder, as bonds must be redeemed at face value.
- For bonds issued after 1984, OID is treated as interest.
  - Taxable as it accrues over the term of the bond.
  - Increase basis in the bond by the OID included in income.

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Issue 6: Original Issue Discount pp. 366-371

- In Contrast to regular interest rates on a bond, OID is not calculated or paid on a monthly basis. Instead, it is only awarded as a total sum along with the principal invested, at the time of maturity.
- Discounts are used to entice buyers into purchasing lower-interest bonds, and may be seen as critical to the successful sale of zero-coupon bonds.
- OID is includible in lender's taxable income at the end of each tax year, or part of the tax year if the loan was not owned for the full year.

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Issue 6: Original Issue Discount pp. 366-371

~~p. 366~~

- Not Applicable to the following:
  - Tax-exempt obligations
  - US savings bond
  - Fixed maturity date equal to or less than 1 year from issue
  - Issued by individuals before 3/2/84
  - Loans equal to or less than $10,000 between individuals not in the business of lending money

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Issue 7: Disaster Tax Relief pp. 371 - 381

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Issue 7: Disaster Tax Relief pp. 371 - 381

Issue 7: Disaster Tax Relief pp. 371 - 381

- Disaster Tax Relief Act of 2017
  - Signed into Law September 29, 2017
  - Hurricane Harvey
  - Hurricane Irma
  - Hurricane Maria
    - See Official FEMA website
      - www.fema.gov

Issue 7: Disaster Tax Relief pp. 371 - 381

- Summary of Tax Provisions in New Law
  - Qualified Hurricane Distribution
  - 10% Early Withdrawal Penalty
  - Rollovers
  - 3-Year Income Inclusion
  - Re-Contributions of Withdrawals for Home Purchases
  - Loans From Qualified Plans
  - Employee Retention Credit

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Issue 7: Disaster Tax Relief pp. 371 - 381

- Summary of Tax Provisions in New Law (cont.)
  - Suspension of Limitations on Charitable Contributions
  - Casualty Losses
    - 10% AGI Limitation does NOT apply
    - $100 per casualty limit is increase to $500
  - Earned Income
    - May elect use the earned income for 2016
      - EITC
      - Child Tax Credit

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Disaster Tax Relief - Other Resources

- IRS Tax Tip 2017-56
  - Tips for Business Owners Who Need to reconstruct Records after a Disaster
- IRS Tax Tip 2017-54
  - Tips for Individuals Who Need to reconstruct Records after a Disaster
- IRS Tax Tip 2017-60
  - Taxpayers Can look to IRS for Tax Help After a Disaster
- IRS Publication 2194
  - Disaster Resource Guide for Individuals and Businesses

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Disaster Tax Relief - Other Resources

- IRS Publication 584
  - Casualty, Disaster, and Theft Loss Workbook
- IRS Publication 284-B
  - Business Casualty, Disaster, and Theft Loss Workbook
- Reconstructing Your Records
  - https://www.irsvideos.gov/Individual/DisasterInformation/ReconstructingRecords

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Issue 7: Disaster Relief Casualty Loss

p. 372

- Casualty Losses
  - Fires, Floods, Tornadoes, Hurricanes, Storms
  - Earthquakes
  - Accidents
  - Thefts
  - Vandalism
- Nondeductible Losses
  - Willful Acts
  - Lost Property
  - Damages done by pets
  - Progressive Corrosion and or Deterioration

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Issue 7: Disaster Relief Casualty Loss

- Personal / Non-Business Loss
  - The amount of the casualty loss is the smaller of the decrease in FMV of the property caused by the casualty, or the adjusted basis of said property
  - Reduced by Insurance
    - Must make claim with Insurance Company
  - Limit on Deduction after Insurance Reimbursement
    - $100 reduction per loss event
    - 10% of taxpayer's AGI
  - Form 4684
  - IRS Publications 547, 544 and 584

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Disaster Relief
Choice of Loss Year

p. 374-375

- Federally Declared Disaster Area
  - Deduct in year of event or
  - Deduct in year before event
    - By 6 mos after loss year due date
    - Statement on return re: election
    - Revoke by 90 days after election due
  - Consider itemized, AGI limit of each year

Disaster Relief
Disaster Relief Payments

p. 375-376

Qualified Disaster Relief Payments

- Not taxable regardless of source
- For family living or funeral, repair or rehabilitation of residence, repair or replace contents of home
- If reimburses property loss, reduces loss
- Does not include money for expenses insurance covered or funds for income replacement

Disaster Relief
Disaster Relief Payments p. 376

Federal Disaster Loan Cancellation

- Is considered reimbursement for loss – reduces casualty loss deduction

Qualified Disaster Mitigation Payments

- Disaster Relief Act or National Flood Insurance Act
- Made to protect from future disasters
- No increase to property basis

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Disaster Relief
Copies of Prior Year Returns p. 379

- Copies of returns free to victims of disaster
  - Name of disaster in red at top of Form 4506
- Copies to be expedited
- Can call Disaster Assistance Hotline for free transcript
- 866-562-5227

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Disaster Relief
Record Reconstruction Tips p. 379-380

- Personal residence/real property
- Vehicles
- Personal property
- Business records

- **Important to document all assets in written inventory and by photo or video.**

Issue 8: Military Tax Issues pp. 381 - 390

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Issue 8: Military Tax Issues pp. 381 - 390

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Issue 8: Military Tax Issues pp. 381 - 390

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Issue 8: Military Tax Issues pp. 381 - 390

- Filing Extensions
- Excluded Income
- Special Deductions and Gain Exclusion Rules
- When Tax Liabilities May be Forgiven for a Deceased Service Member.
- Foreign Financial Account Reporting
- Qualified Reservist Distributions Retirement plans not subject to 10% Penalty

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Issue 8: Military Tax Issues pp. 381 - 390

- US Armed Forces
  - Commissioned Officers
  - Warrant Officers
  - Enlisted Personnel
- Regular and Reserve Units
  - Navy {Includes Marine Corps}
  - Army
  - Air Force
  - Coast Guard

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Issue 8: Military Tax Issues
Extensions of Time p. 381

- Automatic 2-Month Extension
- Additional Automatic 4-Month Extension
  - If eligible for the 2-month, can request additional 4 with Form 4868
- 180-Day Extension

Military Tax Issues
Military Pay Exclusions pp. 382-384

- Figure 10.14 – p. 383
- Figure 10.15 – p. 384
- Basic Allowance for Housing - excludible
  - Can deduct interest and taxes
- Combat Pay – not in W-2 Box 1
  - Commissioned officer exclusion limited
- Hospitalized – up to 2 years after the end of combat

Military Tax Issues
Military Pay Exclusions p. 382-384

- Other Income in Combat Zones (excluded)
  - List p. 385-386
- Military not eligible for foreign earned income exclusion

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Military Tax Issues
Moving Expense p. 386

- Do not have to meet time and distance
- Permanent change of duty station
  - From home to first post of active duty
  - From one permanent to another
  - From last post of duty back to US if w/in specific time from ending active duty
- Move to foreign country plus storage costs

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Military Tax Issues
Uniforms p. 386-387

- May deduct cost if restricted from wearing when off duty

Sale of Primary Home p. 387

- Exception to ownership and use test
- 5-year period suspended for qualified official extended duty
  - Ex.10.38 - suspended while taxpayer stationed more than 50 miles away

Tax Forgiveness pp. 388-389

- US Armed Services member
- Dies in combat zone
- Or terrorist or military action
- Tax liability may be forgiven

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Foreign Financial Accounts p. 389

- FBAR & FinCEN Form 114
- Not Foreign account if it is maintained with a financial institution located in the US.
  - USAA
  - Navy Federal Credit Union
- See Example 10.39

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Qualified Reservist Distributions p. 390

- Qualified Reservist Distributions not subject to 10% additional tax on early distributions
- Can repay QRD to IRA even if exceeds contribution limits

Questions?

Until 12:45 pm

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Retirement Issues

Chapter 9 pp. 289-326

Retirement Issues

p. 289
p. 289

- Retirement Planning – A Life Cycle Approach
- Tax Reform – Impact on Retirement Plans
- Distributions from Qualified Plans and IRAs
- Types of Retirement Plans

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Retirement Planning Checklist

- Key Ideas – For Each Stage of Life
  - Help Your Client Start Today
  - Develop Powerful Advanced Strategies for Your Client
  - Understand Why Formal Retirement Planning TOO Early is Harmful
  - Develop Appropriate Action Plan in the Years Immediately Prior to Retirement

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Retirement Planning Checklist

- Retirement Planning Checklist for Your Client's 20s – Save Money and Build Assets
  - The importance of starting now
  - How to begin
  - Develop a retirement planning extra credit – investment in real estate
- Summary
  - Help your client max out their tax deferred retirement plan contributions
  - Help your client acquire positive cash flow rental property
  - Oh yeah – don't forget to tell them to have fun

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Retirement Planning Checklist

- Retirement Planning for Mid-Career – Grow Their Assets and Financial Intelligence
  - General time frame after the 20s and 30s and about 5 to 10 years prior to retirement
  - This period's retirement planning objectives for "Mid-Career" –
    - Grow a nest egg large enough to support the client's retirement
    - Grow the client's financial knowledge and level of intelligence in this area is important
  - "*Our life is frittered away by detail. Simplify, simplify, …"* – Henry David Thoreau
  - Avoid formal retirement planning with your client – too many factors will change during time period prior to retirement
  - Focus your client's attention on the available resources they have that can make a difference

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Retirement Planning Checklist

- Action Steps for the Mid-Career Individual(s)
  - Help Your Client Build Their Financial Intelligence
  - "Employ your time in improving yourself by other men's writing so that you shall come easily by what others have labored hard for." – *Socrates*
  - Help Your Client Keep Accurate Records
  - Help Your Client Create Their **First** Ballpark Estimate
  - Coach Your Client to Avoid Raiding Their Retirement Accounts
  - Help Your Client to Focus on the "Long-Term"

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Retirement Planning Checklist

- Checklist for 5 to 10 Years Before Retirement
  - To date, you helped your client build a solid foundation of good financial habits
  - Now it is time to up the ante – retirement is within sight and you now have a limited number of years remaining to adjust for any errors or shortfalls
  - "We think in generalities, but we live in detail." – *Alfred North Whitehead*
  - Let's dig into the details – time is running short

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Retirement Planning Checklist

- Checklist for 5 to 10 Years Before Retirement
  - Help your client build their dream
  - Develop a more accurate ballpark estimate
  - Consider having your client paying down the mortgage
  - Emphasize to your client to reduce consumer debt and not take on additional consumer debt – "spend only what your client can afford" (i.e., *retirees need to earn interest – not pay it)*.
  - Discuss with your client taking care of their health
  - Encourage your clients to develop independence with their dependents
  - Review with your client insurance coverage
  - Help your client obtain defined benefit plan estimates
  - Help your client obtain health insurance estimates
  - Help your client obtain second and third opinions from professional advisers

Retirement Planning Checklist

- Checklist for 1 to 3 Years Before Retirement
  - Help your client "Color in the Dream"
  - Help your client "Test Drive the Dream"
  - Help your client to do a final review of Social Security and Pension benefits
  - Help your client assist their long-term care insurance plan
  - Help your client continue "inter-vivos" financial planning

Retirement Planning Checklist

- Checklist for Less Than 12 Months to Retirement
  - “The power of accurate observation is commonly called *cynicism* by those who have not got it.” - George Bernard Shaw
  - Get Your Client’s Organized – *Most people have retirement and savings accounts scattered in various places*
    - Get your client’s financial transactions automated
    - Simplify your client’s financial affairs
  - Clients Need to File for Defined Benefits
  - Clients Need to Finalize Their Withdrawal Strategy
  - Clients Need to Finalize Their Health Insurance Coverage
  - Clients Need to Finalize Their Long-Term Care Insurance Strategy
  - Complete Any Rollovers
  - MAKE SURE DESIGNATED BENEFICIARIES ARE ACCURATELY IDENTIFIED
  - Clients Need to Give Notice of Their Employer

Retirement Planning Checklist

- Now We Have Retired – What Now –
  - Annual Budget, Asset and Cash Flow Review
  - Healthy Habits
  - Don’t Forget Required Minimum Distributions – Traditional IRAs require minimum distributions beginning at age 70 ½ - More detailed discussion on this topic latter in our Webinar presentation
  - Update Your Estate Plan Periodically

Lots of Benefits From Retirement Plans

- Compounding Counts!

Your Monthly Savings	Your Savings Growth in 5 years*	Your Savings Growth in 15 years*	Your Savings Growth in 30 years*
$100.00	$7,808.	$41,792.	$227,933.
$300.00	$23,425.	$125,377.	$683,798.
$500.00	$39,041.	$208,962	$1,139,663.

Assuming 10% annual Earnings compounded monthly

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Lots of Benefits From Retirement Plans

- Start Early – Two Young Workers – April and June – The chart below shows the comparison of the two saving strategies –

$300 monthly savings with 10% compounded savings	April, who started saving early, yielded -			June, who started saving later, yielded -		
	Contributions	Total Accumulated Contributions	Account Balance	Contributions	Total Accumulated Contributions	Account Balance
Year 10	$36,000	$36,000	$61,966	$0	$0	$0
Year 20	0	36,000	167,743	36,000	36,000	61,966
Year 30	0	36,000	454,089	36,000	72,000	229,709
Year 40	0	36,000	1,229,236	36,000	108,000	683,798
Year 45	$0	$36,000	$2,022,474	$18,000	$126,000	$1,148,483

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Tax Reform – Retirement Plan Provisions

- Budget Reconciliation Explained
- What to Expect
- The "Pass-Through" Problem
  - The House Bill
  - The Senate Bill
- 35 to 28 Percent Tax Rate Example
- Qualified Plan Changes in TCJA

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Tax Reform – Budget Reconciliation Explained

- Created by the 1974 Congressional Budget Act
- Only process that avoids Senate filibuster
- Has been used for major legislation such as COBRA, EGTRRA, and welfare reform
- "Byrd Rule" applies to provisions that do not "affect" revenue or lose revenue outside the ten-year budget window
- The bill must be revenue neutral outside the budget to avoid a ten-year expiration date

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Tax Reform – What to Expect

- There is a desire to have a bill on the President's desk by the end of the year
- A "conference committee" will likely be appointed to resolve differences and the conference bill will be presented to both Houses for a vote
- Also possible is "ping-ponging" of bills back and forth between the House and Senate

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Tax Reform – *The "Pass-Through" Problem*

- The Republican plan also includes a new lower tax rate for businesses that are organized as "pass-through" entities such as Sub-S corporations, partnerships, LLCs taxed as partnerships, and sole proprietors
- Under the House bill, the pass-through rate would only apply to the "business income" portion of the pass-through entity's total income with the "compensation" portion being taxed at ordinary income rates
- Under the House bill, the **big question** is <u>how to allocate the entity's total income between these two categories</u>

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Tax Reform – *The "Pass-Through" Problem* (Con't)

- The approach taken in the House version of "TCJA" is an somewhat arbitrary allocation under which 30 percent of a pass-through entity's income is considered business income eligible for the lower pass-through rate. The remainder is compensation income taxed at ordinary income rates.
- The business income percentage is zero percent for certain specified business activities defined in IRC §1202(e)(3)(A) as follows: "any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees"

Tax Reform – *The "Pass-Through" Problem* (Con't)

- The business income percentage however, can electively be increased based on the percentage of the pass-through entity's income that can be attributed to capital assets (rather than services)
- The calculation is somewhat complicated, but essentially comes up with a deemed rate of return on the pass-through entity's capital assets and divides that by the total income (with some adjustments) to determine a "capital percentage," which is the percentage of total income attributable to capital investments and eligible for the pass-through rate
- Businesses that engage in "specified service activities" must have a minimum capital percentage of ten percent to make this election

Tax Reform – *The "Pass-Through" Problem* (Con't)

- The net result is the business income of these pass-through entities will no longer be subject to the top individual tax rate of 35 percent (or potentially 39.6 percent)
- Additionally, once the 25 percent pass-through tax has been paid, the net amount remaining can be reinvested in assets that produce capital gains taxed at 20 percent (or more likely 23.8 percent with the net investment tax)
- Interestingly, the Republican plan does not make any changes to the capital gains tax rates presently in effect

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Tax Reform – *Senate Pass-Through Approach*

- The Senate took a different approach
- Rather that a tax credit, the Senate bill provides for a deduction equal to 23 percent of the pass-through entity's qualified business income
- Pass-throughs performing "specified service activities" can qualify for this rate if taxable income is below $500k for a joint return, $250k for an individual
- "Reasonable compensation" paid to S Corp shareholders and guaranteed payments to partners reduce qualified business income and therefore the deduction

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Tax Reform – *Senate Pass-Through Approach*

- The effect of a deduction approach is that taxpayers in the higher brackets get a larger reduction in the marginal tax rate applicable to pass-through income
  - For taxpayers in the 38.5% bracket, a 23% deduction equates to 29.6% effective tax rate on pass-through income (an 8.9% difference)
  - For taxpayers in the 35% bracket, a 23% deduction equates to a27% effective tax rate on pass-through income (an 8% difference)

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Tax Reform – The 35% to 28% Tax Rate Example

- The disincentive for a small business owner to save in a retirement plan can be illustrated through a basic example.
- Sarah is the owner of a printing company that is organized as a Subchapter S corporation. She has spent a long time building her business and she is now in a position to begin saving for retirement at age 50. She plans on saving $60,000 per year until she reaches age 65—her planned retirement age. She also plans on investing conservatively by purchasing and holding investments expected to produce an annual rate of return of four percent.
- To accomplish this she is considering a cash balance defined benefit plan since it offers a plan design consistent with her investment objectives.

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Tax Reform – The 35% to 28% Tax Rate Example

Pass – Through Income	**$500,000**
Cash Balance Plan Contribution	60,000
Qualified Business Income	440,000
Pass-Through Deduction (23%)	101,200
Taxable Pass-Through Income	338,800
Tax on Pass-Through Income (35%)	118,580
Effective Tax Rate ($118,580 / $440,000	26.95%

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Tax Reform – The 35% to 28% Tax Rate Example

Cash Balance Plan Contribution	**$60,000**
Annual Tax Deferral (@ 27%)	16,200
Accumulations @ 4% Over 15 Years	1,309.472
Tax on Accumulations at Ordinary Tax Rates (35%)	458,315
Post-Tax Retirement Plan Savings	851,157

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Tax Reform – The 35% to 28% Tax Rate Example

After-Tax Savings on $60,000 (27%)	**$43,800**
Accumulations @ 4% Over 15 Years	955,914
Tax on Capital Gains Deferred Until Retirement with Buy and Hold Strategy (23.8%)	60,717
Post-Tax Savings for Retirement	895,197
Benefit of Saving Outside the Plan	40,040

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Tax Reform – The 35% to 28% Tax Rate Example

- As can be seen from the example, the financial penalty to Sarah for saving in a qualified retirement plan is over $40,000
- There is a fix that can avoid this financial penalty
- The solution involves matching the tax rate on the deduction for the allocable retirement plan contributions of the small business owner (which includes deferrals, matches, and profit-sharing plan contributions or defined benefit accruals) with the tax rate the small business owner will pay when the money is withdrawn from the plan at retirement.
- In other words, a deduction of allocable retirement plan contributions at ordinary income tax rates to match the taxation of retirement plan distributions at ordinary income tax rates

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Tax Reform – The 35% to 28% Tax Rate Example

- This would make the tax treatment consistent at the time amounts are contributed (and deducted) and at the time they are ultimately distributed
- This in turn would eliminate the tax disincentive for owners of pass-through entities to save in a qualified retirement plan

Tax Reform – Qualified Plan Changes in TCJA

- What Isn't In TCJA
  - $2,400 limit on pre-tax § 401(k) contributions with the remaining IRC § 402(g) limit being limited to after-tax Roth contributions
  - Catch-up contributions being limited to individuals who have less than $500K in joint income ($250K for Single Income)
  - New stricter rules for deferred compensation arrangements
  - Consolidation of IRC § 403(b) and § 457(b) Plans

Tax Reform – Qualified Plan Changes in TCJA

- What Isn't In TCJA (Con't)
  - Elimination of special catch-up contributions rules that apply to IRC § 403(b) and governmental § 457(b) plans
  - Reduction or freezing of limits (e.g., IRC § 415, § 401(a)(17), § 402(g), etc))
  - Changes to the nondiscrimination and coverage rules

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Tax Reform – Qualified Plan Changes in TCJA

- Extends rollover period for loan offset distributions (typically at termination of employment) to the due date of the tax return for the year of distribution. **Also in Senate bill.**
- Directs Treasury to modify the IRC §401(k) regulations to eliminate the six-month prohibition on elective deferral contributions after a hardship distribution. **Not in Senate bill.**
- Eliminates the requirement to take all available loans before taking a hardship distribution. **Also in Senate bill.**

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Tax Reform – Qualified Plan Changes in TCJA (Con't)

- Allows hardship distribution to be made from QNECs, QMACs and earnings on those amounts as well as earnings on deferrals. **Also in Senate bill.**
- Lowers the age for in service distributions from a DB or governmental 457(b) plan to 59 ½ from 62. **Not in Senate bill.**
- Provides nondiscrimination relief for frozen DB plans with respect to benefits, rights, and features and benefit accruals for a closed class, under a plan that meets certain requirements. **Not in Senate bill.**

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Taxation of Retirement Plan Distributions – Regular Distributions p. 290

Periodic Payments

- Paid at regular intervals for greater than 1 year
- Taxpayer's cost recovered tax free
- Taxpayer's cost =
  - Premiums, contributions, taxed employer contributions minus
  - Refunds, unrepaid loans (not taxed), tax-free amounts already recovered

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Taxation of Retirement Plan Distributions – Regular Distributions p. 290

- For annuity paid under qualified plan
  - Taxpayer's cost divided by the number of expected payments
  - Annuitant's age on ASD - IRS Table in Pub 575 (1 life Table 1, more than 1 life Table 2)
- For annuity under contract
  - Taxpayer cost divided by number of payments in contract

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Regular Distributions - Simplified Method – Example 9.1

p. 291

- Bill & Kathy, both 65
- Bill contributed $31,000 to the qualified plan (his cost)
- Joint & survivor annuity – 2017 start
  - Bill $1,200/month → Kathy $600/month
  - Total ages (130) – Table 2 (Figure 9.1); a factor of "310"
  - Tax free/payment: 31,000/310 = 100
- Both die before reaching combined age of 310?
- Miscellaneous Item deduction allowed for unrecovered cost not subject to the 2% adjustment
- Simplified Worksheet – Figure 9.1

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Regular Distributions
Traditional IRA-Based Plans p. 292

p. 292

- Deductible contributions = No basis
- Nondeductible contributions use Form 8606
- Roth IRA
  - Qualified distributions: Not taxable, no 10% penalty
    - If 5 yrs after contribution (+rollover) **and** after age 59 ½, or death, disability, or 1st-time home purchase
  - Nonqualified: Earnings taxed + 10% additional tax

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Regular Distributions
Loans to Participants p. 292

A Participant Loan – treated as a deemed distribution (subject to IRC § 72 (additional tax)) unless

1. Loan to be repaid over not more than 5 years
2. By its terms, level installments, principal and interest
3. Loan does not exceed lesser of:
   - $50,000 less excess of highest loan amount during last 12 months over current loan balance
   - Or 50% of PV nonforfeitable benefit ($10,000 if greater)

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Regular Distributions p. 293
Loans to Participants p. 292-293

- IRS memorandum - lacks of clarity in applying IRC § 72(p)(2)(A)
  - February – Borrow $30,000
  - April – repay the February loan of $30,000
  - May – Borrow $20,000
  - July – repay the May loan of $20,000
  - Dec – Apply for $20,000 loan
- Possibilities (agents told either acceptable)
  1. No loan as 1st 2 loans = $50,000
  2. 12 month high $30,000 – allow $20,000

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Regular Distributions p. 293
Loans to Participants p. 293

- Employment termination: Sponsor may require repayment of loan
  - If no repayment, balance of loan is treated as a deemed distribution

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Early Distributions p. 293-294

- For qualified plans, including IRAs, 10% additional tax if distribution before 59 ½
  - IRC § 457 plans not subject to 10%
  - Exceptions – Figure 9.2 (p. 294-295)

Note: Over 55 and separation from service exception does not apply to IRAs (p. 295)

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Early Distributions - Substantially Equal Periodic Payments p. 295

- Substantially Equal Periodic Payments (SEPP) exception to 10% penalty if made
  - At least annually and
  - For the life (or expectancy) of employee or joint lives of employee and beneficiary
- Qualified plan: Must separate from service
- IRA: Separation from service is not applicable
- 3 methods for payments

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Early Distributions - Substantially Equal Periodic Payments

p. 295

1. Required Minimum Distribution (RMD) Method: Account balance at end of prior year divided by Table factor
2. Fixed Amortization Method: Account balance over life expectancy + interest
3. Fixed Annuitization Method: Divide account balance by annuity factor based on age of taxpayer (and beneficiary if joint)

First payments vary each year, payments under methods in #2 and #3 above; payments remain level

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Early Distributions - Substantially Equal Periodic Payments

p. 295-296

- Modifying method of distribution could result in 10% additional tax
- Exceptions
  - Fixed methods to RMD – no 10%
  - After later of 5 years or age 59 ½
  - Death, disability
- 10% additional tax applies to all prior distributions plus interest for the deferral period

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Early Distributions - Medical Expense Exclusion

p. 296
p.
296

- No 10% additional tax to the extent distribution is for deductible medical expenses
  - Expense in excess of 10% AGI
  - Applies even if not itemizing
  - Expense must be incurred and not reimbursed
- Reminder: Age 65 and over 7.5% AGI limit expired 12/31/16 – all medical expenses now subject to 10% AGI

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Required Minimum Distribution (RMD)

p. 296-297

- By April 1 (required beginning date (RBD) of year following attaining 70 ½
  - If none in year turning 70 ½ will have 2 distributions in following year
- Applies to defined contribution plans, IRAs (and defined benefit plans)
- Still working and participating in plan: later of 70 ½ or retirement (not if IRA or if 5% owner)
- No RMD for Roth IRA while owner alive

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Required Minimum Distribution p 296-297

Excise tax applies if failure to take RMD – IRC §4974

- 50% of amount required to be distributed that was not distributed
- Form 5329
- IRS can waive excise tax if:
  - Reasonable error *and*
  - Taxpayer takes reasonable steps to remedy

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Required Minimum Distribution Inherited IRAs p. 297

- Timing of RMD depends on type of beneficiary and whether owner died before or after required beginning date (RBD)
- Roth IRA
  - No RMD during life of owner
  - RMD for heirs as if owner's death occurred before required beginning date

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Required Minimum Distribution
Inherited IRAs

p. 297

- Individual Beneficiaries – Begin payments by 12/31 of year following death year and:
- Death prior to RMD required beginning date (RBD)
  - Use beneficiary's life expectancy or 5-year rule
- Death on or after RMD required beginning date (RBD)
  - Using longer of beneficiary's or owner's life (using age just before death)

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Required Minimum Distribution
Inherited IRAs

p. 297

- Spousal Beneficiary
  - Treat as spouse's own IRA
  - Roll to traditional IRA or to the extent taxable:
    - to a qualified employer plan (IRC § 401(a)),
    - to an IRC § 403(a) plan or
    - to an IRC § 457(b) plan
  - Treat as beneficiary rather than spouse

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Required Minimum Distribution
Inherited IRAs – Spouse p. 297-298

- Treat as spouse's own IRA
  - All IRA rules apply – 70 ½ for RMD
  - Considered own IRA if:
    - Makes contributions to inherited IRA
    - No RMD for year as beneficiary of IRA
- Must be sole beneficiary to treat as own
- Must have unlimited right to withdrawal
  - Roll to traditional IRA or to extent taxable to qualified ER plan (IRC § 401(a)), IRC § 403(a) plan, IRC § 403(b) plan, or IRC 457(b) plan
  - Treat as beneficiary rather than spouse

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Required Minimum Distribution
Inherited IRAs – Spouse p. 298

Rollover

- Must be sole beneficiary with unlimited right to withdraw from account
- Rollover election any time after death of owner
- Spouse can roll a distribution from deceased spouse's IRA if general rollover rules met

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Required Minimum Distribution
Inherited IRAs – Spouse

p. 298

Spouse treated as beneficiary

- Owner died before RBD -
  - Apply 5-year rule or
  - RMDs based on surviving spouse's age
- Owner died after RBD –
  - RMD based on owner's age at death or spouse's age

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Required Minimum Distribution
Inherited IRAs – Nonindividual p.p. 298

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- Death on or after RBD -
  - RMD based on owner's age - Table I
- Death before RBD -
  - 5 year rule applies
- See-thru trust (4 requirements – p. 298)
  - Use oldest trust beneficiary's life expectancy
  - Possible use of separate share trusts to create separate individual beneficiary
- Figure 9.3 - RMD Summary (p. 299)

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Types of Retirement Plans

p. 303 - 326

- Key provisions of different types of retirement plans
- Types of Retirement Plans –
  - Defined Benefit Plans (DB Plans)
  - Defined Contribution Plans (DC Plans)
  - IRA-Based Retirement Plans
    - SIMPLE
    - SEP

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Retirement Plans - Defined Benefit Plans

p. 303-304

- Fixed preestablished retirement benefit
- Benefit based on number of working years, age at retirement, compensation
- No salary deferrals
- Minimum funding standard – determined by actuary
- Benefit cannot be more than 100% of highest 3 years average compensation or $215,000 (62 in 2017)

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Retirement Plans Defined Benefit Plans

pp. 304-306 p. 303-306

- Top-heavy rules apply if present value of benefits for key employees exceeds 60% of present value benefits for employees
- Benefits may be increased for employees over the social security wage base
- Investment critical to meet promised income
- Multiple options on payouts
- Figure 9.8 and Figure 9.9 Summaries (pages 305 and 306)

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Retirement Plans Defined Contribution Plans

p. 306-307

- Focus on periodic contributions, investment growth and aggregate asset value at retirement, rather than a fixed periodic benefit
- At retirement/termination employee gets value
  1. Profit-sharing plans
  2. IRC § 401(k) component of profit-sharing
  3. IRC § 403(b) plans
  4. IRC § 457 plans

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Retirement Plans Profit Sharing Plans

p. 306-307

- Must establish plan by last day of plan year
  - Can be retroactive to first day
  - Safe harbor IRC § 401(k) plans – prior to October 1st
- Can exclude employees not age 21, not meeting certain number of work years, under collective bargaining, certain nonresident aliens, employee's working less than 1000 hours per year
- Set formula for employer contributions; often discretionary formulas

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Retirement Plans Profit Sharing Plans

p. 307

- Employer contributions
- 0% - 25% compensation (25% maximum deduction)
- Lesser: 100% of compensation or $54,000 (2017)
  - Maximum compensation of $270,000
- Contribution made as late as of the extended due date of return

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Retirement Plans Profit Sharing Plans p. 307

- IRC §401(k) feature to allow employees to make additional contribution (both after tax and / or tax deferred contributions)
- Money purchase plan similar but requires fixed annual contributions
- Investment of Plan Assets – Separate Trust Account in Name of Plan
- Investment alternatives may include – participant directed accounts
- ESOP – defined contribution plan
  - Invests primarily in employer stock
  - No immediate cash outlay for employer

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Retirement Plans Profit Sharing Plans – Reporting

p. 308

1. Summary Plan Description: To employees when they join, beneficiary when benefits paid
2. Individual Benefit Statement: Quarterly if employees directs account, otherwise annually
3. Summary Annual Report: Narrative of the annual 5500 given to employees
4. Form 5500, SF or EZ

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Retirement Plans Profit Sharing Plans p. 309-310

- Loans
  - Lesser of $50,000 or ½ account balance
  - Repayment no more than 60 months and pay at least quarterly (except for home mortgage)
- Payout options
  - Lump sum, rollover to IRA (or other ER plan) or periodic distributions
- Figure 9.10 and Figure 9.11 Summaries

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Retirement Plans IRC §401(k) Plans p. 310-311

- Employees contribute, employer may match
  - Contribution annual limitation for 2017:
  - Employer: Lesser of 100% of comp or $54,000
  - Employee: $18,000, $6,000 catch-up if age 50 or older ($18,500 for 2018, however catch-up remains same)
- Employer deduction
  - Equal to or less than 25% total compensation + all salary reductions
- Roth feature - Employee contributions are “after tax contributions” for both FICA and Income tax purposes

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Retirement Plans IRC §401(k) Plans p. 310

- Vesting
  - Salary deferrals immediately 100% vested
  - Employer contributions can vest over time
- Nondiscrimination
  - Annual testing to ensure highly compensated employee's (HCE) contributions is proportional to those of non HCE's
- HCE = 5% owner or compensation in excess of $120,000 (can provide that they be treated as HCE if in top 20%)

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Retirement Plans IRC §401(k) Plans – Nondiscrimination p. 311

- Limitation on highly compensated employee's contributions
  - Subject to $18,000 limit + limited based on deferrals by Non-highly compensated employee's (NHCE) – Figure 9.12
- Safe Harbor 401(k) – no testing – Employer must make:
  - 100% vested contribution of 3% compensation for all NHCEs (QNEC) or
  - Contribution formula of
    - 100% vested match for 3% of salary deferral
    - 50% of next 2% of salary deferral or
    - Alternative formula of 100% vested match of 1st 4% of salary deferral

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Retirement Plans IRC § 401(k) Plans – Nondiscrimination p 310-312

- New Comparability Plans
  1. Employees divided into groups and tested within each group
  2. Each group is then tested against other groups
- Purpose – *Designed to maximize contribution for the highly compensated participant in plan* (often are paid more in salary and are older in age)

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Retirement Plans Solo IRC §401(k) Plans p. 311-312

- One participant and normally a profit-sharing plan with an IRC §401(k) feature
- Covers business owner with no employees *(spouse is not treated as an employee for this purpose)*
- Employee deferral: 100% of compensation up to $18,000 plus $6,000 catch-up if age 50 or over
- May provide for an employer matching contribution
- Employer nonelective contribution up to 25%
- Overall maximum without catch-up: $54,000

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Retirement Plans Solo IRC §401(k) Plans p. 312

- Example 9.2 Age 51, $50,000 in wages
- Deferred $18,000 + $6,000 catch-up
- Corporation contributed $12,500 (25%)
- $36,500 max that could be contributed
- Form 5500-SF filing Plan's account balance at year end is at least $250,000 in value
- Salary deferrals: Deposit month-end + 15 days
- Employer contributions: Return due date including extensions requests

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Retirement Plans IRC §401(k) Hardship Distributions p. 312-313

- Immediate & heavy financial need
  1. Medical Care
  2. Purchase of Principal Residence
  3. Educational Payments
  4. Foreclosure/Eviction from Principal Residence
  5. Funeral and Burial Expenses
  6. Repairs for Damage to Principal Residence
- Figure 9.13 and Figure 9.14 Summaries

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Retirement Plans IRC §403(b) Plans: Tax Sheltered Annuities

p. 315

- Plan for tax exempt entities – IRC §501(c)(3), educational, churches, certain government entities
- May exclude certain employees (list p. 315)
- Can have a Roth contribution feature
- Total contribution limit: Lesser of 100% of compensation ($270,000 max) or $54,000
- Employee: $18,000 + $6,000 catch-up (≥ age 50)

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Retirement Plans IRC §403(b) Plans: Tax Sheltered Annuities

p. 315

- If at least 15 years of service an employee can increase deferral by smallest of
  1. $3,000
  2. $15,000 less prior year additions
  3. $5,000 x # service years less total elective deferrals (excluding catch-up contributions)
- Yields maximum contribution of $21,000 for 2017

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Retirement Plans IRC §403(b) Plans: Tax Sheltered Annuities

p. 315

- 15-year: use test, lifetime & annual limits
  - Deferrals exceeding the standard limit must first apply to the 15-year catch-up
- Example 9.3 Age 50, 15 years, $70,000 comp
  - Maximum contribution for 2017 is $60,000
  - Employee: $21,000 ($18,000 deferral + $3,000)
  - Employer: $33,000 (to max $54,000)
  - Employee: $6,000 age 50 catch-up

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Retirement Plans IRC §403(b) Plans: Tax Sheltered Annuities

p. 316

- Example 9.4:
  - Using Example 9.3 Pat only deferred $22,000 (2017), rather than $27,000
  - $22,000 deferral is considered:
    1. $18,000 maximum standard
    2. $3,000 of 15-year catch-up
    3. $1,000 of ≥ 50 catch-up ($22K - $18K - $3K)
- Eligible for 15-year $3,000

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Retirement Plans IRC §403(b) Plans: Tax Sheltered Annuities

p. 316

- Investment of assets
  - Annuity contract with insurance company
  - Custodial account in mutual funds
  - Retirement account set up for church employees
- Reporting
  - Written plan + IRC § 401(k) type administration and reporting (need to restate plan by 3/31/2020)
- Figure 9.15 and Figure 9.16 Summaries

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Retirement Plans IRC §457 Plans

p. 318

- State, political subdivisions, agencies, other organizations exempt under IRC §501(c)
- For employees or independent contractors
- Nongovernment top-hat plans limit participation to HCE-type groups
  - Not subject to nondiscrimination rules

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Retirement Plans IRC §457 Plans – Participant Contribution

p. 318

- Lesser of 100% of compensation or $18,000 (2017)
- Catch-up of $6,000 if age 50 or older
  - No catch-up if tax-exempt organization plan
- Special catch-up contributions can be made in the 3 years prior to retirement, if permitted by the plan
- Contribute the lesser of:
  - 2 x the annual limit ($36,000) or
  - Basic annual limit + amount of basic limit not used in prior years (only allowed if not using $6,000 catch-up)

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Retirement Plans IRC §457 Plans

p. 318-319

- Plan Assets
  - Set up in separate accounts/trusts but remain available to employer creditors
- Plan Payouts
  - Not until earlier of separation from employment or age 70 ½
  - May permit in-service distribution of less than $5,000

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Retirement Plans IRC §457 Plans

p. 318-319

May distribute for unforeseeable emergency

1. An illness or accident – participant/family
2. Property loss by casualty not reimbursed
3. Funeral expense – spouse/dependent
4. Similar events beyond control of participant
5. Other similar extraordinary and unforeseeable circumstances resulting from events beyond the control of the participant (or his or her beneficiary)

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Retirement Plans IRC §457 Plans

p. 318-319

- Revenue Ruling 2010-27 - Examples of unforeseeable emergency expenses
- IRC §457 plans not subject to 10% penalty
- May select a Roth feature
- No Form 5500 filing but nongovernmental must file notification of plan with Department of Labor
- Public employers – also IRC §415(m) plan
- Figure 9.17 and Figure 9.18 Summaries

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Retirement Plans - Multiple Plans

p. 320-321

- Individual must monitor total contributions
- In the aggregate cannot be greater than $18,000 (2017)
- Total of age 50 or older catch-up cannot be greater than $6,000
- Example 9.5
  - Deferred $2,500 in first job
  - New job in November, maximum deferral $15,500
  - Total $18,000
- May be a opportunity for client to maximize contributions

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Retirement Plans - Multiple Plans

p. 321

- Example 9.6
  - 50 years old, 2 unrelated employers
  - Participates in an IRC § 401(k) plan and an IRC § 403(b) plan
  - Each allow $18,000, IRC § 403(b) provide for no catch-up contribution
  - Total limit for the year still $24,000

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Retirement Plans - Multiple Plans

p. 321

- Maximum participant contribution is lesser of:
  1. Allowed amount for that plan type or
  2. 100% of eligible compensation
- Example 9.7
  - #1: IRC § 401(k) plan - $10,000 compensation
  - #2: SIMPLE IRA plan - $10,000 compensation
  - Maximum to either plan is $10,000

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Retirement Plans - Multiple Plans

p. 321

- IRC §457(b) plan is not aggregated with other qualified plans
- If you had both an IRC §457(b) plan and an IRC §401(k) plan – the maximum contribution for a calendar year would be:
  - $18,000 to the IRC § 457(b) plan (more if within 3 years of retirement age)
  - And $18,000 to an IRC § 401(k)
    (assuming sufficient compensation for each)

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Retirement Plans IRA-Based: SIMPLE IRA Plan

p. 321-322

- With 100 or fewer employees earning $5,000 or more
- No SIMPLE if Plan Sponsor offers any other qualified plan to employees (unless collective bargaining)
- Set up through any financial provider
- Establish by October 1 of prior year
  - Must give employees 60-day notice of match
  - Also 60-day notice every year

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Retirement Plans IRA-Based: SIMPLE IRA Plan

p. 321-322

Participation

- Eligible if $5,000 compensation in any 2 prior years and to earn $5,000 in current year
- Can use minimum less than $5,000
- Cannot require period of prior year service beyond 2 years
- Cannot have minimum age
- Can exclude collective bargaining employees and nonresident aliens with no US source income

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Retirement Plans IRA-Based: SIMPLE IRA Plan

p. 322-323

- Employees cannot opt-out but can choose not to make a salary-reduction contribution
- Contributions
  - Employees: Lesser of $12,500 or 100% of compensation
  - Employees: Catch-up of $3,000 if age 50 or older
  - Employer: Match mandated – immediately 100% vested

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Retirement Plans IRA-Based: SIMPLE IRA Plan

p. 322

- Employer contribution methods
  1. 2% nonelective: 2% of compensation (2017 max $270,000) regardless of employee deferral (QNEC) or
  2. 100% match up to 3% of compensation
     - Can be as low as 1%
     - Cannot be greater than 3% for more than 2 of 5 years
- Not required to use the same method of employer contribution for a particular calendar year

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Retirement Plans IRA-Based: SIMPLE IRA Plan

p. 322

- Investment in Plan Assets
  - Employee has complete control of account
- Reporting
  - Annual summary and election notice to employees
  - Form 5498 from financial institution
  - No 5500 filing

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Retirement Plans IRA-Based: SIMPLE IRA Plan

p. 323-324

- Early Withdrawals
  - 25% penalty on distributions within 2 years of contribution prior to age 59 ½
  - Penalty exceptions may apply
- Figure 9.19 and Figure 9.20 Summaries

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Retirement Plans IRA-Based: SEP p. 324

p. 324

- Employer can contribute to IRAs owned by employees
- Form 5305-SEP by extended due date of employer (no need to adopt plan before end of Plan year)
- Participation: Age 21, working 3 of 5 years
- All eligible must participate including part-time, seasonal, part-year employees
- Exclude: collective bargaining, nonresident aliens with no US source income and less than $600 compensation

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Retirement Plans IRA-Based: SEP p. 324-325

- Contributions
  - Employer pays directly to SEP IRA for each employee
  - Only employer contributions allowed
  - Determined annually, may be zero
  - Must be the same for each employee
  - Max 25% of compensation up to $54,000
  - Can include social security integration

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Retirement Plans IRA-Based: SEP p. 324-325

- Example 9.8
  - Figure 9.21 – 25%
    - Due to $54,000 limit, same contribution despite level of compensation
  - Figure 9.22 – 20%
    - Maximizes contributions for owner
    - Still $54,000 for owner, less for others

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Retirement Plans IRA-Based: SEP p. 325-326

- SEP accounts are IRAs under complete control of the employee owner
- No annual Form 5500 filing
- Form 5498 from financial institution
- Figures 9.23 and 9.24 - Summaries

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Issue 2: Impact of Income on Social Security p. 299

- Earnings before Full Retirement Age (FRA) reduce benefits
- Figure 9.4 – 2017 earnings limit
- Before FRA: lose $1 for every $2 earned
- Year of FRA: lose $1 for every $3 earned up to month turns FRA
- Lost payments will create higher benefit at FRA
- Earned income only considered

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Impact of Income on Medicare Premiums p. 300-301

- Part A: Inpatient hospital care, nursing facilities, hospice, home health
- Part B: Doctor and lab services, screenings, physical therapy, med equip
- Part C: Offered through private insurance
- Part D: Prescription drug plan
- Income related monthly adjustment amount (IRMAA) for higher incomes

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Impact of Income on Medicare Premiums

p. 301-302

- Figure 9.5 Medicare Costs for 2017
- IRMAA: MAGI for most recent return filed
  - MAGI = AGI + tax exempt income
- Medicare Part B Hold Harmless Rule:
  - No increase in Part B premiums if no COLA or if COLA is less than the Part B increase (N/A if subject to IRMAA)
  - Taxpayer must have paid Part B premium out of Social Security in November and December of prior year

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Impact of Income on Medicare Premiums

p.302-303

- Medicare Part B standard premium applies:
  1. First enrollment is in 2017
  2. TP does not receive Social Security
  3. TP billed directly for Part B
  4. Medicaid pays the premiums
  5. MAGI is above a specified amount (+IRMAA)
- Figure 9.6 Part B Premium Amounts

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Impact of Income on Medicare Premiums

p. 302

Medicare Part D

- Late enrollment penalty
  - Exceptions if have certain types of coverage before enrollment
- IRMAA if MAGI above certain amount
- Figure 9.7 Medicare D Premiums

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Questions?

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IRS Issues

Chapter 7 pp. 205-234

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p. 205

IRS Issues

- Private Debt Collection
- National Research Program (NRP) Audits
- Audit Technique Guides
- Identity Theft, Scams, and Safeguards
- E-Services Online Tools for Tax Practitioners
- Current-Status of the IRS
- PTIN Issuance and Renewals

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Issue 1

pp. 206

Private Debt Collection

- § 6306(c) requires the IRS to contract with private collection agencies (PCAs) to help collect certain federal tax debts
- Enacted by the Fixing American's Surface Transportation Act of 2015 (FAST) – this is the third time Congress has authorized the use of Private Debt Collection
- The selected agencies are held to same standards as IRS and must respect taxpayers rights, privacy and confidentiality

Function of PCAs p. 206

- Assignment of cases, IRS no longer works
- Locate and contact taxpayers (telephone) specified by the IRS concerning tax debts
  - The client should have already received a group of notices from IRS over time and should be aware of the debt owed
- Request a lump sum payment of specified taxes, or installment agreement providing for full payment over not more than 5 years – this may be limited by statute
- Obtain taxpayer financial information as well as other current information

pp. 206-
207

History of PCAs

- 1996
  - Cost of pilot test exceeded amount collected
- 2006-2009
  - Discontinued because National Taxpayer Advocate said the program was a serious threat to taxpayer rights
    - Potential misuse of taxpayer data
    - Taxpayer mistreatment
    - Higher costs and lower effectiveness when compared to hiring more IRS employees

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p. 207

PCAs Today

- April 2017, accounts were assigned to four collection agencies
  - CBE – Waterloo, Iowa
  - ConServe – Fairport, New York
  - Performant –Pleasanton, California
  - Pioneer – Horseheads, New York

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Publication 594 The IRS Collection Process

p.207-208

- Taxpayers will receive Publication 4518: What to Expect When the IRS Assigns You to a Private Collection Agency
  - The first letter will come from the IRS and will say which private debt collection company the account has been assigned to
  - The second letter will come from the private debt collection company assigned to the account

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Publication 594 The IRS Collection Process

- Both letters will include:
  - The tax amount owed
  - The name of the private debt collection company assigned and
  - A taxpayer authentication number that is unique to the taxpayer

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Notice CP 40 – Not in Text

- We are notifying you that we've assigned your tax account to a private collection agency for collection

Department of Treasury
Internal Revenue Service
PO Box 149342
Austin, TX 78714-9342

Notice	CP40
Notice date	January 26, 2017
Taxpayer ID number	XXX-XX-NNNN
Tax form	
Tax year	
Taxpayer authentication number	
To contact us	Phone: nnn-nnn-nnnn
Page 1 of 2	

We assigned your overdue tax account to a private collection agency

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Private Debt Collection – CP 40 Notice

Current law requires us to contract with qualified private collection agencies to assist in collecting certain overdue federal taxes. We have assigned your account to the following agency:

[Agency name]
[Address line 1]
[Address line 2]
[Phone number]

What happens next

The private collection agency will work with you to resolve your overdue account. The private collection agency will explain payment options to help you find one that is best for you. It also will provide you with a payment plan if you can't pay the full amount at this time.

You can pay online now at www.irs.gov/directpay or visit www.irs.gov/payments for more information about ways to pay. If paying by check or money order, make the check or money order payable to the United States Treasury. Include your name, social security number, and the tax year on your payment and send it to the address on this notice. These are the only forms of payment the IRS accepts. We'll never ask you to pay using any form of pre-paid card or store or online gift card.

The private collection agency is required to maintain the security and privacy of your tax information. To do this, it will ask you to provide your name and address of record before assisting you in resolving your account. Also, it will perform two-party verification by asking you for the first five numbers of your taxpayer authentication number at the top of this notice. The private collection agency will then provide the subsequent five numbers.

Keep this notice for your records. You'll need information from it to complete the two-party verification.

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Private Debt Collection – CP 40 Notice

Keep this notice for your records. You'll need information from it to complete the two-party verification.

See the enclosed Publication 4518, What You Can Expect When the IRS Assigns Your Account to a Private Collection Agency, for more information.

Additional information

- Visit www.irs.gov/cp40
- You can also find the following online:
  - Publication 1, Your Rights as a Taxpayer
- For tax forms or publications, visit www.irs.gov/formspubs or call 1-800-TAX-FORM (1-800-829-3676).
- The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your

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Private Debt Collection – CP 40 Notice

Notice	CP40
Tax year	
Notice date	January 26, 2017
Taxpayer ID number	XXX-XX-NNNN
Page 2 of 2	

Additional information – **continued**

taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

- Assistance can be obtained from individuals and organizations that are independent from the IRS. The Directory of Federal Tax Return Preparers with credentials recognized by the IRS can be found at http://irs.treasury.gov/rpo/rpo.jsf. IRS Publication 4134 provides a listing of Low Income Taxpayer Clinics (LITCs) and is available at www.irs.gov. Also, see the LITC page at www.taxpayeradvocate.irs.gov/litcmap. Assistance may also be available from a referral system operated by a state bar association, a state or local society of accountants or enrolled agents or another nonprofit tax professional organization. The decision to obtain assistance from any of these individuals and organizations will not result in the IRS giving preferential treatment in the handling of the issue, dispute or problem.

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p.207

Types of Collection Matters

What are Inactive Receivables?

- IRS removed from active inventory because lack of resources or inability to locate the taxpayer
- More than 1/3 of the statute of limitations have lapsed and not assigned for collection
- Assigned for collection, but more than 365 days without interaction with the taxpayer or a third party

p. 207

Excluded Collection Matters

- Deceased
- Under age 18
- Located in designated combat zones
- Victims of tax-related identity theft
- Currently under examination, litigation, criminal investigation, or levy
- Subject to pending or active Offer in Compromise(OIC)
- Subject to an installment agreement
- Subject to a right of appeal

pp. 207-208

Excluded Matters Continued

- Innocent spouse cases
- Federally declared disaster area and requesting relief from collection
- Currently outside the United States

Economic Hardship

p. 208

- National Taxpayer Advocate (NTP) has concerns that IRS may assign economic hardship cases to PCA
- The law does not explicitly require or even allow the IRS to withhold hardship cases from assignment
- Accounts in the currently not collectible status (Status 52) are not tax receivables within the meaning of §6306(c)(2)(B)

Opting Out p.
208

- If TP does not wish to work with private debt collection agency, they must submit submit a request in writing to the company

IRS Publication 4518 pp.
209-210

What You Can Expect When the IRS Assigns Your Account to a Private Collection Agency

- 9 FAQs have been provided including:
  - How to be sure it is the PCA calling
  - How to make a payment
  - How to obtain tax assistance

Other Issues

- If payment as been made – the text states to call the collection agency and resolve the issue – I would work with IRS to verify payment made, sending an opt out letter to the agency and then work with IRS to resolve the issue

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p. 210

Regulation of Private Debt Collection Agencies

Fair Debt Collection Practices Act

- No threat of use of violence or harm
- No use of obscene or abusive language
- No publishing list of debtors
- No annoying, abusive, or harassing phone calls
- No false representations
- No threats of imprisonment, seizure, or garnishment, etc

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Federal Trade Commission FAQs pp. 210-211

- No contact before 8am or after 9pm – taxpayer's time
  - Note: PCA's can contact the taxpayer at work unless they are told orally or in writing that the taxpayer cannot take calls at the workplace
  - PCA's can use e-mail, text message, letter or phone – alert your clients to just be very cautious

Federal Trade Commission FAQs pp. 210-211

- Tell collector to stop contacting, but the request must be in writing, example of what to include page 211
- Collector must contact the taxpayer representative if a POA is on file – remind your client that as their representative – the PCA should contact you
  - Note: They can still contact third parties to find out current address, phone numbers and where the taxpayer works
- Right to sue the collector in state or federal court is allowed if illegal collection practices are employed

p. 212

Unfair Collection Recourse

1. § 7433A civil damages
2. Taxpayer Assistance Orders
   - National Taxpayer Advocate can direct a PCA to cease or refrain from taking collection action

p. 212

Abusive Collection Actions

- US senators accused Pioneer of violating the law – Practitioner note
- National Taxpayer Advocate claims PCAs are violating the statute of limitations on collections and not determining economic hardship
- Definition of a significant hardship – TAO applies page 212

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Safeguarding Taxpayer Information

- PCA's have limited access to taxpayer information
- PCA's have limited disclosure requirements of taxpayer information
- PCA's use information only applies to collection of tax debt
- PCA's will not be provided with tax return copies or access to taxpayer information beyond what is needed to collect tax

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p. 213

Tax Scams

- Caution: Scammers are pretending to be PCAs
  - No calls from a PCA if the taxpayer does not owe taxes
  - Make all payments to US Treasury, not to PCA
  - Can check on IRS.gov if balance due, IF they can get through the authentication process

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National Research Program

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Issue 2: National Research Program Audits p. 214

- The audits conducted measure tax reporting compliance
- IRS collects audit data to:
  - Measure the tax gap
  - Update audit selection process – DIF Scores
  - Estimate revenue
    - DIF – Discriminate Function Audits – scores line by line to get an average of what taxpayers enter on the tax return

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TCMP vs. NRP Audits p. 215

TCMP (1988)	NRP (2002)
100% of sample returns are subject to line-by-line audits.	Some taxpayers will not be contacted at all; others will be audited either by mail or in person.
Limited use of examiner judgment; substantiation and verification is required for most line items.	Examiner judgment is encouraged regarding ▪ depth of audits, ▪ substantiation, and ▪ verification.
Case assignment is not limited to a particular group of examiners.	Cases are assigned only to specially trained groups of examiners.
Emphasis on closing cases.	Emphasis on quality and in-process reviews.

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Digital Correspondence Audits

- Correspondence examination of Schedule A, itemize deduction
- 8,000 taxpayers were invited to participate
- Communicate with IRS through “secure messaging”

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Audit Technique Guides

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Issue 3: Audit Technique Guides

p. 216

- Industry Specific Information based on industries that is used to:
  - Avoid an audit – using the guide provides an insight into what IRS looks at and provides information on the law – though check the date of the publication
  - Defend an audit – provides at times court cases and other information to assist in research to support your position

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Audit Technique Guides(ATG)
p. 216

ATGS include:
- Examination considerations
- Examiner interview questions
- Documents and records to consider
- Audit techniques

Some ATG Topics p. 217

- Activities Not Engaged in For Profit – dated 2009
- Capitalization of tangible property – dated 2016
- Conservation easement- dated 2016
- Construction – dated 2009
- Cost Segregation – dated 2016
- Farmers – dated 2006
- Ministers – dated 2009
- Passive activity losses – dated 2005

IRS.Gov Authority

p. 217

- IRS memo reminds examiners that FAQs on IRS.gov are not legal authority unless they are published in the I.R.B.

Identity Theft, Scams, and Safeguards

386

Issue 4: Identity Theft, Scams, and Safeguards p. 218

Tax related identity theft:

- Steal SSN to file fake return
- Steal EIN to file fake business return or fraudulent W-2s
- Steal SSN to obtain a job-work related identity theft

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Signs of Tax Related ID Theft p. 218

- Individual
  - Return rejected because the SSN has been used
  - The taxpayer receives a notice concerning the tax return after all tax issues have been resolved or they have never filed for that year
  - A notice indicates the taxpayer has worked for someone that is generally in another state – yet the employer is unknown to them
  - Return accepted as amended – client never amended

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Signs of Tax Related ID Theft p. 218

- Business
  - Return accepted as amended
  - Notice concerning fictitious employees
  - Notice that the business has closed after all accounts have been settled

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Assisting Victims of ID Theft p. 218

- File a paper return and pay taxes
- Form 14039 ID theft affidavit
- File a report with the Federal Trade Commission
- Contact credit bureau

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Protect from ID Theft

pp. 218-219

2016 Security Summit Initiative

- Fewer fraudulent returns achieved with the help of bank, industry, and state partners
- Shared data help identify other fraudulent returns

2017 Security Summit Meeting – Not in Book

- The Summit partners also are putting an increased emphasis on identity theft protections for business returns in the Form 1120 and 1041 series
- The IRS will be asking tax professionals to gather more information on their business clients
- The data being collected assists the IRS in authenticating that the tax return being submitted is actually a legitimate return filing and not an identity theft return

New Features for 2017 p. 219

- 37 new data elements (32 for businesses) are transmitted with every return
- 20+ states are working with IRS in the financial and private sector
  - Partners helping to protect refunds
- W-2 Verification Code initiative expanded
  - A 16 digit code on Form W-2
- Enhanced software passwords

FAQs pp. 220-222

Answers to some of the IRS FAQs regarding safeguards:

- If client or tax professional changed tax software products for 2017, they may need 2015 AGI
- Refunds claiming EITC or ACTC held until 2/15
- If TP has an identity protection PIN (IP PIN), IRS will send a new IPPIN each year
  - Generally in December - January

Accessing Software p. 222

New standards to access tax software:

- Password with 8+ characters, upper and lower case, number, and special character
- Timed lockout after unsuccessful access attempts
- 3 security questions
- E-mail address verification

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Scams p. 222

- Scams target tax practitioners:
  - Phishing to steal e-Service user name and password
  - Solicit W-2 information from payroll or Human Resources
  - Automated calls requesting payment
  - Emails and calls from fake tax preparation individuals or companies

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More Scams pp. 222-223

- Fake e-mail asks to update e-Services and EFIN info
- Phishing email using name of a real preparer education firm
  - Content in Figure 7.3

Fraudsters are Using Stolen CAF Numbers – New Scam – Next Information is not in Book

- Fraudsters are using stolen CAF numbers to:
- File phony disclosure authorization forms (8821/2848), and then
- Request transcripts from IRS - Scammers are trying to get the transcript to file a false return that they hope will pass our identity theft filters
- The IRS is aware that scammers are trying to file phony Forms 8821 and Form 2848
- Beginning Tuesday, October 17, 2017, IRS will issue approximately 11,000 letters (Letter 6018) to a random selection of taxpayers requesting verification of the third party identified on Form 2848 and/or 8821

Fraudsters are Using Stolen CAF Numbers – New Scam

- IRS is contacting the taxpayers because they want to be sure that only people they have authorized have access to their tax account
- If your client gets Letter 6018, does that mean thier CAF number was stolen?
  - No. Letter 6018 is a random review of current third party authorizations and it does not mean that there is a problem
  - It is just one of the ways we are validating third-party access

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Fraudsters are Using Stolen CAF Numbers – New Scam

- What should my client do if they get Letter 6018?
- Stress the importance for your client to respond as instructed by the letter
- If they don't reply, IRS will put a refund hold on their account
- Visit www.irs.gov/ltr6018 (THIS LINK IS NOT ACTIVE YET but I hope it will be soon

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Letter 6018

- Text of Letter 6018
- Why you're receiving this letter
- We're contacting you because we want to be sure that only people you authorize, whether tax professionals or family members, are accessing your tax account
- Our records show that we have an authorization (Form [number, title]) on file from the following third party: [Third Party business name or representative name based on Form 8821 or 2848 filed]

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Letter 6018

- [Third Party business name or representative name based on Form 8821 or 2848 filed] currently has authority to access your tax account based on the submission of Form [number, title] to the IRS
- Please know that this is a random review of current third-party authorizations
- This does not mean that there is a problem
- This letter is one of the ways to verify the authorization of third-party access

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Letter 6018

- What you need to do
- Check the appropriate box below and return this letter to the IRS address above within 30 days (or, if you prefer, you can fax it to the number above within 30 days) from the date of this letter, so we can complete our third-party verification process
- I did authorize the third party listed above to have access to my account
- I did not authorize the third party listed above access to my account

Letter 6018

- If you checked the “I did not authorize….” box
- Please be aware that the third party listed may be affiliated with the entity or individual that you authorized to access your account information
- We will contact you and let you know if you need to take any additional action
- Please review the links under the “Additional Information” section below

Letter 6018

- If you don't respond
- We'll place all actions (including refunds) on hold until you respond and we complete the third-party verification
- Additional information
- • Visit www.irs.gov/ltr6018
- • Visit www.irs.gov/thirdpartyauthorizations for more information
- We recognize that keeping your information confidential is a critical priority. We're working hard to protect your tax information and prevent unauthorized disclosures
- We apologize for any inconvenience and thank you for your cooperation

Signature on Letter 6018

- Sincerely,
- Fred Banks, Program Mgr W&I Service Center, AM

Victims of Data Breach p. 225

- Contact IRS, law enforcement (police, FBI, maybe Secret Service)
- Contact states where you prepare tax returns
- Contact security experts
- Contact clients and other services
- Notify credit bureaus

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New Contacts for Data Breach – Release 10/31/2017

- If a preparer is a victim of a data theft, contact SL. https://www.irs.gov/individuals/data-theft-information-for-tax-professionals
- If anyone gets a phishing email, send it to IRS. https://www.irs.gov/privacy-disclosure/report-phishing
- If anyone gets the phishing email from the "CEO" that asks for W-2's, send the email to IRS. If they are a VICTIM of the W-2 scam, this page lists the steps they should take https://www.irs.gov/individuals/form-w2-ssn-data-theft-information-for-businesses-and-payroll-service-providers

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Example 7.1 – Effects of a Data Breach

p. 225

- Hacker obtained password for Tracy's Tax Preparation Services, stole client information, and filed fake returns
- $250,000 for: credit monitoring fees for clients, legal fees, forensic computer fees, publicist fees, etc.

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W-2 Data Breaches p. 225

- Email requests a list of employees and their W-2s
  - Victims report to dataloss@irs.gov
  - Others forward to phishing@irs.gov

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Monitor PTINS
p. 226

- Check the number of returns filed per IRS records on your PTIN program
  - Check returns filed per PTIN – generally the system only reports e-filed tax returns – end of season
  - Check EFIN status regularly

E-Services Online Tools for Tax Practitioners

Issue 5: E-Services Online Tools pp. 226-228

- Information for filing
- Confirm of payments
- Payment alternatives
- Professional responsibilities
- Reference materials, etc.
- Only when it is working
- The E-Services transition to a new platform has caused some issues

Break

2:30 – 2:45 pm

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Current Status of IRS

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Issue 6: Current Status of the IRS pp. 230-231

- Hiring freeze – losing 50 employees per week
- Nonautomated calls down 34%
- 18 minutes average wait time – on a good day – few and far between
- 2016 audited less than 1% of individual returns
- Digital correspondence exam
- Virtual appeals conference
- Future state initiative
- Online accounts
- Virtual assistance center

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Issue 7: PTINs pp. 233-234

- Steele v. US
  - IRS can issue PTINS but cannot charge for the issuance
  - Court ordered IRS to refund PTIN fees
  - IRS moved to stay
  - Do nothing and remain part of the suit – cannot bring another suit but share in any monetary settlement
  - Opt-out – you can bring another suit but will not share in any monetary settlement from the class action suit

Current Issues

418

Letters 6002

- Individuals who may have received an erroneous Letter 6002 include those claiming an exemption granted by the Marketplace in the following categories:
  - Members of certain religious sects
  - Ineligible for Medicaid based on a state's decision not to expand Medicaid coverage
  - General hardship
  - Coverage considered unaffordable based on projected income
  - Unable to renew existing coverage

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Letters 6002

- Certain Medicaid programs that are not minimum essential coverage
  - The Marketplace determined that you were (1) enrolled in Medicaid coverage provided to a pregnant woman that is not recognized as minimum essential coverage
  - (2) enrolled in Medicaid coverage provided to a medically needy individual (also known as Spenddown Medicaid or Share-of-Cost Medicaid) that is not recognized as minimum essential coverage or
  - (3) enrolled in Medicaid coverage provided to a medically needy individual and were without coverage for other months because the spend-down had not been met

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Refundable Credit Educational Compliance Letters 5025, 5025-A, 5025-B, 5025-E, 5025-H

- IRS is sending due diligence letters to paid tax preparers who may be noncompliant in meeting their due diligence requirements
- Return Preparers who completed highly questionable refundable credit claims may receive one of the following letters:
  - Letter 5025, You may not have met your EITC due diligence requirements on returns with questionable qualifying children and self-employment income
  - Letter 5025-A, You may not have met your due diligence requirement on returns claiming the American Opportunity Tax Credit

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Refundable Credit Educational Compliance Letters 5025, 5025-A, 5025-B, 5025-E, 5025-H

- Letter 5025-B, You may not have met your due diligence requirements on returns claiming Child Tax Credit and Additional Child Tax Credit
- Letter 5025-E, You may not have met your EITC due diligence requirements on a high number of returns claiming EITC
- Letter 5025-H – You may not have met your EITC due diligence requirements on returns reporting income received as a household employee

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Forms 1099R –Ameritrade and Baird

- CP 2000 are being sent with mismatching federal withholding
- IRS has been notified and provided with examples
- We await a resolution

myRA

Phasing Out the myRA Program 10-4-2017

- The U.S. Department of the Treasury has decided to phase out the myRA® retirement savings program, and the program is no longer accepting new enrollments
  - Existing accounts can remain open until further notice
- What is happening to accounts?
  - The account remains open and taxpayers can continue to manage the account until further notice
  - The funds in the account remain safe and in an investment issued by the U.S. Department of the Treasury

Phasing Out the myRA Program 10-4-2017

- Any myRA with a zero ($0) balance as of September 15, 2017 or later, will be subject to possible automatic closure beginning on September 18, 2017
- Treasury will be reaching out to all of the account holders with more information regarding the transfer or closure of the account over the next few weeks outlining when they will stop accepting and processing deposits

Phasing Out the myRA Program 10-4-2017

- It is recommended taxpayers log in to their account to make sure their contact information is complete and up to date
- They can also update their information by contacting customer service
- They can initiate a direct transfer of their full account balance to another Roth IRA at any time
- First identify or open an account at the new Roth IRA provider where they will continue to save and invest

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Phasing Out the myRA Program 10-4-2017

- Then, work with a new Roth IRA provider selected to transfer the myRA balance to the new Roth IRA
- By opening another Roth IRA and working with the new Roth IRA provider to initiate a transfer of the funds in the myRA to the new Roth IRA, taxpayers avoid withholding and potential tax liabilities (including potential tax penalties) that may apply to earnings if funds are paid directly to them
- To request closure of the account, call myRA customer support at 855-406-6972 or TTY/TDD 855-408-6972 or International 414-365-9616

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Phasing Out the myRA Program 10-4-2017

- Remember that a myRA follows Roth IRA rules
- To avoid tax liabilities that may apply to earnings if funds are paid directly to the taxpayer they will need to deposit the amount of the distribution (including any tax withholding) into a private-sector Roth IRA within 60 days of the distribution
- Taxpayers may receive an additional payment due to a timing difference between when interest earned was reflected in the account balance, and when the requested a withdrawal or distribution is issued

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Phasing Out the myRA Program 10-4-2017

- Transferring the account - myRA has no fees to move funds to another Roth IRA provider (or to withdraw funds and close the account)
- Have the taxpayer check with the new Roth IRA provider to learn whether they have applicable fees
- Can the taxpayer transfer or roll over the account into an employer-sponsored retirement plan, such as a 401(k), or into a traditional IRA?
  - No. As is the case with all Roth IRAs, the myRA can't be transferred or rolled over into an employer-sponsored retirement plan or a traditional IRA
  - Roth IRAs must be transferred or rolled over into other Roth IRAs

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New Form 8809 Application for Extension of Time to File Information Returns

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Form 8809 Application for Extension of Time to File Information Returns

- New Version is dated September 2017
- Contains a new line – to indicate they qualify to use the form for extension of Form W-2 or an additional extension

7 If you are requesting an extension for Form W-2, or if you checked the box on line 5, you must meet one of the following criteria. Check the applicable box(es) that describes your need for an extension.

The business suffered a catastrophic event in a Presidentially Declared Disaster Area that made the business unable to resume operations or made necessary records unavailable . . . . ☐

Fire, casualty, or natural disaster affected the operation of the business . . . . ☐

Death, serious illness, or unavoidable absence of the individual responsible for filing the information returns affected the operation of the business . . . . ☐

The business was in its first year of establishment . . . . ☐

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Box 5 – Form 8809

1 Payer's/filer's information. **Type or print clearly in black ink.**

Payer's/filer's name

Address

City State ZIP Code

Contact name Telephone number

Email address

2 **Taxpayer identification number (TIN)** (Enter the payer/filer nine-digit number. Do not enter hyphens.)

3 Check your method of filing information returns (check only one box). Use a separate Form 8809 for each method.

☐ electronic ☐ paper

4 If you are requesting an extension for more than one payer/filer, enter the total number of payers/filers and attach a list of names and TINs. See *How to file* below for details. ▶

5 Check this box **only** if you already requested the automatic extension and you now need an **additional** extension. See instructions. ▶ ☐

6 Check **only** the box(es) that apply. **Do not** enter the number of returns.

Form(s)	✓ here	Form(s)	✓ here	Form(s)	✓ here
W-2		5498		8027	
1097, 1098, 1099, 3921, 3922, W-2G		5498-ESA		1094-C, 1095-C	
1099-MISC NEC reporting only		5498-QA		1095-B	
1042-S		5498-SA		1099-QA	

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Form 1098-T Reporting

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1098-T: Box 1 Will Be Required for Tax Year 2018 Reporting

- The Internal Revenue Service (IRS) is not planning to grant any further relief from the Box 1 reporting requirement on the Form 1098-T
- Colleges and universities will still be allowed to use the Box 2 reporting method for 2017 (forms filed in early 2018)
- Institutions are expected—without further guidance from the IRS—to report amounts paid for qualified tuition and related expenses in Box 1 of the 2018 Form 1098-T (furnished to students and the IRS in early 2019)

1098-T: Box 1 Will Be Required for Tax Year 2018 Reporting

- Box 2 reporting will not be an option for the 2018 form
- New federal regulations addressing Form 1098-T reporting requirements are not expected until later this year
- Institutions of higher education will be expected to make a good faith effort to report the required amounts in Box 1 for tax year 2018 (filed in early 2019) based on existing rules and instructions

Form 1098-T

8383 ☐ VOID ☐ CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Payments received for qualified tuition and related expenses $ 2 Amounts billed for qualified tuition and related expenses $	OMB No. 1545-1574 2017 Form 1098-T	Tuition Statement
FILER'S federal identification no.	STUDENT'S taxpayer identification no. ☐	3 Check if you have changed your reporting method for 2017 ☐		Copy A For Internal Revenue Service Center
STUDENT'S name		4 Adjustments made for a prior year $	5 Scholarships or grants $	File with Form 1096.
Street address (including apt. no.) City or town, state or province, country, and ZIP or foreign postal code		6 Adjustments to scholarships or grants for a prior year $	7 Check this box if the amount in box 1 or 2 includes amounts for an academic period beginning January–March 2018 ▶ ☐	For Privacy Act and Paperwork Reduction Act Notice, see the 2017 General Instructions for Certain Information Returns.
Service Provider/Acct. No. (see instr.)	8 Check if at least half-time student ☐	9 Check if a graduate student . . . . . ☐	10 Ins. contract reimb./refund $	

Form 1098-T Cat. No. 25087J www.irs.gov/form1098t Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

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ITIN Renewals

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Renewal Applications for ITINs Set to Expire by End of 2017 - IR-2017-109

- IRS will send the CP- 48 Notice that explains the steps to take to renew the ITIN if it will be included on a U.S. tax return filed in 2018
- ITINs that have not been used on a federal tax return at least once in the last three consecutive years will expire Dec. 31, 2017, and ITINs with middle digits 70, 71, 72 or 80 will also expire at the end of 2017
- Affected taxpayers who expect to file a tax return in 2018, for the 2017 tax year, must submit a renewal application
- As a reminder, ITINs with middle digits of 78 and 79 already expired at the end of 2016

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Renewal Applications for ITINs Set to Expire by End of 2017 - IR-2017-109, June 21, 2017

- Taxpayers with these ITIN numbers can renew at any time
- To renew an ITIN, a taxpayer must complete a Form W-7 and submit all required documentation
- Taxpayers submitting a Form W-7 to renew their ITIN are not required to attach a federal tax return, but attach a reason for needing an ITIN on the Form W-7

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Renewal Applications for ITINs Set to Expire by End of 2017 - IR-2017-109, June 21, 2017

- Family Option Remains Available
  - Taxpayers with an ITIN with middle digits 70, 71, 72 or 80 have the option to renew ITINs for their entire family at the same time
  - Those who have received a renewal letter from the IRS can choose to renew the family's ITINs together even if family members have an ITIN with middle digits other than 70, 71, 72 or 80
  - Family members include the tax filer, spouse and any dependents claimed on the tax return

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Note: When Renewing, Check the "Renew Box" Otherwise it Could Delay Processing

- Common Mistakes
  - Federal returns that are submitted in 2018 with an expired ITIN will be processed
  - Exemptions and/or certain tax credits will be disallowed
  - Missing Information and insufficient supporting documentation
  - Review the Form W-7 instructions for how to prepare and what documentation is needed to submit a valid request

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Form W-7 – Current Form

Form **W-7**
(Rev. September 2016)
Department of the Treasury
Internal Revenue Service

Application for IRS Individual Taxpayer Identification Number
▶ **For use by individuals who are not U.S. citizens or permanent residents.**
▶ **See separate instructions.**

OMB No. 1545-0074

An IRS individual taxpayer identification number (ITIN) is for federal tax purposes only.

Before you begin:

- ***Don't submit*** *this form if you have, or are eligible to get, a U.S. social security number (SSN).*
- *Getting an ITIN doesn't change your immigration status or your right to work in the United States and doesn't make you eligible for the earned income credit.*

Application Type (Check one box):
☐ Apply for a New ITIN
☐ Renew an Existing ITIN

Reason you're submitting Form W-7. Read the instructions for the box you check. **Caution:** If you check box **b, c, d, e, f, or g, you must file a U.S. federal tax return with Form W-7 unless you meet one of the exceptions** (see instructions).

a ☐ Nonresident alien required to get an ITIN to claim tax treaty benefit
b ☐ Nonresident alien filing a U.S. federal tax return
c ☐ U.S. resident alien **(based on days present in the United States)** filing a U.S. federal tax return
d ☐ Dependent of U.S. citizen/resident alien
e ☐ Spouse of U.S. citizen/resident alien
Enter name and SSN/ITIN of U.S. citizen/resident alien (see instructions) ▶
f ☐ Nonresident alien student, professor, or researcher filing a U.S. federal tax return or claiming an exception
g ☐ Dependent/spouse of a nonresident alien holding a U.S. visa
h ☐ Other (see instructions) ▶
Additional information for **a** and **f**: Enter treaty country ▶ and treaty article number ▶

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Miscellaneous Issues

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Rev. Proc. 2017-34 New, Simplified Procedure for Obtaining Extension to Make Estate Tax Portability Election

- The taxpayer is not required to file an estate tax return
- The taxpayer did not file an estate tax return within the time prescribed by Reg. § 20.2010-2(a)(1) for filing an estate tax return required to elect portability
- The executor must file a complete and properly-prepared Form 706 on or before the later of Jan. 2, 2018, or the second annual anniversary of the decedent's date of death; and
- The executor filing the Form 706 on behalf of the decedent's estate must state at the top of the Form 706 that the return is “FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER Code § 2010(c)(5)(A)”

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Rev. Proc. 2017-34 New, Simplified Procedure for Obtaining Extension to Make Estate Tax Portability Election

- Taxpayers that are not eligible for relief under this revenue procedure because the executor does not satisfy requirements detailed, may request an extension of time to make the portability election by requesting a letter ruling
- Note: A nonresident surviving spouse who is not a citizen of the United States may not take into account the DSUE amount of a deceased spouse, except to the extent allowed by treaty with his or her country of citizenship

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New Revised Form 56 – no Significant Changes

Form **56**
(Rev. November 2017)
Department of the Treasury
Internal Revenue Service

Notice Concerning Fiduciary Relationship

▶ Information about Form 56 and its separate instructions is at *www.irs.gov/Form56*.
(Internal Revenue Code sections 6036 and 6903)

OMB No. 1545-0013

Part I Identification

Name of person for whom you are acting (as shown on the tax return)	Identifying number	**Decedent's social security no.**

Address of person for whom you are acting (number, street, and room or suite no.)

City or town, state, and ZIP code (If a foreign address, see instructions.)

Fiduciary's name

Address of fiduciary (number, street, and room or suite no.)

City or town, state, and ZIP code	Telephone number (optional)
	( )

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Form 56

Form 56 (Rev. 11-2017) Page **2**

Part II Revocation or Termination of Notice

Section A—Total Revocation or Termination

6 Check this box if you are revoking or terminating all prior notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship ▶ ☐

Reason for termination of fiduciary relationship. Check applicable box:

a ☐ Court order revoking fiduciary authority

b ☐ Certificate of dissolution or termination of a business entity

c ☐ Other. Describe ▶

Section B—Partial Revocation

7a Check this box if you are revoking earlier notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship . . . . . . ▶ ☐

b Specify to whom granted, date, and address, including ZIP code.
▶

Section C—Substitute Fiduciary

8 Check this box if a new fiduciary or fiduciaries have been or will be substituted for the revoking or terminating fiduciary and specify the name(s) and address(es), including ZIP code(s), of the new fiduciary(ies) . . . . ▶ ☐
▶

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Reg.105004-16

- To reduce identity theft, the IRS issued proposed regulations that would permit employers to use truncated taxpayer identification numbers (TTINs) on Forms W-2, Wage and Tax Statement, issued to employees
- Permissible TTINs are Social Security numbers (SSNs) with the first five digits of the nine-digit number replaced with asterisks or XXXs in the following formats: ***-**-1234 or XXX-XX-1234

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Reg.-137604-07 Definition of a Dependent

- Most Significant Change Detailed in the Proposed Regulation
- Proposed Regulation § 1.152-5, Special rule for a child of divorced or separated parents or parents who live apart
- A noncustodial parent must attach a copy of the written declaration to the parent's original or amended return for each taxable year for which the noncustodial parent claims an exemption for the child
- A noncustodial parent may submit a copy of the written declaration to the IRS during an examination to substantiate a claim to a dependency exemption for a child

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Reg.-137604-07 Definition of a Dependent

- A copy of a written declaration attached to an amended return, or provided during an examination, will not meet the requirement of this paragraph if the custodial parent signed the written declaration after the custodial parent filed a return claiming a dependency exemption for the child for the year at issue, and
- The custodial parent has not filed an amended return to remove that claim to a dependency exemption for the child

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Reg.-137604-07 Definition of a Dependent

- Current Reg. § 1.152-4(e)(2) requires that a noncustodial parent ("NCP") claiming a child as a dependent "must attach a copy of the written declaration to the parent's return for each taxable year in which the child is claimed as a dependent"

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Reg.-137604-07 Definition of a Dependent

- Requirements when the Custodial Parent (CP) previously claimed exemption to which a Non-Custodial Parent (NCP) is entitled
- Proposed Reg. § 1.152-5(e)(2)(i) states:
- A copy of a written declaration attached to an amended return, or provided during an examination, will not meet the requirement of paragraph (e) if the custodial parent signed the written declaration after the custodial parent filed a return claiming a dependency exemption for the child for the year at issue, and the custodial parent has not filed an amended return to remove that claim to a dependency exemption for the child

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Reg.-137604-07 Definition of a Dependent

- The new language is proposed to provide greater certainty, but the consequence of the language would be to leave the NCP who secured a Form 8332 from the CP after the CP filed the return with virtually no recourse against the CP for the Service's denial of his or her claim for dependency exemption(s)

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Example 1

- Custodial parent (CP) files her 2015 return on March 1, 2016, and claims a dependency exemption for child
- At noncustodial parent's (NCP) request, CP signs a Form 8332 for the 2015 tax year on April 15, 2016
- On April 15, NCP files his return claiming a dependency exemption for Child and attaches the signed Form 8332 to his return
- Under § 152(e) and paragraph (b) of this section, NCP is allowed a dependency exemption for Child for 2015, and CP is not allowed a dependency exemption for Child for that year
- The NCP has in his possession the Form 8332 at the time he files the return

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Example 2

- The facts are the same as in Example 1, except NCP files on April 15, 2016, a request for an extension to file his tax return because he does not have a signed Form 8332
- CP signs the Form 8332 for the 2015 tax year in August of 2016, and NCP files his return a week later
- NCP claims a dependency exemption for Child and attaches the signed Form 8332 to his return
- NCP is allowed a dependency exemption for Child for 2015, and CP is not allowed a dependency exemption for Child for that year
- The NCP has in his possession the Form 8332 at the time he files the return

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Example 3

- CP files his 2015 return on March 1, 2016, and claims a dependency exemption for child
- NCP files her return on April 15, 2016, and does not claim a dependency exemption for child, even though her divorce decree allocates the dependency exemption for child to her
- CP signs a Form 8332 for the 2015 tax year in August of 2016, and NCP files an amended return a week later and attaches the signed Form 8332 to her amended return claiming a dependency exemption for child
- NCP is not allowed a dependency exemption for child for 2015 if CP has not amended his return to remove a claim to the dependency exemption for child for that year

Example 3

- Note – in this case the parent does not have Form 8332 in possession before filing return
- This is the change

Revocation

- The parent revoking the written declaration must attach a copy of the revocation to the parent's original or amended return for each taxable year for which the parent claims a child as a dependent as a result of the revocation
- The parent revoking the written declaration must keep a copy of the revocation and evidence of delivery of the notice to the other parent, or of the reasonable efforts to provide actual notice
- A parent may submit a copy of a revocation to the IRS during an examination to substantiate a claim to a dependency exemption for the child

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Form I-9 Changes – January 2017 – Foreign Workers

- Another modification lessens the administrative burden on foreign workers
- If the new hire attests to being a foreign national authorized to work in the U.S., he or she can provide either an alien registration number, Form I-94 admission number or foreign passport number
- Previously, foreign nationals authorized to work were required to provide both an I-94 number and foreign passport information

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Form I-9 Changes – January 2017

- The new form allows for up to five preparers and/or translators to each sign and date the form in his or her own field
- The prior form had one field for potentially multiple preparers and translators to fit their signatures
- "The employee [now] needs to affirmatively check a box indicating that he or she did not use a preparer or translator if that's in fact the case
- This is an important double check for all employers to ensure that this box is completed by the new hire"

Form I-9 Changes – January 2017

- The employer representative verifying employment eligibility must be in the physical presence of the person being verified and must also see the original documents being presented
- A dedicated area for including additional information rather than having to add it in the margins has been made available
- The revised Form I-9 is also easier to complete on a computer

Form I-9 Changes – September 2017

- New form will be required to be used dated 07/17/2017 –form and instructions

Instructions | Start Over | Print

Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2019

►**START HERE: Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.**

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)*

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Other Last Names Used *(if any)*	
Address *(Street Number and Name)*	Apt. Number	City or Town	State	ZIP Code
Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	Employee's E-mail Address	Employee's Telephone Number	

Form I-9 Changes –2017

- There are now three ways for users to complete the Form I-9:
  - Print it and fill it out manually, pen to paper
  - Fill it out electronically, then print and sign it
  - Take note that using the online "smart" version of the form does not qualify as a compliant electronic I-9
  - If the online fillable version is used, it must be printed and signed pen to paper
  - Use an electronic I-9 vendor

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Foreign Tax Issues

Chapter 12 pp. 435-475

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Foreign Tax Issues pp 435-475

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Foreign Tax Issues p. 435

1. Reporting by US Citizens Living Abroad
2. Foreign Earned Income and Housing Exclusions and Foreign Housing Deduction
3. Nonresident Alien Reporting
4. Withholding on Payments to Nonresident Aliens

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Foreign Tax Issues p 435p. 435

5. Nonresident Spouse Treated as US Resident
6. New Rules for Foreign Owned US LLCs

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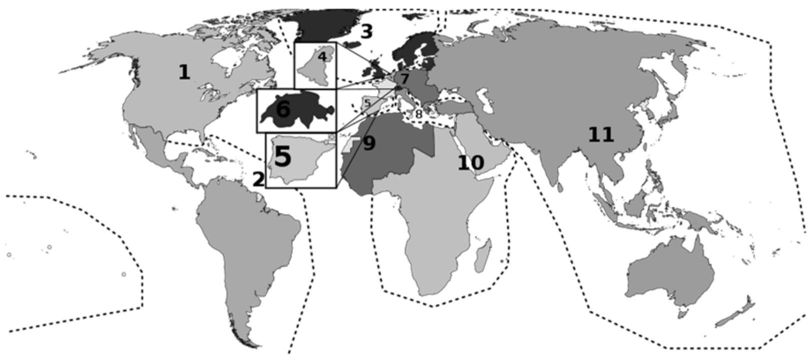
Issue 1: Reporting by US Citizens Living Abroad p. 436-441



Issue 1: Reporting by IS Citizens Living Aboard p. 436-441

- Income Tax Filing Requirements
  - Filing Due Dates
- Foreign Exchange Rates
- Moving Expenses
- Other Filing Requirements
  - FBAR & Fin CEN Report 114
- Income from US Territories or Possessions
  - Determining Residency Status in US Territories

Issue 1: Reporting by US Citizens Living Aboard p. 441-443

- US Government Civilian Employees Stationed Abroad
  - US Foreign Service Employees
- Scholarship Recipients Abroad

Issue 2: Foreign Earned Income & Housing Exclusions & Foreign Housing Deduction p 444-446

Issue 2: Foreign Earned Income & Housing Exclusions & Foreign Housing Deduction p 444-446

- Requirements for the Exclusions or Deduction
  - Determining Exclusion or Deduction Eligibility
  - Foreign Earned Income
  - Tax Home in Foreign Country
    - Foreign Country
    - Tax Home
      - Temporary or Indefinite Assignment

Issue 2: Foreign Earned Income & Housing Exclusions & Foreign Housing Deduction p 446-449

- Bona Fide Residence Test
  - Relevant Factors for Determination
  - Uninterrupted Period Including Entire Tax Year
  - Bona Fide Resident for Part of a Year
- Physical Presence Test
  - 330 Full Days
  - Determining the 12-Month Period
- Exception to the Bona Fide Residence and the Physical Presence Tests

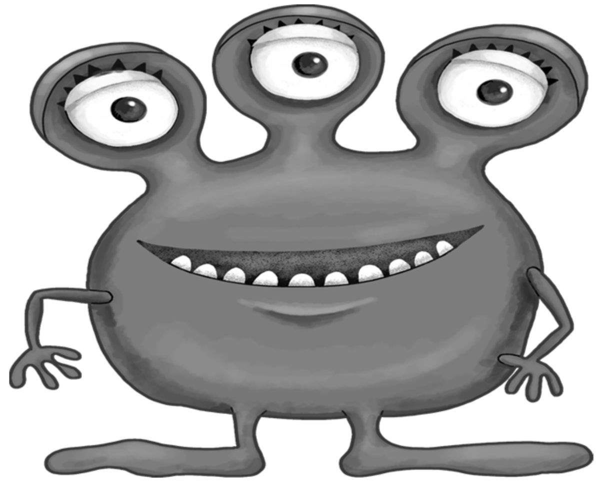
Issue 2: Foreign Earned Income & Housing Exclusions & Foreign Housing Deduction p 449-453

- Calculation the Foreign Earned Income Exclusion
  - Limit on Excludable Amount
  - When Foreign Earned Income is Included
  - Part-Year Exclusion
- Claiming the Foreign Earned Income Exclusion
  - Extension of Time to File
  - Revoking the Exclusion
  - Forms 2555 & 2555-EZ

Issue 2: Foreign Earned Income & Housing Exclusions & Foreign Housing Deduction p 453-454

- Reduced Withholding Tax
- Effect of Claiming the Exclusion
  - Foreign Tax Credit
- Foreign Housing Exclusion or Deduction
  - Housing Expenses
  - Calculating the Exclusion or the Deduction
  - Claiming the Exclusion or the Deduction

Issue 3: Nonresident Alien Reporting
p. 454



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Issue 3: Nonresident Alien Reporting p. 454

- In general, a US person is subject to IS tax on worldwide income.
- In contrast, the IS taxes a foreign person only on US Source income.

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Issue 3: Nonresident Alien p. 455 - 459

- Fixed, Determinable, Annual, or Periodic Income (FDAP)
  - Types of FDAP Income
  - Tax Treatment of FDAP Income
  - Withholding Exceptions
    - Compensation for Personal Services
    - Exemption Disclosed on Tax Return
  - Non taxable Interest Income

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Issue 3: Nonresident Alien p. 459 - 463

- Effectively Connected Income (ECI)
  - Trade or Business
  - Personal Exemptions
    - Form W-4
  - Personal Service Income
    - Allocation of Personal Service Income
    - Allocation of Fringe Benefits
  - Sources of Other Types of Income

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Issue 4: Withholding On Payments to Nonresident Aliens p. 463 - 468

- Income Subject to NRA
- Withholding Agent
- Amount of Withholding
- When to Withhold
- Persons Subject to NRA Withholding
  - US Agent of Foreign Persons
  - Disregarded Entities
  - Flow-Through Entities
  - Foreign Partnerships
  - Foreign Simple and Grantor Trusts
  - Foreign Intermediaries

Issue 4: Withholding On Payments to Nonresident Aliens p. 468 - 469

- Beneficial Owners and Documentation
  - Form W-9
  - Form W-8
  - Form W-8BEN
  - Form W-8BEN-E
  - Form W-8ECI
  - Form W-8EXP
  - Form W-8IMY

Issue 4: Withholding On Payments to Nonresident Aliens p. 470 - 471

- Presumption Rules
- Reporting

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Issue 5: Nonresident Spouse Treated as US Resident p. 471 - 473

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Issue 5: Nonresident Spouse Treated as US Resident p. 471 - 473

- Election: Treat nonresident spouse as US resident
  - Other spouse is US citizen/resident alien
  - Other spouse is resident alien by yearend

1. Both treated as residents
2. Must file joint return in year of election
3. Cannot claim treaty benefits

Issue 5: Nonresident Spouse Treated as US Resident p. 471 - 473

- Without election, US citizen or resident spouse may claim Head of Household if all tests met
- Nonresident alien spouse must have : SSN or ITIN
- File statement with return Figure 12.5
- On original or amended return

Issue 5: Nonresident Spouse Treated as US Resident

p. 471 - 473

Suspending the election - Example 12.20

- Election does not apply if neither is US citizen or resident alien in a later year
- If later qualifies, election still in place

Terminating the Election

- If terminated, neither spouse can elect in a later tax year

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Issue 5: Nonresident Spouse Treated as US Resident

p. 473

p. 471 - 473

Revocation - Either spouse can revoke

- Statement with return or to Service Center

Death

- If survivor is US citizen or resident alien, terminates after 2 years
  - Divorce/legal separation terminates
  - IRS can terminate if inadequate records

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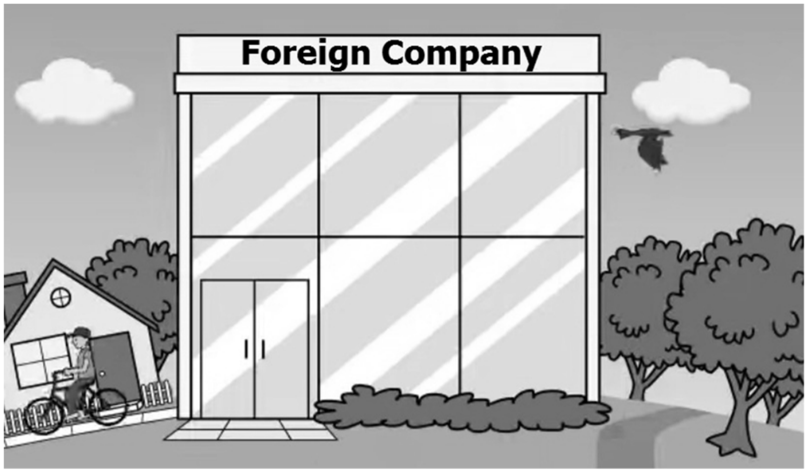
Issue 6: New Rules for Foreign Owned US LLC's p. 474-475



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Issue 6: New Rules for Foreign Owned US LLC's p. 474-475

p. 475

- Foreign owned domestic disregarded entities treated as domestic corporations for purposes of reporting requirements of § 6038A
  - Example: Filing Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business
  - Tax years beginning on or after 1/1/17 & ending on or after 12/31/17
  - Subject to $10,000 penalty/failure

Questions?

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Tax Practice

Chapter 14
Issues 4 & 5
pp. 524-550

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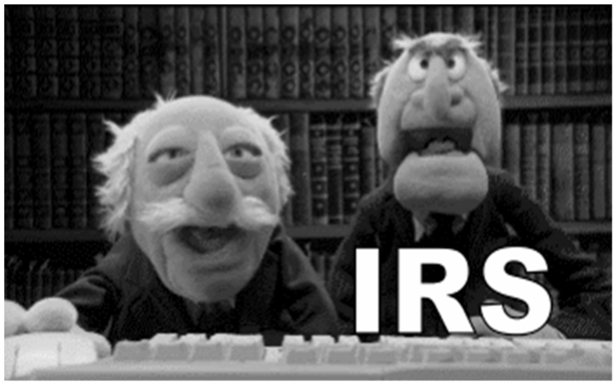
Tax Practice – Issues 4 & 5 pp. 524 - 550



Tax Practice pp 524 - 550 p. 505

- Transferees, Nominees and Alter Egos - Issue 4
- Offer in Compromise - Issue 5

Issue 4: Transferees Nominees and Alter EGOs - Transferee Liabilities p. 524

1. Assessment against one who receives taxpayer's assets for less than full, fair, adequate consideration or
2. Assessment against one who is legally responsible for paying the taxpayer's liability
   - Income, estate, gift, excise, or employment
   - Types: Transferee at law or in equity

Transferee Liabilities p. 524

- Transferee at Law: Liable due to law or contractual agreement (e.g. assumption, guarantee)
- Transferee in Equity:
  1. Transferor's assets received for less than full, fair, and adequate consideration
  2. Transferor left insolvent or unable to pay
     - Liability limited to value of assets received

Transferee Liabilities p. 524

- For In Equity, IRS must establish:
  1. Transferor was insolvent or made insolvent
  2. Value of the asset(s) on transfer date
  3. Consideration, if any, paid for the asset(s)
  4. The assets transfer occurred after the transferor's liability accrued
  5. Reasonable attempts made to collect from transferor or futile to pursue collection

Transferee p. 524- 525

1. Heir, legatee, devisee, distributee – estate
2. Shareholder of a dissolved corporation
3. Assignee or donee of insolvent person
4. Successor of a corporation
5. Party to a reorganization
6. All other classes of distributees
7. Donee (gift tax) – insolvency not required
8. Personally liable for estate tax under §6324(a)(2)

Transferees - Property Transfer p. 525

Transfer must be after accrual of tax liability

- Assessment date not relevant
- See Example 14.8

Transferees - Transferee Liability p. 526

- Constructive fraud:
  - Transfer for less than the value and insolvent or made insolvent
  - Intent is not material
- Actual fraud
  - Intent to hinder, delay or defraud creditor
  - Badges of fraud (circumstantial) list p. 526
- Exchange of promise to pay with a non-negotiable note is not sufficient

Transferees - Assessing Transferee

pp 526 -527

- Liability includes tax, penalties, and interest
- IRS can pursue more than 1 potential transferee
  - Generally pursues the known or closest
  - Not bound by any liability sharing agreemt
- Assessment procedures same as in audits
- Collection procedures standard – can seize any asset of transferee – 10 year statute

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Transferees pp. 527-528
Assessment Statute of Limitations p. 527-528

- Transferee: transferor's statute + 1 year
- Transferee of transferee: preceding transferee's statute + 1 year
  - But not greater than 3 years after transferor's statute
- Court action for prior party? Date final + 1 yr
- Transferor short year? 12 month statute used
  - Ex 14.11 – Application of full year rule

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Transferees p. 528
Estate and Gift Tax Transfer p. 528

- Recipient liability for unpaid estate or gift tax: Limited to FMV of property received
- Fiduciary liability for distributions made unpaid US tax: Limited to FMV of property distributed
- Side Note not in your Material
  - Form 4810
  - Form 5495

Transferees
Defenses Against Liability p. 528

- Proof transferor paid the tax
- Proof transferor does not owe the tax
- Expiration of the statute of limitations
- Return of the transferred property
- Proof that IRS had not exhausted remedies against transferor
- Documentation of different FMV or proof FMV paid for assets

Nominee and Alter Ego p. 528-529

- Nominee: Holds property for taxpayer's sole use
  - Taxpayer's tax can be collected against property
- Alter Ego: Legally distinct from taxpayer but so intermixed with taxpayer, not readily separable
  - IRS treats entity and individual as one taxpayer
  - Factors indicating alter ego – list p. 529

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Nominee & Alter Ego p. 529

- IRS will file to collect by lawsuit to:
  1. Clear title to maximize sale proceeds
  2. Quiet dispute - lien priority or security interest
  3. Seize taxpayer's principal residence (judicial approval required)
  4. 10-year collection statute imminent
  5. Some uncertainty as to facts of the situation

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Nominee - Income Reporting p. 529-530

- 1099 received with income for more than 1 taxpayer
  - Nominee issues 1099 to other owners
  - Nominee listed as “payer”
  - Report full amount on nominee’s tax return
  - Negative adjustment for 1099 income to others
    - Sch B: “Nominee distribution”
    - Sch C: Expense
  - Property sale: Form 8949, “N”, gain/loss

Issue 5: Offer in Compromise pp. 531-550

Issue 5: Offer in Compromise p. 531

- Policy Statement 5-100:
- IRC § 7122
- Agreement to Settle Liability
  - For Less than Full Amount
  - In Interest of Both IRS and Taxpayer
- Collect What They Can (as soon as they can)
- Provide Taxpayer a Fresh Start

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Issue 5: Offer in Compromise p. 531-532

- Taxpayer's Responsibility to make an adequate proposal and to provide reasonable documentation. [IRM § 1.2.14.1.17]
- **Eligible if**
  - Has bill for at least one tax debt
  - Is current in filing of returns
  - Paid all estimated tax for current year
  - Made all federal tax deposits for current quarter

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Issue 5: Offer in Compromise p. 532

- IRS will not consider an OIC if:
  - Taxpayer is not current with all tax return filings
    - Tax amount sent with application will be applied to tax due
    - OIC application will be returned
  - Currently in open bankruptcy
  - Offer amount less than **R**easonable **C**ollection **P**otential **(RCP)**
  - Liabilities can be full paid through Installment Agreement or Other prior to Expiration of Collection Statue
- OIC prequalifier tool at IRS.gov – See p 532

Basis for OIC p. 532

- Doubt as to Liability (DATL):
  - Genuine dispute - existence or amount of correct tax
- Doubt as to Collectibility (DATC):
  - Taxpayers assets and income are less than the full amount of the liability
- Effective Tax Administration (ETA):
  - Collection to create taxpayer economic hardship
  - Compelling public policy or equity reason

OIC - Filing – Doubt as to Collectibility

p. 540-541

- Form 656 {March 2017}
- Form 433-A(OIC) or Form 433-B(OIC)
  - Has checklist of documents to include
  - Computes RCP based on net asset equity & remaining monthly income
  - 2 possible offer methods – must be equal to or greater than RCP
- Make sure most recent version of Forms are used

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OIC - Filing – Doubt as to Collectibility

pp. 540-541

p. 540

- IRS returns offers made to delay collection if:
  1. Offer filed is frivolous
  2. Offer is not materially different from prior offer and return or reject reason not addressed
  3. Substantial understatement of assets
- Returned: No appeal
- Rejected: Appeal rights

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OIC - Filing – Doubt as to Collectibility

p. 541-542

- Fees (paid in separate checks):
  1. $186 application fee
  2. Initial offer payment – can designate year
  3. May pay more as deposit (returned if rejected)

OIC - Payment Options

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OIC - Payment Options – Taxpayer Choice p. 543-544

1. Lump sum cash payment:
   - 20% + 5 months or less

2. Periodic payments:
   - 6-24 months
   - First payment with offer

OIC - Other Considerations p. 544

- Taxpayer can stop installment agreement payments while offer considered
- Taxpayer must stay in compliance for 5 years or full tax reinstated
- Joint offer and one falls out of compliance, OIC remains for compliant spouse
- IRS can file lien during consideration
- Liens remain until offer paid in full

OIC - Reasonable Collection Potential (RCP)

p. 544

- Net asset equity + monthly income after expenses (1 or 2 years based on option)
- Net asset equity = asset value less loans
  - Full value of cash accounts
  - Quick sale value (80%) for assets of value
  - Auto: reduce by $3,450, joint offer reduce 2
  - Reduce net business assets by $4,600

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OIC - Reasonable Collection Potential (RCP)

p. 545

- Income
  - Self employed: Current profit and loss or enter line by line (can use income from most current Sch C)
  - Income of all who contribute to household
    - Taxable and nontaxable income
- Expenses – necessary for health and welfare of taxpayer and & family – actual or financial standards

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OIC - National Standards – Living Expenses
p. 545-546

- Based on family size
  1. Food – groceries, eating out, tips etc
  2. Housekeeping supplies
  3. Apparel and services
  4. Personal care products & services
  5. Misc.: Credit card, fees, school supplies
- Figure 14.8 – 2017 National Standards
  (always check for most current amounts)
  (irs.gov)

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OIC - National Standards p. 546

- Medical: age less than 65 $49/month
- Age 65 or older $117/month
- Housing and Utilities: By state & county
  - Mortgage, rent, taxes, interest, insurance, repairs, utilities, trash, all phone, cable TV, Internet service, maintenance
  - Allowed lesser of actual or local standard
  - Woodbury County, Iowa
    - Range from $1,092 to $1,532

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OIC - National Standards – Transportation

p. 547

- Ownership: monthly lease or payment
  - One Car = $485 & Two Cars = $970
- Operating: repairs, insurance, fuel, registrations, licenses, inspections, parking, tolls, maintenance
  - Figures 14.11
- Allowed lesser of actual or standards

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OIC - National Standards –

p. 547

- Public transportation
  - No car: $189/month
  - With car: lesser of actual expenses for both compared to standard amounts
- May claim actual expenses in all categories, but must be able to show standard inadequate for basic living expenses + prove actual

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Calculation of the Minimum Offer Amount

p 548

- CASH OFFER
  - 20% Down Payment, Pay in 5 or fewer payments within 5 months or less
  - 12 Multiplier, plus
  - Available Equity
- Short Term Deferred Offer
  - Up to 24 Months
  - 24 Multiplier, plus
  - Available Equity

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Questions?

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Individual Issues

Chapter 10   pp. 328-390

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Individual Issues   p. 327

1. Affordable Care Act

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Issue 1: ACA Individual Shared Responsibility Payment

p. 328

- All US individuals must:
  1. Have qualifying health insurance or
  2. Qualify for a coverage exemption or
  3. Make an individual shared responsibility payment (ISRP)

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ACA – Individual Shared Responsibility Payment (ISRP)

p. 328

- Coverage exemption - Form 8965
- No coverage exemption - ISRP
  - Worksheet in Form 8965 instructions
  - 2017 flat dollar amounts (same as 2016)
    - $695 per adult - $347.50 per child
  - No enforcement action by IRS
- Birth/adoption/death can = full-year if covered up to date of death

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ACA - Silent Returns

p. 329

- Silent = Return with no health coverage information
- IRS first stated they would not reject a “silent return”
- For 2018 filing season – filing the 2017 return a return will reject if healthcare issues are not addressed
- Law requires information on return

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ACA - Documents for Minimum Essential Coverage (MEC)

p. 330

- Forms 1095 – Figure 10.2
- Catastrophic plans – no 1095-A
  - Does not qualify for Premium Tax Credit
- Qualified small employer health reimbursement arrangement (QSEHRA)
  - Employer will issue Form 1095-B and must note on Form W-2 Box 12 Code FF

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W-2 Reporting Requirements - NEW

- If the client was covered under a QSEHRA, the employer reports the annual permitted benefit in Box 12 of the Form W-2 with code FF
- If the QSEHRA is affordable for a month, no Premium Tax Credit is allowed for the month
- If the QSEHRA is unaffordable for a month, the taxpayer must reduce the monthly Premium Tax Credit (but not below -0-) by the monthly permitted benefit amount and they must write "QSEHRA" in the top margin on page 1 of Form 8962 to explain the entry and avoid delay in the processing of the return

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ACA - Alternative Proof of MEC p. 330-331

- Insurance/Medicare card
- Form W-2/pay stub showing deduction
- Explanation of benefits
- Insurer statement
- Medical bill showing insurance reimbursement
- Employer document/statement
- Record of Annual Premium Tax Credit

ACA - Coverage Exemptions p. 331-333

- Figure 10.3 (pp. 332-333)
  - Exemption H on Form 8965 if:
    - Birth/adoption/death during the year *and*
    - Coverage exemption claimed for after birth/adoption or before death
- Affordability of Marketplace Insurance
  - 8.16% for 2017 8.05% for 2018

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ACA - Premium Tax Credit (PTC)
p. 334

- Marketplace policies only
- If household income (HHI) 100% - 400% FPL (Figure 10.4)
- Not applicable if employer coverage affordable
  - Self-only cost is greater than 9.69% HHI (9.56% 2018)
- Advanced PTC reconciled Form 8962
  - Limit on repayment based on income
  - Must reconcile to get advanced again

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ACA - Opt-out Payments p. 335

- Employee: Part of employee cost of employer insurance if
  - Unconditional opt-out or
  - Conditional and employee meets conditions
- Employer: Depends on date plan adopted
  - Plan adopted after 12/16/15 → part of employee cost
  - Others → in employee cost after regulations final
- Form 1095-C, line 15, may be understated

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Up Coming Ethics Classes

- Ethics Part 1 and Part 2 (November 13)
- Ethics Part 1 and Part 2 (November 14)
- Ethics Part 1 and Part 2 (December 15)
- Ethics Part 1 and Part 2 (December 18)
- Ethics Part 1 and Part 2 (December 19)

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Thank You!!!

Starts at 8:30 am

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