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From IRAs to Charity***

✓ ***IRS Unveils 2007 List of  
Notorious Tax Scams***

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## A Message From The President



As I write my final message as the 41st President of the PSPA, I find it hard to believe the year has passed so quickly. I would like to begin by thanking everyone for their efforts and support during my year as President. A special thanks to our Executive Director Sherry DeAgostino, our Administrative Assistant Bonnie Hackman and all of the line officers for making the past year a very productive year in moving the PSPA forward in meeting our goals and objectives. Also, I would like to thank the committee chairpersons and all those who have served on a committee over the past year. The contribution of your time, efforts and ideas is what makes the PSPA such a great organization.

During the past year I attended my first NSA convention in Providence, Rhode Island from August 16-19, 2006. At the convention, I attended all of the business meetings, all of the CPE sessions, ACAT Luncheon, First Timers' Reception, ASO Presidents' Luncheon, Awards Breakfast, and the NSA Installation Banquet. Other PSPA delegates at the convention included our NSA State Director, Richard Brasch, Jr., Linda Roth, Ray Bucks and Andy Piernock, Jr. I had the distinct honor of accepting the NSA award presented to the PSPA for our diligence in "Monitoring the State Board of Accountancy". Our current NSA District II Governor, Robert Sommer, was re-elected to serve another two year term. Congratulations go out to our NSA State Director, Richard Brasch, Jr. upon receiving his "Blue Jacket" for recruiting at least 10 new members to NSA over the past year.

Over the past year, I have had the opportunity to visit various PSPA chapters throughout the state, and I have enjoyed meeting many of our members. I was very impressed with the topics covered at these meetings and found them to be relevant to our practices. It was nice to see how many people attended these monthly meetings and the interaction and participation of those in attendance. I commend all of the chapters for their efforts in putting these monthly meetings together.

I attended the PSPA's 3rd Annual Day at the Capitol which I thought was a very worthwhile and successful event. More than ninety percent of PSPA members in attendance were able to meet with their elected officials. I would like to thank our governmental consultant, Chuck McDonald, for his assistance and participation with our 3rd Annual Day at the Capitol. Many thanks to the South Central Chapter for kicking off our day by hosting the Legislative Breakfast at the Capitol Building.

Once again, I would like to thank everyone for giving me the opportunity to serve as your President over the past year. It was truly an honor and privilege to serve as President of the PSPA. In closing, I would like to wish our incoming President Gerry Brenneman and the rest of the incoming line officers the best of luck on the upcoming year.

Respectfully Submitted,  
Daniel J. Vecchio, CPA  
PSPA President





### *Pay Your 2007-2008 membership Dues Online!*

Your 2007-2008 PSPA membership renewal is due. Members can go to [www.pspa-state.org](http://www.pspa-state.org) and log-in to the members only area with their membership identification number and password. If you need assistance please contact the PSPA Executive Office at 1-800-270-3352. Dues renewal notices were sent via U.S. mail on May 9, 2007.

**Congratulations** to PSPA member, Wayne L. Maurer, CPA of the Buxmont Chapter! Mr. Maurer earned a one-year free PSPA membership by being the 60th member to pay his dues online. The membership was given in commemoration of PSPA's 60th Anniversary.



### *PSPA's Course Catalog for the 2007 Seminar Season Enclosed*

The center pages of this edition of the PA Accountant contain PSPA's 2007 Course Catalog. Take advantage of the member discount at all PSPA sponsored seminars. Please contact the PSPA Executive Office for pricing information or to register today.

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## *PSPA Welcomes New Members*

*(The following members joined from 7-1-2006 through present)*

Joseph Adams, Jr., EA	AC BX	Walter Allen Smith, CPA	AC BX
Thomas Bates, EA	AC BX	Steve Sroba, CPA	Michael H. Sharp & Associates LLC
Carolyn Dorsey, CPA	AC BX	Yvonne Ward, CPA	AC BX
Herbert Ewald	AC BX	Harold Watkins, EA	Watkins Associates
Jennifer Ginnetti, CPA	AC BX	Arnold Weiss, CPA	Weiss Freedman Adelman & Lechtman P.C.
Samuel Gitler, CPA	AC BX	Stephanie Wiecek, CPA	Zaveta Construction
Shawn Glick	AC BX	Michael Wright	Michael D. Wright Accounting & Tax Services
Terese Goelz-Kazzaz, CPA	AC BX	Kathleen Zaroff, CPA	H.J. Heinz
T. Randolph Hodgens	AC BX	Jean Boursiquot	M & M Accounting
Bret Johnson, CPA, MBA	AC BX	Dail Granholm	Dail R. Granholm, MBA, CPA, LLC
Stefanie Jurczak	AC BX	Christopher Makosch	AC CTL
James Kelly	AC BX	Craig Peters	Gehman Accounting LLC
Frederick Koelle, CPA	AC BX	Lorette Stoltzfus	Philip K. Miller & Associates, Inc.
Vincent Kowalick, CPA	AC BX	Ruthann Woll, CPA	Reinsel Kuntz Lesher, LLP
Stanley Kritzstein, CPA	AC BX	Pamela Batch	Batch and Company, PC
Thomas Malkoch, CPA, CFP	AC BX	Joseph Febbo	AS LHV
Paul McElwain	AC BX	Edward Franczak	E.T. Franczak, CPA
William O'Donnell	AC BX	William Goodman, CPA	Goodman & Company CPAs
Jagdish Parekh	AC BX	William Gorman, Jr.	Gorman & Associates, P.C., Certified Public Accountants
Kathleen Pecura, EA	AC BX	Richard Gurniak, CPA	Gurniak & Gurniak, CPA's
Maurus Petruzzi, CPA	AC BX	Mark Heller	Merk Heller, CPA
Alicia Purr	AC BX	Rachel Holton	Elizabeth J. Lischner, CPA
Kristine Quigley	AC BX	Joan Hoover, EA	H & R Block
Julie Raffel	AS BX	Edward Hudak, Jr.	Richard W. O'Hay and Randall Kline, CPA's
Donald Roth, CPA	AC BX	Baron Jasper, CPA	AC LHV
Scott Rothman	AS BX	Stephen Liebow	Shapiro and Shapiro CPA's
Daniel Sierchio, CPA	AC BX	William Mannion	Investors' Choice CPA Services
Joan Smalarz, EA	AC BX		

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# PENNSYLVANIA TAX UPDATE

## Governor Rendell Calls for Sales Tax Increase & Tax on Oil Companies

By Sharon R. Paxton

In his Budget Address to the General Assembly in February, Governor Rendell asked the Legislature to increase Pennsylvania's Sales and Use Tax rate from 6% to 7% (from 7% to 8% in Allegheny and Philadelphia counties). He also advocated a new "Oil Company Gross Profits Tax" that would yield ten times the revenue currently raised from oil companies under the Commonwealth's Corporate Net Income Tax.

Revenues from the additional 1% of Sales and Use Tax would be used for two purposes.

First, revenues would be used to offset unfunded federal mandates the Governor says will impose at least \$700 million of additional obligations in FY 2007-08. The gaps plugged by these funds would include medical assistance and child support programs.

Second, \$420 million of additional sales tax revenues would be used to accelerate property tax relief, delivering relief to many non-senior homeowners this summer – a year ahead of schedule. On an ongoing basis, \$700 million of sales tax revenues would be allocated annually to supplement the property tax relief funds to be generated as Pennsylvania's new gaming facilities come on-line.

A new "Oil Company Gross Profits Tax" is one of two options to provide the additional \$1.7 billion per year the Governor's Transportation Funding and Reform Commission recently reported would be required to close the gap between current revenues and needs to maintain roads, bridges and mass transit. The Governor rejected his Commission's suggestion that the Oil Company Franchise Tax be increased by 12.5 cents per gallon at the pump, and that the Realty Transfer Tax be increased by 0.9 percent.

Instead, the Governor first wants to pursue leasing the Pennsylvania Turnpike to private investors. He believes this would generate several billion dollars which could be invested to provide an annual income stream in excess of \$900 million per year.

The Governor's second proposal to generate revenue for transportation needs is to exempt oil companies from Pennsylvania's 9.9% Corporate Net Income Tax and make them subject to a 6.17% tax on gross profits, which would be calculated on a "combined reporting"

basis. According to the Governor, by structuring their operations to minimize taxes, the seven oil companies that presently pay CNI generate only \$71 million in revenue from that tax. Under the Governor's proposal, oil companies would pay \$760 million per year. According to the Governor, the enabling legislation for the new tax would grant Pennsylvania's Attorney General "the power to ensure that these taxes are not passed on to [Pennsylvania's] citizens at the pump."

Other tax-related features of the Governor's budget proposal include:

- maintain previously enacted phase-out of Capital Stock and Franchise Tax
- renewed push for combined reporting of Corporate Net Income Tax
- "clean energy assessment" on electric bills to pay interest on bonds to fund Energy Independence Fund
- 50¢ per ton increase to municipal solid waste disposal fee dedicated to Environmental Stewardship Fund
- \$2.25 per ton fee on disposal of municipal solid waste to help fund hazardous site cleanups
- 3% assessment on payrolls of businesses not offering health insurance, increased cigarette tax, expansion of tax to smokeless tobacco products - all to fund programs to address health coverage and cost crisis
- \$44 million of rebates to PA retailers to promote replacement of inefficient refrigerators and air conditioners by residential and small business customers

### Business License Information Exchange Program

Last year, by Executive Order 2006-03, Governor Rendell created the Commonwealth Business License Information Exchange Program to help make sure that individuals and businesses that are licensed by the state comply with Pennsylvania tax reporting and payment obligations. The Department of Revenue recently announced that the Program, which requires state agencies under the Governor's jurisdiction to provide the Department with information regarding the issuance or renewal of licenses, permits and registrations, is now underway. Upon receipt of information from other state agencies, the Department will verify that those seeking licenses,

permits or registrations are compliant with their Pennsylvania tax obligations. The Department will pursue collection action against non-compliant taxpayers and will also notify all appropriate licensing agencies of any delinquencies. Although some licensing agencies will take enforcement action against prospective licensees for failure to comply with tax obligations, some agencies may currently lack the statutory authority to withhold licenses, permits or registrations for nonpayment of taxes.

### Calculation of Gain from Sale of S Corporation Stock

Under Act 67 of 2006, effective for calendar year 2006, any corporation that has elected S corporation status for Federal income tax purposes will be a Pennsylvania S corporation unless it affirmatively elects to be treated as a C corporation for Pennsylvania tax purposes. In Ruling No. PIT-07-001, the Department recently issued guidance concerning the calculation of a taxpayer's basis in the stock of a closely held corporation that had become a Pennsylvania S corporation as a result of the enactment of Act 67, for purposes of determining the taxpayer's gain from the disposition of the stock during 2006. The Department concluded that the taxpayer's basis in the stock was the cost of the stock at the time of acquisition reduced by any subsequent distribution(s) from the corporation, other than distributions out of current earnings or profits, until December 31, 2005. Beginning January 1, 2006, the date when the corporation became a Pennsylvania S corporation, the basis was to be adjusted as required under 72 P.S. §§ 7307.11 and 7307.12.

### Abandoned and Unclaimed Property Changes Benefit Companies Issuing Gift Cards/Certificates

On November 9, 2006, Governor Rendell signed Act No. 138 of 2006, which provides incentives for businesses to issue gift certificates and gift cards that do not contain an expiration date and are not subject to post-sale fees and charges. Act 138 exempts "qualified gift cards" and "qualified gift certificates" from reporting requirements (discussed below) for 2006 and subsequent years. A "qualified" gift card or certificate cannot contain an

expiration date or any type of post-sale charge or fee, including, but not limited to, a service charge, dormancy fee, account maintenance fee, cash out fee, replacement card fee or activation or reactivation fee. Under the new law, issuers of qualified gift cards and certificates will have no obligation to remit unredeemed amounts to the Commonwealth. On the other hand, they will be obligated to redeem the gift cards and certificates indefinitely.

Legislation was introduced a number of times over the past several years that would have made it a summary offense to sell gift certificates or gift cards with an expiration date. Other proposed legislation would have made selling gift certificates or gift cards with an expiration date, or a right of the seller to impose or collect any after-the-sale charge or fee, a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law. While it is still lawful and appropriate for companies to issue gift cards and gift certificates with expiration dates and post-sale fees, the changes made by Act 138 to the Abandoned and Unclaimed Property Law provide a substantial incentive for businesses to offer "qualified" gift certificates and gift cards.

Pennsylvania, like most states, requires the holder of "abandoned" or "unclaimed" property to report (and remit) such property after the expiration of a certain number of years. According to the Treasury Department's website, Pennsylvania is currently holding over \$1 billion in unclaimed property. Examples of reportable unclaimed property include dormant bank accounts, escrow accounts, stocks and bonds, uncashed payroll checks, uncashed accounts payable checks, uncashed operating fund checks, credit balances, customer deposits, uncashed death benefit checks and unused gift certificates and gift cards. Reporting obligations for abandoned and unclaimed property are generally governed by the laws of the state of the legal owner's last known address rather than the laws of the state where the business holding the property is located. If the owner's address is unknown (or if the owner's state of residence does not require reporting of the property), the unclaimed property is reportable to the holder's state of incorporation.

*Sharon R. Paxton is a member of McNeese Wallace & Nurick LLC's State and Local Tax Group.*

## NSA State Director's Message



NSA has been very busy during tax season testifying before the Congress to protect the practice rights of the independent practitioner, while simultaneously presenting practitioner concerns to the Internal Revenue Service.

### **NSA Urges U.S. Senate to Enact Tax Preparer Legislation**

NSA delivered a statement to the U.S. Senate Finance Committee in support of legislation that would require professional tax preparers to demonstrate their expertise before they can submit returns on behalf of taxpayers. NSA urged members of the Committee to consider introducing a bill this year similar to S.832, which addressed this issue in the last Congress. Under the provisions in last year's bill, the Treasury Department would be instructed to develop and administer an eligibility examination designed to test the knowledge and technical competency of individuals who prepare federal tax returns. NSA has long supported this type of legislation, provided it recognizes the validity of existing examinations offered by nationally recognized credentialing organizations such as the AICPA or ACAT (Accreditation Council for Accounting and Taxation) as a means of meeting the standard required to practice. Senators Max Baucus and Charles Grassley have again made overtures that a bill similar to last year's 832 would be introduced this year.

### **NSA Testifies before IRS Oversight Board**

In a meeting held in early March before the IRS Oversight Board, NSA's Federal Taxation Committee stressed the need for tax simplification as a means of reducing the federal "tax gap," which is estimated to cost the U.S. government \$200-\$400 billion per year in unpaid taxes. This translates to a "surtax" of \$2,200 per taxpayer to subsidize the noncompliance of individuals and businesses that are not filing tax returns, according to the IRS National Taxpayer Advocate.

### **NSA President Testifies before Small Business Administration**

National Society of Accountants President Robert Fukuhara Jr., CPA, ABA, ATA, testified at a National Regulatory Fairness Hearing before the U.S. Small Business Administration (SBA) in Washington, DC. concerning regulatory problems confronting small business. Issues discussed by Fukuhara included excessive paperwork and reporting costs in complying with Sarbanes-Oxley Act, the increased time it takes for approval of an SBA Loan and the impact of Social Security taxes on retirement savings.

### **Serving Aging America**

NSA's outstanding seminar series: Serving Aging America - 2007, will be held at the Riviera Hotel & Casino in Las Vegas, NV June 4-9, 2007.

Serving Aging America is offered in three levels:

- Level 1** - Preparing You and Your Clients for Retirement (June 4-5, 2007)
- Level 2** - Essentials of Estate and Trust Planning (June 6-7, 2007)
- Level 3** - Elder Care Hot Topics (June 8-9, 2007)

Those completing all three levels of Serving Aging America™ can apply for the prestigious Elder Care Specialist® (ECS) designation conferred by the Accreditation Council for Accountancy and Taxation (ACAT). For more information on obtaining the ECS credential, and testing requirements call ACAT toll free at 1-888-289-7763.

### **NSA Webinars Coming Soon**

NSA will be launching a series of monthly webinars covering topics such as marketing on a budget, effective billing techniques, when and how to fire a client, and much more. Each webinar will last approximately one hour and will include time for questions and answers. Schedule will be published in the near future.

Please feel free to contact me with any questions via email at [rbraschcpa@verizon.net](mailto:rbraschcpa@verizon.net)

Respectfully submitted,  
Richard Brasch Jr., CPA  
NSA State Director - Pennsylvania





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Number of accountants (with years of experience):

	F/Time:	P/Time*:
5+ years:	_____	_____
4 years:	_____	_____
3 years:	_____	_____
2 years:	_____	_____
1 year:	_____	_____
<1 year:	_____	_____
Total:	_____	_____

\*Average of 25 hours per week or less

In the past three years, how many firm members attended a loss control seminar \_\_\_\_\_

On what date was the firm established \_\_\_\_\_

Within the past 5 years:

Has the firm provided services to a client that is engaged in the issuance, offering, registration or sale of securities or bonds; or provided clients with forecasts or projections for inclusion in sales literature, etc., of any securities or bonds? YES  NO

Has any member of the firm provided services or acted as a director/officer/committee member for any financial institution? YES  NO

Has any member of the firm had an accounting license or authority to practice accounting revoked, or been subject to disciplinary action, fine reprimand, or criminal penalty related to performance of professional services? YES  NO

Renewal: \_\_\_/\_\_\_/\_\_\_ Insurer: \_\_\_\_\_ Limit: \$ \_\_\_\_\_ Deductible: \$ \_\_\_\_\_ Premium: \$ \_\_\_\_\_

What is the retroactive date on your current policy \_\_\_/\_\_\_/\_\_\_  None  N/A

Approximately percentage of income received from the following activities for the last annual period:

Activity	%
Audit: Public Companies**	
Audit: Other	
Review	
Compilation	
Bookkeeping	
Tax	
Business Valuation	
Computer Consulting	
Litigation Support	

Activity	%
Litigation Support	
Management Advisory Services	
Assurance Services	
Financial Planning	
Asset Management	
Sale of Mutual Funds	
SEC/Sarbanes Oxley Related Services**	
Other*	
Total	100%

\*\*Calls for a supplement

### CLAIMS HISTORY (within the past five years):

Date claim(s) Reported	One: ___/___/19	Two: ___/___/19	Three: ___/___/19
Amount Paid, including	\$ _____	\$ _____	\$ _____
Defense Expenses (if closed)	\$ _____	\$ _____	\$ _____
Reserve amount (if open)	\$ _____	\$ _____	\$ _____

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## Washington Struggles Over Dealing With Alternative Minimum Tax

On March 5, the staff of the Joint Committee on Taxation published an overview of the alternative minimum tax (AMT). The document, prepared in advance of a March 7 House Ways & Means Committee meeting on the AMT, highlights the basics of this tax, how it will affect more and more taxpayers in the coming years and what it will cost them, and the options for reform.

**RIA observation:** The study vividly demonstrates why the AMT is such a thorny problem for Congress and the Administration and will be a key driver in the debate over the 2001 EGTRRA (Economic Growth and Tax Relief Reconciliation Act) tax provisions scheduled to expire after 2010. It also shows why it will be politically unpalatable for Congress not to enact at least a short-term AMT "fix" for at least 2007 and perhaps 2008 as well.

**Rising AMT tide.** Absent Congressional action, the percentage of taxpayers affected by the AMT is projected to jump from 2.5% in 2006 to 13.8% in 2007. It will increase to 15.1% in 2008, 16.5% in 2009, and 17.98% in 2010. AMT liability and lost credits expressed as a percentage of total individual income tax liability also will jump. For example, it is projected to rise from 2.5% in 2006 to 6.7% in 2007.

The principal reason for the sharp increase in the AMT's impact from 2006 to 2007 is that, under current law, beginning this year: (1) the AMT exemption levels drop to where they were before 2001, and (2) nonrefundable personal credits (except for the adoption, child, and saver's credits) are no longer allowed against the

AMT. The number of taxpayers affected by the AMT continues to rise through 2010 because the AMT exemption levels are not indexed for inflation while the regular income tax is. By 2010, almost 31 million individual income tax returns will have AMT liability and/or restricted use of credits totaling approximately \$119 billion.

The Joint Committee study also shows how the AMT's reach will extend further down the income distribution chain. For example, in tax year 2006, 170,000 taxpayers, or 1.6% of those with adjusted gross income between \$75,000 and \$100,000, are estimated to be affected by the AMT and will likely have an AMT liability or lost credits totaling \$290 million. However, for 2007, almost half of the taxpayers in this income group, nearly 5.7 million, would be affected by the AMT and experience AMT liabilities or lost credits totaling \$6.3 billion.

**Beyond 2010.** Absent Congressional action, the tax reductions enacted by the 2001 EGTRRA will expire after 2010. For example, the reduced regular income tax rates would expire (e.g., the top tax rate would rise from 35% to 39.6%), the relief from phaseouts of personal exemptions and itemized deductions would be eliminated, and the marriage penalty relief for the standard deduction and the 15% bracket would disappear. Paradoxically, if the EGTRRA reductions are allowed to expire, the number of taxpayers affected by the AMT after 2010 will decline. That's because regular income tax liability would rise for many taxpayers and thus cause fewer of them to be exposed to the AMT (which applies only if tentative minimum

tax exceeds regular tax liability).

**Selected reform options.** The Joint Committee study presents legislators with the following options for long-term AMT reform, and shows what each would cost over 2007-2017:

- Permit the deduction for state and local taxes for purposes of computing AMTI (alternative minimum taxable income): \$576.5 billion.
- Permit a deduction for personal exemptions for purposes of computing AMTI: \$509.8 billion.
- Permit the deduction for miscellaneous itemized deductions for purposes of computing AMTI: \$114 billion.
- Permit a deduction for the standard deduction for purposes of computing AMT: \$95.2 billion.
- Permit deductions for state and local taxes, miscellaneous itemized deductions, personal exemptions, and the standard deduction for purposes of computing AMTI: \$783.7 billion.
- Repeal the AMT: \$872.3 billion.

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### New Members

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Celeste Midkiff, CPA	Celeste Ann Midkiff CPA	AC	LHV	Georgia MacInnis	B. Joseph Cellini	AC	SE
Francis Mullane, CPA	Francis X. Mullane, Inc.	AC	LHV	Edwin Nickey		AC	SE
Richard Schlosser		AC	LHV	Keith Brenner	Brenner Accounting Services, Ltd.	AC	SOC
Lewis Slepetz, Jr., EA		AC	LHV	Ronald Calhoun	R. Calhoun & Associates	AC	SOC
Kandy Stearns, EA	Stearns & Company	AC	LHV	Carrie Campbell, EA	Carey Associates, Inc.	AC	SOC
James Bone, Jr., CPA		AC	NE	E. Steve Clever, CPA	John W. Gleim, Jr., Inc.	AC	SOC
Bonnie Fulkerson	Stephen A. Webster, CPA	AC	NE	Kenneth Collins, EA	Kenneth C. Collins, EA	AC	SOC
Joseph Kerestes, Jr., CPA		AC	NE	Donna Gurreri	Lease's Tax and Accounting	AC	SOC
Tami Mangan, CPA	Joseph M. Alu & Associates	AC	NE	Steven Hake, CPA	Stambaugh Ness, PC	AC	SOC
Carl Mullay	Mullay and Sons, Inc.	AC	NE	Thomas King		AC	SOC
Nancy Nicoletto, CPA		AC	NE	John Klingler, CPA	Klingler & Associates, P.C.	AC	SOC
Tracey Pordon, CPA	Tracey L. Pordon, CPA, LLC	AC	NE	John Raudenbush		AC	SOC
Steven Resuta, CPA	Steven C. Resuta, CPA	AC	NE	Andrew Sartalis, CPA	Sartalis and Associates	AC	SOC
Jacqueline Kania		AC	PH	Stephen Kline	Kline Accounting & Income Tax Service	AC	WC
Peter La Rosa		AC	PH	Robert John Moyer, Jr., CPA	Robert J. Moyer, Jr., CPA	AC	WC
Deborah Markert	P.M. Lipari, CPA	AS	PH	Richard Speicher, CPA	Richard L. Speicher, CPA	AC	WC
Jerome Mauze, CPA		AC	PH	Gerald Erbe	Erbe Company	AC	WP
Carl O'Fria, Jr., CPA	O'Fria & Company PC	AC	PH	Joseph Ferno	McCardle & Company	AC	WP
Lewis Schifreen		AC	PH	Linda Ford, PA	Linda J. Ford, PA	AC	WP
Ira Siegal, CPA		AC	PH	Bruce Hall, CPA		AC	WP
Richard Barrett, PA	Barrett & Associates, LP	AC	SE	Pete Jenkins	Pete Jenkins Tax, Accounting & Financial Services	AC	WP
Robert Blasiotti, CPA	Blasiotti & Co. - CPA's	AC	SE	Heather Perman	P.A. Erbe & Associates, Inc.	AC	WP
				Jeffrey Rihn, CPA		AC	WP

## IRS Explains How Older Individuals Can Make Nontaxable Transfers From IRAs to Charity

The IRS has explained how age 70 1/2 and older individuals can make nontaxable transfers from IRAs to charities under Code Section 408(d) (8) . This Pension Protection Act of 2006 (PPA, P.L. 109-280) provision applies only for transfers made in 2006 and 2007.

**RIA observation:** The IRS's interpretation of the nontaxable transfer provision is liberal. For example, it permits each spouse to make an up-to-\$100,000 tax-free transfer, and allows the IRA owner to hand-deliver a check from the IRA made out to the charity. It also permits otherwise-qualifying IRA beneficiaries to make the nontaxable rollover.

**New charitable giving option.** For distributions in tax years beginning in 2006 and 2007, an up-to-\$100,000 annual exclusion from gross income is available for otherwise taxable IRA distributions that are qualified charitable distributions, as defined below [Code Sec. 408(d) (8) ]. An excluded distribution can't be deducted as a charitable contribution. [Code Sec. 408(d) (8) (E) ]

**RIA observation:** Qualified charitable distributions aren't subject to the charitable contribution percentage limits, since they are neither included in gross income nor claimed as a deduction on the taxpayer's return. Because such a distribution is not includible in gross income, it will not increase AGI for purposes of the phaseout of itemized deductions, personal exemptions, or any other deduction, exclusion or tax credit that is limited or lost completely when AGI reaches certain specified levels.

A qualified charitable distribution is one made from an individual retirement plan (other than a SEP or SIMPLE IRA) on or after the date that the IRA owner attains age 70 1/2 directly by the IRA trustee to a Code Section 170(b) (1) (A) charitable organization (other than a Code Section 509(a) (3) organization or a donor advised fund, as defined in Code Section 4966(d) (2) ). Also, to be excludible, the distribution must otherwise be entirely deductible as a charitable contribution under Code Section 170 without regard to the charitable deduction percentage limits. [Code Sec. 408(d) (8) (B) , Code Sec. 408(d) (8) (C) ]

**RIA observation:** Thus, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available for any part of the IRA distribution.

If the IRA owner has any IRA with nondeductible contributions, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income if the aggregate balance of all IRAs having the same owner were distributed during the same year. The annuity rules of Code Section 72 under which a pro rata part of the distribution would be treated as made out of nondeductible contributions don't apply. However, proper adjustments must be made in applying the Code Section 72 annuity rules to other distributions made in the tax year and later tax years to reflect the amount treated as a qualified charitable distribution under this special rule. [Code Sec. 408(d) (8) (D) ]

Although a direct distribution from an IRA to a charity is not included in the taxpayer's gross income, it is taken into account in determining his required minimum distribution (RMD) for the year. Thus, if the amount distributed directly from the IRA to an eligible charity at least equals the amount of the owner's RMD for the tax year, he will not be required to take any other distribution from the IRA for that tax year. (Joint Committee on Taxation Report on the PPA, JCX-38-06)

Here's how IRS interprets the new nontaxable transfer-to-charity option:

- **Eligibility for nontaxable transfer to charity.**

The nontaxable transfer to charity is available not only to IRA owners, but to their beneficiaries as well. The beneficiary must make the transfer after he has attained age 70 1/2. (Notice 2007-7, Q&A 37)

- **\$100,000 limit.**

The income exclusion for qualified charitable distributions only applies to the extent that the aggregate amount of qualified charitable distributions made during any tax year with respect to an IRA owner does not exceed \$100,000. Thus, if an IRA owner has multiple IRAs, and makes qualified charitable distributions from more than one of them, he may exclude a maximum of \$100,000 for that year. For married individuals filing a joint return, the limit is \$100,000 per spouse. (Notice 2007-7, Q&A 34)

- **Eligible IRAs.**

The IRS says that the exclusion for qualified charitable distributions is generally available for distributions from any type of IRA (including a Code Section 408A Roth IRA and a Code Section 408(q) deemed IRA). However,

the IRA can't be an "ongoing SEP IRA" or an "ongoing SIMPLE IRA". A SEP IRA or a SIMPLE IRA is treated as "ongoing" if it is maintained under an employer arrangement under which an employer contribution is made for the plan year ending with or within the IRA owner's tax year in which the charitable contributions would be made. (Notice 2007-7, Q&A 36)

- **RIA observation:** In other words, the IRS says that if a SEP or SIMPLE IRA account owner retired before 2006 (and didn't get an employer contribution after 2005), he may make a nontaxable distribution in 2006 or 2007 from the IRA to a charity if he meets all the necessary conditions (e.g., he has attained age 70 1/2).

- **Direct payment to charity.**

Code Section 408(d) (8) (B) (i) provides that to qualify as a nontaxable distribution, a transfer must be made directly by the IRA trustee to an eligible charitable organization. The IRS says that if a check from an IRA made payable to an eligible charitable organization is delivered by the IRA owner to the organization, the payment is treated as a direct payment by the IRA trustee to the charitable organization for purposes of Code Section 408(d) (8) (B) (i).

- **Transfer not a prohibited transaction.**

Notice 2007-7, Q&A 44, says a qualifying transfer from an IRA to a Code Section 170(b) (1) (A) charity won't be treated as a prohibited transaction under Code Section 4975, even if the individual for whose benefit the IRA is maintained had an outstanding pledge to the receiving charitable organization.

According to the Franchise Tax Board, California is conformed to this treatment of distributions from IRAs to charity.

For further information, visit [ria.thomson.com](http://ria.thomson.com).

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## IRS Unveils 2007 List of Notorious Tax Scams The "Dirty Dozen"

IRS has unveiled its latest list of notorious tax scams, which it calls the "Dirty Dozen", highlighting five new scams that IRS auditors and criminal investigators have uncovered. IRS publishes the list each year to remind taxpayers to be wary of schemes that promise to eliminate taxes.

### **RIA recommendation:**

Practitioners should counsel clients and prospective clients to steer clear of these schemes and take steps to remedy the situation for any client that may have gotten involved in one of them.

"Dirty Dozen" for 2007. The IRS has identified the following tax scams as this year's "Dirty Dozen." This list includes five new scams involving: fraudulent telephone excise tax refunds, abusive use of Roth IRAs, the American Indian employment credit, domestic shell corporations, and structured entities.

### **1) Telephone excise tax refund abuse.**

Early filings show that some individuals have requested large and apparently improper amounts for the special telephone tax refund. For example, some taxpayers seem to be seeking a refund of their entire phone bills, rather than just the 3% long-distance excise tax. In some cases, tax preparers are filing improper requests for their clients. The IRS is investigating potential abuses in this area and will take prompt action.

### **2) Abusive Roth IRAs.**

The IRS says that taxpayers should be wary of advisers who encourage them to shift undervalued property to Roth Individual Retirement Arrangements (IRAs). For instance, some promoters have the taxpayer move undervalued common stock into a Roth IRA, circumventing the annual maximum contribution limit and allowing otherwise taxable income to go untaxed.

### **3) Identity theft.**

The IRS says that it's aware of several email identity theft scams (so called "phishing") involving taxes. Fraudsters send bank customers fictitious correspondence and IRS forms in an attempt to trick them into disclosing personal financial data. A typical email notifies a taxpayer of an outstanding refund, urging him to click on a hyperlink and visit an official-looking website where he is asked to give his Social Security and credit card number. The IRS emphasizes that it does not use email to initiate contact with taxpayers. A taxpayer who has any doubt whether a contact from IRS is authentic can call 800.829.1040 to confirm it.

### **4) Disguised corporate ownership.**

The IRS says that domestic shell corporations and other entities have been formed and operated in certain states to disguise the ownership of a business or financial activity. They are being used to facilitate income underreporting, non-filing of tax returns, listed transactions, money laundering, financial crimes and possibly terrorist financing.

### **5) Zero wages.**

In this scam, a Form 4852, Substitute Form W-2, or a "corrected" Form 1099 showing zero or little income is filed with a return. The taxpayer may include a statement rebutting wages and taxes reported to IRS by the payer or may refer to the paying company's refusal to issue a corrected Form W-2.

### **6) Return preparer fraud.**

Dishonest return preparers can cause many headaches for taxpayers who fall victim to their ploys. Such preparers derive financial gain by skimming a portion of their clients' refunds and charging inflated fees for return preparation services. They attract new clients by promising large refunds. The IRS says that taxpayers should choose carefully when hiring a tax preparer.

### **7) American Indian employment credit.**

In this scam, Native American employees reduce the income on their returns, citing an American Indian employment or treaty credit. Although businesses employing Native Americans or their spouses can claim such a credit, it isn't available to employees. Unscrupulous promoters have also informed Native Americans that they're not subject to federal income tax and had them eliminate withholding by filing Form W-8 BEN, Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding. Promoters have also sent email with false IRS letterheads to solicit personal financial information in order to process their "non-tax" status.

### **8) Trust misuse.**

Unscrupulous promoters for years have urged taxpayers to transfer assets into trusts. They promise reduction of income subject to tax, deductions for personal expenses and reduced estate or gift taxes. However, some trusts do not deliver the promised tax benefits, and the IRS is actively examining these arrangements. The IRS says that taxpayers should seek the advice of a trusted professional before entering into a trust.

### **9) Structured entity credits.**

The IRS says that promoters of this newly identified scheme set up partnerships to own and sell state conservation easement credits, and rehabilitation and other credits. The credits are the only assets of the entities and once they're fully used, investors receive a K-1 indicating the initial investment is a total loss, deductible on their return. The IRS states that forming such an entity isn't a viable business purpose; the investments aren't valid; and the losses aren't deductible.

### **10) Abuse of charitable organizations and deductions.**

The IRS says it has observed an increase in the use of tax-exempt organizations to improperly shield income or assets from taxation. This can occur, for example, when a taxpayer moves assets or income to a tax-exempt supporting organization or donor-advised fund but maintains control over the assets or income, thereby obtaining a tax deduction without transferring a commensurate benefit to charity. Contributions of non-cash assets also continue to be an area of abuse, especially the overvaluation of contributed property. The IRS also notes an upswing in private tuition payments being disguised as charitable contributions to religious organizations.

### **11) Form 843 tax abatement.**

This scam involves a return filer requesting abatement of previously assessed tax using Form 843, Claim for Refund and Request for Abatement. Often the requesters have failed to file returns in the past and the tax they want abated has been assessed by IRS through the Substitute for Return Program.

### **12) Frivolous arguments.**

The IRS warns taxpayers to be aware of frivolous arguments such as those claiming that wages are not income and paying taxes is entirely voluntary.

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**Deadline for Submitting Clean Coal Allocation Requests Remains June 30**

Applications for the 2007 allocation for clean coal projects are due to the Department of Energy (DOE) on or before June 30, 2007. Contrary to the expectation in an earlier information release (IR-2006-184), the Internal Revenue Service no longer expects to change the deadline to June 1.

The Energy Policy Act of 2005 authorized \$1.65 billion in tax credits for clean coal projects. Approximately \$650 million of this amount is available for allocation to clean coal projects in 2007. Of this total, \$267 million will be available for integrated gasification combined cycle (IGCC) sub-bituminous coal projects, \$133 million will be available for IGCC lignite projects, \$250 million will be available for non-IGCC advanced coal electricity generation projects and \$337,000 will be available for gasification projects.

IRS Notices 2006-24 and 2006-25 provide complete instructions for submitting an application for the 2007 credit allocation. Under those notices, the application for DOE certification for the 2007 allocation is due to the DOE on or before June 30, 2007.

**Nissan Hybrid Still Qualifies for Tax Credit**

The Internal Revenue Service announced that purchasers of qualified Nissan North America Inc. vehicles may continue to claim the Alternative Motor Vehicle Credit. The announcement comes after the IRS concluded its quarterly review of the number of hybrid vehicles sold.

Nissan sold 2,094 qualifying vehicles to retail dealers in the quarter ending March 31, 2007. The allowable credit amount for the 2007 Altima Hybrid — Nissan's only certified hybrid vehicle — is \$2,350.

Consumers seeking the credit may want to buy early because the full credit is only available for a limited time. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records its sale of the 60,000th vehicle. For the second and third calendar quarters after the quarter in which the 60,000th vehicle is sold, taxpayers may claim 50 percent of the credit. For the fourth and fifth calendar quarters, taxpayers may claim 25 percent of the credit. No credit is allowed after the fifth quarter.

More information on hybrid vehicles and other alternative motor vehicles can be found on the IRS' Web site at IRS.gov.

**PENNSYLVANIANS WHO PURCHASED CIGARETTES OVER THE INTERNET MUST PAY PA STATE TAXES Revenue Department Mailing Letters to 4,329 People**

Pennsylvanians who purchased cigarettes over the Internet, or from out-of-state mail order companies, will soon receive a letter from the PA Department of Revenue asking them to pay state taxes on the purchases.

Under the federal Jenkins Act, vendors that ship cigarettes into another state are required to release information about the purchases to state taxing authorities.

"Unfortunately, many Web sites falsely advertise that cigarettes can be purchased tax-free," said acting Secretary of Revenue Thomas W. Wolf. "In fact, in Pennsylvania and most other states, people who purchase cigarettes from another state are required to pay cigarette taxes to their home state. The Internet is a great resource, but when people use it to avoid paying taxes, Pennsylvania taxpayers suffer and our retailers are placed at a competitive disadvantage."

The Revenue Department mailed cigarette tax forms and letters explaining Pennsylvania's cigarette tax law to 4,329 people who purchased at least 100 cartons of cigarettes from out-of-state sources since January 2005.

The department estimates that the commonwealth is owed about \$9.3 million in cigarette taxes and another \$1.1 million in sales and use taxes from these purchases. These individuals purchased a total of 694,126 cartons of cigarettes; the average number of cartons purchased was 160. If recipients of the letters respond by the due date listed, the department will waive late-payment penalties. Deferred payment plans are available for those who cannot afford to pay the taxes they owe at one time.

The state Revenue Department has been receiving information on cigarette purchases from a number of Web sites nationwide. At least 13 other states, including neighboring New Jersey, Ohio and New York, have also been using the federal information to collect cigarettes taxes.

All cigarettes sold legally in Pennsylvania are marked with a Pennsylvania cigarette tax stamp on the bottom of the pack to show that the appropriate tax has been paid. The cigarette tax is imposed on the ultimate consumer, but licensed cigarette stamping agents remit the tax, currently \$1.35 per pack of 20 cigarettes, to the commonwealth.

Possessing or selling untaxed cigarettes in Pennsylvania is illegal. By law, Pennsylvanians may possess no more than one carton of out-of-state cigarettes (not bearing a genuine Pennsylvania cigarette tax stamp on the bottom of the pack). However, the person who possesses the cigarettes is still responsible for paying the appropriate cigarette and use taxes to the state Revenue Department on a Consumer Cigarette Excise Tax Return (REV-791). Cigarette purchases from Native American reservations are also subject to Pennsylvania taxes.

Cigarette tax revenue helps fund the Children's Health Insurance Program, or CHIP, which provides quality health insurance for children of working families, the Agricultural Conservation Easement Purchase Fund for farmland preservation and the Health Care Provider Retention Account that helps reduce medical malpractice insurance costs.

**PA Department of Revenue Offers Access to Your Clients' Personal Income Tax Data**

Tax professionals now have the ability to view records of your client's returns, return acknowledgements and messages, refunds, estimated payments, credits, and tax return summaries for PA Personal Income Taxes. In order to access this system, you will need to register online as a practitioner with the Revenue Department. This is a one time only process. Registered tax professionals in Pennsylvania must also be registered practitioners with the Internal Revenue Service (IRS) and must participate in the Fed/State e-file program.

In order to register, you will need your:

- Pennsylvania e-Signature account (User ID and Password)
- Social Security Number
- Last Name
- First Name
- Daytime Phone Number
- Taxpayer Identification Number (PTIN)
- Electronic Filing Identification Number (EFIN)

For a complete explanation on how to do this, see the 'Register as a Practitioner' instructions on Revenue's website.

Once you successfully register as a tax professional in the system, your client list will be automatically displayed, provided you met the requirements listed below for gaining access to client data.

**Gaining Access to Client Data Requirements** - In order to gain access to your client's data, you must have:

- Filed your clients PA-40 income tax



return electronically through the Fed/State e-file program for the Current tax year.

- Completed a Power of Attorney Form (REV-677) and had it signed by your client.
- Supplied your PTIN on the PA-40 income tax return and indicated that you have a completed and signed Power of Attorney Form (REV-677) on file.

**Viewing Previous Tax Years** - You may also view your client's tax information for previous tax years. To gain access for previous years, you must have:

- Met the initial requirements listed above in "Gaining Access to Client Data Requirements".
- Completed a Power of Attorney Form (REV-677) and had it signed by your client for the appropriate tax year.
- Have your client's tax liability which can be found on Line 12 of the PA-40 Tax Return for the appropriate tax year.

For a complete explanation on how to do this, see the Add Power of Attorney (POA) for Previous Tax Years instructions on Revenue's website.

### **Section 6330 sets out the process for administrative review of decisions by the IRS to levy taxpayers' property.**

One of the protections that section 6330 gives taxpayers is a promise that the hearing will be conducted by an IRS employee who is impartial. Congress reinforced this requirement by directing the Commissioner to reorganize the IRS so that the entire IRS Appeals function would be independent. The Service then made the guarantee of impartiality part of the IRS's standard operating procedure. This procedure prohibits ex parte communications by IRS employees that would appear to compromise the independence of an Appeals officer. In *Industrial Investors* (T.C. Memo. 2007-93) the Court held that a cover letter sent to the Appeals Officer that accompanied the administrative file was precisely the sort of prohibited ex parte contact that the IRS and Congress wanted to ban. It put the revenue officer's spin on what he thought of the taxpayer, and blatantly advocated a particular result. The IRS held that because there was an impermissible ex parte communication, the Court remanded the case to the IRS Appeals Office closest to the taxpayer's location, for a new CDP hearing with an impartial Appeals officer. (Note: The case mentions several other points claimed by the taxpayer including a hearing site in Oklahoma City when the taxpayer was located in California, the fact that it was only 18 days from the date of initial contact to the hearing date, and the fact that a settlement agreement existed.

### **Roger F. Duronio et ux (T.C. Memo. 2007-90)**

Generally, a distribution from an IRA prior to a taxpayer attaining age 59-1/2 is subject to

a 10-percent additional tax on the amount of the early distribution. There are a number of exceptions to the rule, and one of them is if the funds are used for qualified higher education expenses paid in the year of the early distribution. In *Roger F. Duronio et ux* (T.C. Memo. 2007-90) the taxpayers argued that because money is fungible the taxpayers' December 2001 \$18,000 tuition payment for their son should be deemed to have been funded not in 2001 but in 2002 by the \$19,900 early IRA distribution. The Court did not agree. It held the December 2001 tuition payment may have necessitated the 2002 IRA distribution. However, qualified higher educational expenses paid in a year other than the year of an early IRA distribution do not reduce the amount of the early distribution subject to the 10-percent additional tax. The taxpayers also appear to argue that they guaranteed their son's 2002 \$19,263 student loan and that the taxpayers' loan guarantee should be treated as a \$19,263 payment on their son's educational expenses. Here the Court held that because the taxpayers did not produce credible evidence that they guaranteed the \$19,263 student loan their son obtained in 2002, it did not address the merits of the taxpayers' argument that the alleged loan guarantee should be treated as a payment of their son's educational expenses. Further, the taxpayers have not established that in 2002 they paid any of their son's other educational expenses.

### **Alternative Minimum Tax Reform Legislation.**

According to House Ways and Means Committee Chairman Charles B. Rangel, alternative minimum tax reform legislation is expected to be introduced in June. The anticipated plan would exempt taxpayers earning less than \$250,000; taxpayers earning between \$250,000 and \$500,000 would see a reduced impact.

### **In Estate of Melvine B. Atkinson et al. (T.C. Memo. 2007-89) the estate claimed the IRS abused its discretion in sustaining a proposed levy action against the estate for Federal estate tax liabilities.**

The Court concluded that the IRS did not abuse his discretion by: (1) Failing to take into account information respondent requested of the estate and that the estate failed to produce; and (2) proceeding with the collection hearing despite the estate's lack of files. The Court also noted that the due to questionable investments and other factors including legal fees contesting this very tax deficiency, the estate had already shrunk considerably. The IRS did not abuse its discretion by expeditiously deciding the estate's case.

### **Notice 2007-43 (IRB 2007-22)**

Notice 2007-43 (IRB 2007-22) sets forth interim guidance, pending the issuance of regulations, relating to the new qualified

alternative fuel vehicle (QAFV) refueling property credit ("Refueling Property Credit") under Sec. 30C. The regulations are expected to incorporate the rules set forth in this notice.

### **REG 149856-03 - Section 152**

The IRS has issued proposed regulations (REG-149856-03) under Sec. 152 relating to a claim that a child is a dependent by parents who are divorced, legally separated under a decree of separate maintenance, separated under a written separation agreement, or who live apart at all times during the last 6 months of the calendar year. The proposed regulations reflect amendments under the Working Families Tax Relief Act of 2004 (WFTRA) and the Gulf Opportunity Zone Act of 2005 (GOZA).

### **Revenue Ruling 2007-24 (IRB 2007-21)**

Revenue Ruling 2007-24 (IRB 2007-21) concludes that a taxpayer's receipt of a check issued by an insurance company under a non-qualified annuity contract is treated as a taxable distribution, even if the check is endorsed to a second insurance company for the purchase of a second annuity. The transaction is not characterized as a tax-free exchange because there was no direct exchange or assignment of the original contract.

### **Sec. 7426(a)(1)**

Under Sec. 7426(a)(1), if the IRS levies upon a third party's property to collect taxes owed by another, the third party may bring a wrongful levy action, so long as such action is brought before "the expiration of 9 months from the date of the levy," Sec. 6532(c)(1). In contrast, the limitations period for a tax refund action under Sec. 1346(a)(1) begins with an administrative claim that may be filed within at least two years, and may be brought to court within another two years after an administrative denial. In *EC Term of Years Trust* the IRS levied on a bank account in which petitioner (Trust) had deposited funds because the IRS assumed that the Trust's creators had transferred assets to the Trust to evade taxes. The bank responded with a check to the Treasury. Almost a year later, the Trust and others brought a Sec. 7426(a)(1) action claiming wrongful levies, but the District Court dismissed the complaint because it was filed after the 9-month limitations period had expired. After unsuccessfully pursuing a tax refund at the administrative level, the Trust filed a refund action under Sec. 1346(a)(1). The District Court held that a wrongful levy claim under Sec. 7426(a)(1) was the sole remedy possible and dismissed, and the Fifth Circuit affirmed. The Supreme Court held the Trust missed Sec. 7426(a)(1)'s deadline for challenging a levy, and may not bring the challenge as a tax refund claim under Sec. 1346(a)(1). Section 7426(a)(1) provides the exclusive remedy for third-party wrongful levy claims.

**The IRS has issued final regulations (T.D. 9324) under Sections 401(k), 402(g), 402A, and 408A relating to designated Roth accounts.**

These final regulations provide guidance concerning the taxation of distributions from designated Roth accounts under qualified cash or deferred arrangements under section 401(k). These final regulations will affect administrators of, employers maintaining, participants in, and beneficiaries of Section 401(k) and section 403(b) plans, as well as owners and beneficiaries of Roth IRAs and trustees of Roth IRAs.

**IRS ISSUES - APRIL 2007**

The following information is provided by the IRS as a brief synopsis of some of the issues that were received/closed by the Service during the month of April 2007. These reports can also be accessed from the Tax Professionals page on IRS.gov. The 2006 Closed Issues Sorted by Subject summary is now available on IRS.gov. Please help us to uncover systemic issues with the IRS. If you have experienced any of the issues listed below, or if you have encountered any other issues of a systemic nature please provide feedback to the PSPA Executive Office. Our Cooperation with the IRS Committee meets regularly with IRS and we may be able to bring resolution to your issue.

**Communication and Outreach**

**IMRS 07-0000463 – Products for the Visually Impaired**

**Issue:** Stakeholder would like an index of what is available to the visually impaired on the Digital Talking Books Page and for IRS to communicate tax law updates and other important changes in either CD format, Podcast or other audio means accessible to the visually impaired.

**Response:** Tax law updates are not available in audio format at this time. Information was provided as to the accessible Section 508 compliant file formats.

**IMRS 05-0000064 – IRS Restructuring Causing Taxpayer Burden**

**Issue:** Taxpayers and their representatives are having problems locating an address for sending non-return related forms.

**Response:** Developed and launched website "Where to Send Non-Return Forms (Applications and Payments)" on IRS.gov. Site includes information on topics such as offer in compromise, liens, installment agreements, innocent and injured spouse, application for ITIN, and other information. This site can be found by going to IRS.gov and entering "Where to File" in the search field.

**Electronic Filing**

**IMRS 07-0000383 – Balance Due Notices**

**Issue:** Preparers advise that balance due

notices are being generated when the return is e-filed and a check is mailed shortly afterwards.

**Response:** Because the electronically filed return posts more quickly than a payment via paper check, this is a difficult systemic issue to resolve. The IRS has several controls in place to prevent this from happening during our peak filing season, but there are related issues that prevent year-round implementation. If tax is the only item owed, the taxpayer or tax professional can avoid this problem by using an electronic funds withdrawal (EFW). However, if penalty and interest are due (for example, on a return filed after the regular due date), the EFW does not permit payment of the penalty and interest, so there will still be a notice issued for those amounts. Beginning in processing year 2008, a scheduled enhancement to EFW will enable taxpayers to make penalty and interest payments.

**Electronic IRS**

**IMRS 07-0000455 – Electronic Submission of Potential Tax Scams**

**Issue:** Tax professionals would like the ability to submit information electronically regarding potential tax scams.

**Response:** We truly appreciate the public's assistance in identifying and reporting these items. In an effort to help tax practitioners and taxpayers report fraud, waste, and abuse, the IRS has added a link to the IRS Contact Web page for reporting suspicious e-mails. At the top right-hand side of the IRS.gov home page, select the "I need to ..." option. Click on the arrow in the box and a drop-down menu will appear. Select "Call or contact the IRS." Scroll down to Suspicious eMails, Phishing, and Identity Theft. Tax scams and questionable tax shelters can be reported electronically at <http://www.irs.gov/newsroom/article/0,,id=121584,00.html>. You can also access the page from IRS.gov by entering the keyword "scam", then choosing "Tax Scams – How to Recognize and Avoid them," then "options."

**Forms, Publications, Products**

**IMRS 07-0000499 – Audit Technique Guides**

**Issue:** Stakeholder suggests that if a specific industry has a Web page on IRS.gov, the Web page should include a link to the appropriate audit technique guides. Also, Publication 3780, Tax Information for Small Construction Businesses, directs the reader to the Construction Industry site for the audit technique guide, yet the guide is not posted there.

**Response:** Exam is in the process of updating the construction industry guide and expects this to be completed later this year. When completed, there will only be one guide that will include drywall, masonry, concrete, etc. Links and publications will be reviewed to see if revisions are necessary. A link to the audit technique guides can be

found on the Small Business Web page under industries/professions.

**IMRS 07-0000487 – Form 1099-INT, Interest Income**

**Issue:** Practitioner would like to see the EIN included on Forms 1099-INT issued by the IRS as some software providers require this information when e-filing.

**Response:** The EINs and SSNs on information returns are used for matching purposes, i.e., expenses deducted on one return are matched with income reported on another return. Because the IRS is not taking a deduction for the interest paid, the payor EIN is not necessary on the documents in question.

**IMRS 07-0000398 – Form 1040, Individual Income Tax Return**

**Issue:** Practitioner advises that client had withholding shown on Form 1099-INT and 1099-DIV, Dividends and Distributions. Both the Form 1040 instructions and Publication 17, Your Federal Income Tax For Individuals, instruct the taxpayer to list amounts withheld on Form 1040 but do not require attaching the Form 1099. However, Form 1040 was returned to taxpayer along with Notice 779 requesting the tax return be resubmitted with Form 1099. The instructions should state that 1099 forms with withholding should be attached to the return or, if more information is needed, correspondence should be sent to the taxpayer without returning the entire tax return.

**Response:** Instructions for Form 1040 and Publication 17 are correct in stating that attaching the Form 1099 is not a requirement; therefore those instructions do not need to be revised. We make every effort to look at the taxpayers' returns and attachments so forms are not sent back without cause. We are continuing to develop guidance and educate our employees on proper procedures to ensure that our process will continue to improve.

**IMRS 07-0000376 – Form SS-4, Application for Employer Identification Number**

**Issue:** Practitioner suggests that the Service add a check box line to Form SS-4 to identify money services businesses.

**Response:** Per Counsel, legal restrictions prevent us from using a Title 26, Internal Revenue Code, form (W-4) to collect information on matters related to Title 31, Money and Finance.

**Policy and Procedure**

**IMRS 07-0000502 – Licensed Public Accountant**

**Issue:** A public accountant in Alabama reports difficulties in getting IRS employees to recognize him to practice before the IRS. Have IRS personnel been informed that Alabama public accountants are recognized as authorized representatives before the IRS



just like the Alabama CPAs?

**Background:** In October 2004, the Chief Counsel determined that Pennsylvania law accorded Pennsylvania public accountants (licensed before a change in the law governing the practice of accountancy in that state) the same practice privileges as Pennsylvania certified public accountants, provided they met the same ethical and continuing professional education requirements as Pennsylvania CPAs. OPR is in the process of reviewing this issue on a state-by-state basis. A determining factor involves whether the state had a prior program or designation of public accountant which subsequently transitioned into the CPA process and designation. In some states, public accountants were "grandfathered in," meaning they did not have to take the CPA exam. In contrast, some states maintain a two tier approach, whereby they still have "public accountants" and "certified public accountants".

**Response:** At this time, IRS recognizes public accountants from the following states as authorized representatives:

AL, AK, CA, CO, CT, HI, MT, NH, NJ, NY, ND, OH, PA, RI, SD, TN, VT, WV

We have shared this information with the Collection and Examination organizations for distribution to their employees.

#### **IMRS 07-0000498 – Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return**

**Issue:** Practitioners would like to use private delivery services for overnight mailing of Form 4868 when making payments.

However, they must have the campus street addresses to do so.

**Response:** Instructions for Form 4868 have been revised to include information regarding using private delivery services. If you are not making a payment, you can use certain private delivery services designated by the IRS. These private delivery services already have the correct street addresses for the IRS. If you are making a payment, you must use the U.S. Postal Service, not private delivery service.

#### **IMRS 07-0000491 Taxpayer Surveys**

**Issue:** CPA suggests that taxpayer surveys and notices be provided in both English and Spanish or that the IRS provide a checkbox on returns for taxpayers to indicate whether they would like correspondence issued in another language.

**Response:** The IRS has conducted an extensive assessment of the language needs of taxpayers who have difficulty understanding and speaking English. Historically, assessment of the Spanish speaking population, which included gathering feedback from taxpayers, practitioners, volunteers, and grantees, has shown that they would prefer to receive correspondence in their native language. The IRS has responded to this preference by

developing over 240 written products in Spanish. Recent assessments have indicated that the majority of Spanish speaking taxpayers seek the assistance of tax professionals to prepare their tax return. In light of this finding, the IRS has developed a number of bilingual documents (English and Spanish) to assist the tax professional with interpreting the document, as well as provide the taxpayer with native language information. These documents include notices and customer satisfaction surveys. With the increasing numbers of taxpayers with limited English proficiency, the IRS recognizes the importance of being able to identify the language preference of non-English speaking taxpayers and those who assist them. The agency is considering the impact of providing a check box on the 1040 tax returns, and is assessing other means for identifying language preference. The IRS is committed to providing quality service to all taxpayers and continues to work towards providing non-English speaking taxpayers with the tools and support they need to meet their tax responsibilities.

#### **IMRS 07-0000470 – Split Refunds, Payment for Tax Preparation Services**

**Issue:** Practitioners request the option of designating a portion of their client's refund to pay for tax preparation services.

**Response:** At this time, split refunds are only available between two and three accounts with financial institutions and are not available for taxpayers to direct part of their refund into their tax professional's checking or savings account to pay for tax preparation fees.

The IRS invites stakeholders and partners to tell us about their experience with the 2006 split-dollar refund option - what worked well and what can be improved? We welcome feedback from stakeholders about their experiences assisting their customers and clients during the filing season and will use this feedback to modify and improve the process for 2007 refunds. Stakeholders can comment through their IRS stakeholder relationship manager or via e-mail to [splitrefundcomments@irs.gov](mailto:splitrefundcomments@irs.gov). Although the IRS will read and consider every suggestion or comment, the IRS does not have the capability to respond to individual email messages.

#### **IMRS 07-0000453 – Form 8655, Reporting Agent Authorization**

**Issue:** Practitioners would like to know if the IRS will recognize Form 8655 to discuss taxpayer issues when a practitioner calls and they do not have a Form 2848, *Power of Attorney and Declaration of Representative*.

**Response:** For an individual employee of a payroll provider to represent a client, they must have the client sign a Form 2848. Form 8655 does not authorize the payroll provider to represent their client on any issue before

the IRS. Form 8655 authorizes payroll providers to sign and file returns for Forms 940, 941, 940-PR, 941-PR, 941-SS, 943, 943-PR, 944, 944-PR, 945, 1042 and CT-1. Additionally they can make deposits and payments on: 940, 941, 943, 944, 945, 720, 1041, 1042, 1120, CT-1, 990-C, 990-PF and 990-T. It also authorizes them to receive copies of notices regarding these form(s) and they can provide information to the IRS.

#### **IMRS 07-0000451 – Large Cases**

**Issue:** Practitioner suggests that the IRS provide the contact phone number for large/high dollar cases on taxpayers' notices. In addition, upon entering the ACS system, they would like the ability to indicate the dollar amount of the case to ensure they are directed to the appropriate area. They report that each time they contact ACS on a taxpayer's case, they need to explain the taxpayer's situation to a different person.

**Response:** High dollar accounts are already segregated and handled in a specific environment. When a taxpayer or practitioner calls into any of the toll-free numbers, they are asked to give the SSN or Case Number. If the account is \$100,000 or greater and in Status 22 (the return filed and assessed and a taxpayer delinquency account notice (TDA) issued), the call will be directly routed to a specific site designated for these accounts. In ACS we document the case history to avoid the taxpayer having to repeat their situation to the person who answers the call. In a small environment such as the 100k team, there should be some familiarity with an account if the taxpayer has called several times for assistance.

#### **IMRS 07-0000447 – Rejection of Form 8633, Application to Participate in IRS e-file Program, for Limited Liability Company (LLC) Election Using Same EIN**

**Issue:** Practitioners advise that when completing Form 8633 to update their status from sole proprietor to a single member LLC using their current EIN, they are incorrectly receiving rejection notices. In addition, they have been informed that they must apply for a new EIN and, upon receipt, submit an application to become a new electronic returns originator (ERO).

**Response:** If the taxpayer converts from a sole proprietor to a single member LLC, and does not have employees, they do not need an EIN just because of the LLC election. There is no process available for changing to an LLC with the online e-file application. Because of the current Third Party Data Store (TPDS) program structure, it cannot be done systemically either. There is nothing in the regulations that states a taxpayer cannot be a sole proprietor and an LLC; therefore, these individuals should remain as sole proprietors, provided they are single member LLCs. They may then contact the e-help number at 1-866-255-0654 and tell them they would like the



IRS to know that they are a single person LLC retaining sole proprietor status and they are not required to obtain an EIN. The assistor would then make a comment on the application and it would be entered into the records. ETA is looking into the possibility of systemically allowing an LLC to be input with an SSN and also allowing an update from sole proprietor to an LLC, without an EIN but with an SSN.

**IMRS 07-0000439 – Individual Taxpayer Identification Numbers (ITINs)**

**Issue:** Certifying Acceptance Agents are having difficulty obtaining ITINs.  
**Response:** As in all new systems, we are working to eliminate the bugs in the real-time system. Organizations that have been approved as acceptance agents are given the ITIN operation telephone number for checking the status of applications. Generally, when we conduct research on processing problems, we find that (1) the agent failed to provide the required documents to support the application, and/or (2) they did not complete the W-7 correctly. For assistance, please contact the ITIN program office via e-mail at [itinprogramoffice@irs.gov](mailto:itinprogramoffice@irs.gov) or you may call 404-338-8963.

**IMRS 07-0000390 – Penalty and Interest Calculator**

**Issue:** Practitioners request a penalty and interest calculator be placed on [IRS.gov](http://IRS.gov) - similar to the calculator on the New York State Department of Taxation and Finance's website.  
**Response:** Due to the nature and complexity of interest computations, a calculation tool for federal returns that is similar to what is provided on the NY website could only provide an estimated computation and could not take into consideration the various tax law provisions that may be applicable. Therefore, at this time there is no plan to provide an interest calculation application via [IRS.gov](http://IRS.gov).

**IMRS 07-0000367 – Federal Heavy Highway Vehicle Use Tax**

**Issue:** A state transportation department has raised questions which require guidance, pending issuance of regulations. The organization suggests adding these questions and answers to the Frequently Asked Questions (FAQs) section on the existing Federal Heavy Highway Vehicle Use Tax Web page on [IRS.gov](http://IRS.gov).  
**Response:** We added this information to the existing Frequently Asked Questions regarding Federal Heavy Highway Vehicle Use Tax posted to [IRS.gov](http://IRS.gov), key word: "highway." Please note: FAQs are labeled as "FAQs for Indian Tribal Governments regarding Highway Use Tax." However, the FAQs may be useful for others filing Form 2290, *Heavy Highway Vehicle Use Tax Return*.

**IN PROCESS ISSUES\***

**Communication and Outreach**  
**IMRS 07-0000493 – e-News for Tax Professionals**

**Issue:** Stakeholder would like current as well as past issues of the e-News for Tax Professionals archived on the [IRS](http://IRS.gov) web site.  
**Status:** Coordinating with Communications.

**Electronic Filing/Payment**

**IMRS 07-0000488 – State E-File Coordinators**

**Issue:** The 41 State e-file coordinators should have access to a central point of contact at the e-Help desk in Andover.  
**Status:** Coordinating with Wage & Investment.

**IMRS 07-0000506 – Liability of Electronic Federal Tax Payment System (EFTPS) Batch Provider**

**Issue:** Practitioners state that when registered as an EFTPS Batch Provider, they become liable for the funds paid by clients if the client's bank account lacks sufficient funds for payment.  
**Status:** The liability for insufficient funds remains with the taxpayer, not the batch provider. EFTPS analysts have asked for specific examples of this penalty being imposed on batch providers. Practitioners with case specific information are asked to contact their local Stakeholder Liaison as soon as possible and reference IMRS issue 506.

**E-Services**

**IMRS 07-0000492 – Changes to E-Services**

**Issue:** To increase user-friendliness, the practitioner suggests that the Service provide a listing of error codes and a CD tutorial on how to navigate the system.  
**Status:** Coordinating with ETA.

**Forms, Publications, Products**

**IMRS 07-0000505 – Form W-2**

**Issue:** Stakeholder believes that there is a significant problem with the easy availability of blank Forms W-2 at the Taxpayer Assistance Centers and [IRS](http://IRS.gov) Distribution Centers.  
**Status:** Coordinating with Wage & Investment.

**Policy and Procedure**

**IMRS 07-0000504 – Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, Difficulty in Getting State Payments Certified**

**Issue:** West Virginia practitioner files unemployment tax returns for an Ohio business using his West Virginia address and frequently has problems getting the state payments certified.  
**Status:** Coordinating issue with Governmental Liaison for Ohio.

**IMRS 07-0000490 & 489 – Certifying Acceptance Agent (CAA)**

**Issue:** Certifying Acceptance Agent is concerned about the lack of training provided to CAAs on the ITIN application

process, procedures and requirements and is having difficulties with getting assistance from the ITIN unit.

**Status:** Coordinating with Compliance.

**IMRS 07-0000484 – Taxability of Proceeds from Livestock Sales at County Fairs**

**Issue:** Educational assistance is requested regarding the taxability of proceeds from livestock sales at county fairs and the requirements to issue Forms 1099.  
**Status:** Coordinating with Exam and Counsel.

**IMRS 07-0000483 – Collection Notices**

**Issue:** Practitioner raised the issue of Collection sending out dunning notices for old amounts that had been subsequently changed by another unit of the [IRS](http://IRS.gov) and wonders why the [IRS](http://IRS.gov) computing system cannot scan the affected accounts to make sure all changes to date are captured.  
**Status:** Coordinating with Compliance.

**IMRS 07-0000478 – Complaints against [IRS](http://IRS.gov) Employees**

**Issue:** Practitioner advises that when they have a complaint against an [IRS](http://IRS.gov) employee and they search [IRS.gov](http://IRS.gov), that Publication 1 should be the number one search result for employee complaints.  
**Status:** Coordinating with [IRS.gov](http://IRS.gov) web design team.

**\*This is not a complete listing of "In Process" issues, just a sampling of those recently opened that are currently being worked.**

**NOTE:** This report, as well as previous reports, can be accessed from the Tax Professionals page on [IRS.gov](http://IRS.gov). (The Monthly Overviews are posted for the periods May 2006 through the current month. You can also access the 2006 Closed Issues Sorted by Subject report on the same page.) We invite you to raise your issues/concerns with your local liaison representative. A listing of Stakeholder Liaison (SL) Local Contacts can be found by going to [IRS.gov](http://IRS.gov) and typing "Stakeholder Liaison (SL) Local Contacts" in the search field or by following the link on the IMRS page. This list is also available for downloading.

**Guidance Regarding the Application of Section 409A** Notice 2007-34 (IRB 2007-17) sets forth guidance regarding the application of Section 409A to split-dollar life insurance arrangements. The notice addresses the identification of the types of arrangements subject to Section 409A, including the application of the statutory effective date rules under Section 409A. The notice also includes guidance on bringing such arrangements into compliance with Section 409A, and provides certain related relief under the effective date provisions of the regulations under Section 61 and Section 7875 addressing split-dollar life insurance arrangements.

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