

the **Pennsylvania** Summer 2011  
**Accountant**



The Magazine Of The Pennsylvania Society of Public Accountants

- ✓ *64th Annual Meeting Highlights – June 23-26, 2011 – Gettysburg Hotel*
- ✓ *IRS Representation – Best Practices Seminar – October 20th – Valley Forge*
- ✓ *PSPA Offers RTRP Competency Test Review Course (Gear Up Seminars)*
- ✓ *Save BIG with new Verizon Wireless Discount*



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## A Message From The President



Dear Fellow PSPA Members,

I just returned from the 66<sup>th</sup> Annual National Society of Accountants Meeting.

Six of us represented PSPA at this meeting in Anchorage, Alaska. It was a tough job, but someone had to do it.

One of the speakers was Nina Olson, the IRS National Taxpayer Advocate. She talked about the work going on with the IRS on her part. If her group takes on a problem the IRS must act on it. The other point that was made was regarding budget cuts. This could affect the hotlines, both taxpayer and preparer. In the past getting through to the IRS was a big help, what the future brings we will have to see.

The next speaker was Leann Ruf from the IRS Return Preparer Regulations Implementation Team. We heard from her about the problems they have found and their plans to resolve them, more to come. Only 720,000 people have registered for the PTIN not the 1.5 million they anticipated. Our PTIN registration will be on a calendar year no matter when you first registered.

On another note PSPA received a Certificate of Appreciation for our State Board Monitoring. Both Paul Cannataro and Neil Trama were recognized for the work on the Federal Tax Committee, as well as Randy Brandt for the Leadership Development Program and Richard Brasch for his work as State Director. Gerald Brenneman was appointed our new State Director. Next year this meeting will be in Hawaii, maybe we will see you there. A by-law change was approved making Registered Tax Return Preparers full members.

Well summer is coming to a close; the kids will soon be back in school, weather as well as the leaves will change. The October 15<sup>th</sup> deadline will be upon us in no time.

Seminar season is now. Both PSPA and your local chapters will have the most to offer. PSPA will have seminars on Practitioner Best Practices and with the Pennsylvania Department of Revenue. Please visit our website at [www.pspa-state.org](http://www.pspa-state.org) and register.

I want to thank you for allowing me to serve as your President.

Respectfully Submitted  
Lamont B. Anderson, PA  
PSPA President

*PSPA's 2011-2012 Officers were installed at the 64th Annual Meeting in June at the Gettysburg Hotel*

*Left to Right:  
Frank H. Kelly, EA,  
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**PSPA Members**

# Save BIG

**with Verizon Wireless**

PSPA is pleased to offer PSPA members an extreme cost-savings discount through Verizon Enterprise Center (VEC) for Verizon Wireless services. Through a unique partnership, this program will make available to PSPA members a corporate discount that is normally reserved for large corporations and government agencies. The discount is available for both current and new Verizon Wireless customers, and it includes a 15% monthly discount for data and voice service, a 25% discount on Verizon Wireless accessories as well as immediate rebate offers. Information regarding this program was distributed to members on August 24th via the PSPAeLink – PSPA’s electronic newsletter. All program details and necessary paperwork were included in that publication. Please send an email to: [info@pspa-state.org](mailto:info@pspa-state.org) to request the information or contact us at 1-800-270-3352. Please see page 4 of this Magazine for pricing for the Small Biz Share Plan. We have received an overwhelming response to this program. Just another great reason to be a member of PSPA!



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The PSPA Committee on Cooperation with the PA Department of Revenue will meet once again with representatives of the Pennsylvania Department of Revenue late this coming Fall. This meeting is an opportunity for our membership to identify those issues that affect your practice and your clients on a daily basis. Our agenda includes all facets of state tax as well as technology and administration issues. If you have an issue and/or question that is systemic in nature that you would like to be included in this year’s meeting, please send it to: [info@pspa-state.org](mailto:info@pspa-state.org). Please provide appropriate supporting information and/or documentation.



ADP’s Mary Jane Boyle was an exhibitor at the 64th Annual Meeting. ADP is a Preferred Partner of the PSPA. ADP will provide a free copy of the US Master Tax Guide to those PSPA members attending the Gear Up 1040 seminars this year.

JOIN US ON:



### Gear Up Seminars

**RTRP Competency Exam Review Course**

October 31st & November 1st – Radisson Hotel, Camp Hill

November 2nd and 3rd – Embassy Suites, Valley Forge

Go to [www.pspacpe.com](http://www.pspacpe.com) for more information or to register online



## IRS Releases Specifications for Registered Tax Return Preparer Competency Test

The Internal Revenue Service has finally released the specifications for the competency tests individuals must pass to become a Registered Tax Return Preparer.

The test is part of an ongoing effort by the IRS to enhance oversight of the tax preparation industry. Preparers who pass this test, a background check and tax compliance check as well as complete 15 hours of continuing education annually will have a new designation: Registered Tax Return Preparer.

The specifications identify the major topics that will be covered by the test, which will be available starting this fall. Although individuals who already have a provisional preparer tax identification number (PTIN) from the IRS do not have to pass the exam until Dec. 31, 2013, they may take the exam at any time once it is available.

The test will have approximately 120 questions in a combination of multiple choice and true or false format. Questions will be weighted and individuals will receive a pass or fail score, with diagnostic feedback provided to those who fail.

Test vendor Prometric Inc. worked with the IRS and the tax preparer community to develop the test. The time limit for the test is expected to be between two and three hours. The test must be taken at one of the roughly 260 Prometric facilities nationwide.

To assist in test preparation, the IRS has provided a list of recommended study materials. This list is not all-encompassing, but a highlight of what the test candidates will need to know.

- Publication 17, Your Federal Income Tax
- Form 1040, U.S. Individual Income Tax Return
- Form 1040 Instructions
- Circular 230, Regulations Governing Practice before the Internal Revenue Service (rev. 8/2/11)
- Publication 334, Tax Guide for Small Business
- Publication 970, Tax Benefits for Education
- Publication 1345, Handbook for Authorized IRS e-file Providers
- Form 6251, Alternative Minimum Tax – Individuals
- Form 6251 Instructions
- Form 8879, IRS e-File Signature Authorization

Some reference materials will be available to individuals when they are taking the test. Prometric will provide individuals with Publication 17, Form 1040 and Form 1040 instructions as reference materials.

The fee for the test has not been finalized but is expected to be between \$100 and \$125, which is separate from the PTIN user fee. Currently there is no limit on the number of times preparers can take the test, but they must pay the fee each time. Individuals must pass the test only once.

### Who Must Take the Exam?

Only certain individuals who prepare the Form 1040 series are required to take the test. Attorneys, Certified Public Accountants

and Enrolled Agents (EAs) as well as Public Accountants in Pennsylvania and New Jersey as well as several other states are exempt from testing and continuing education because of their more stringent professional testing and education requirements. Also exempt are supervised employees of attorneys, CPAs, attorneys or EAs who prepare but do not sign and are not required to sign the Form 1040 series returns they prepare and individuals who prepare federal returns other than the Form 1040 series.

Approximately 730,000 return preparers have registered and received PTINs in 2011. Approximately 62 percent do not have professional credentials. The IRS does not yet know how many preparers will fall into other exempt categories, but those individuals will be required to identify themselves when they renew an existing PTIN or obtain a new PTIN beginning in October 2011.

The IRS will notify those preparers who have a testing requirement and provide more details. Once the test is available, preparers who have on-line accounts can use their accounts to schedule a test time and select a Prometric site.

### ARE YOU READY??? PSPA CAN HELP!

PSPA has partnered with Fast Forward Academy – The Best Strategy to Pass the RTRP Exam. PSPA members and their employees can now maximize test preparations while saving time and money preparing for the EA or RTRP exams! Through an exclusive discount program with Fast Forward Academy, the industry's leader in credentialing preparers, you have access to the most complete test preparation aids:



Comprehensive electronic and hard-cover workbook materials that are current with 2011-12 test requirements and information; An unlimited and free test bank where you can access sample test questions to reinforce your preparations. The bank also includes pre-tests and post-tests so you can accurately gauge your preparations and know when you're ready to take the examination; A pass rate of 99.1 percent with over 84 percent of test candidates passing the exam on their first attempt!

Fast Forward Academy is so confident you'll pass, they offer a 100% money back guarantee within 30 days of purchase if you're not completely satisfied! Please check out our web portal on the homepage of our website. This portal provides a lot of extended content regarding the enrolled agent exam including the benefits of becoming an enrolled agent, the CPE requirements, strategies for taking the exam, and how to register to take the enrolled agents exam. If you are going to be in the tax preparation profession, you need a credential and Fast Forward Academy can help. PSPA is offering a Live Gear Up Review Course. See the dates on page three of this magazine. ✓

**PSPA Member  
Appointed to the  
Pennsylvania State  
Board of Accountancy**

The Pennsylvania State Senate unanimously confirmed the reappointment of PSPA member, Alfred L. Whitcomb, PA (South Central Chapter) to serve on the State Accountancy Board. Mr. Whitcomb is pictured here being sworn in at the



Board's July meeting. He was appointed by Governor Corbett earlier this year and will serve a four year term.

**REMINDER - Licensing Biennial  
Expires December 31, 2011 -  
Ethics Requirement Postponed**

December 31, 2011 will mark the end of the current 2-year biennial licensing period for Certified Public Accountants and Public Accountants in Pennsylvania.

Licensees must have 80 hours of CPE, with a minimum of 20 hours in each year. As we have formerly reported, the State Board of Accountancy voted to suspend enforcement of the PA/CPA 4-hour ethics requirement for this period. Licensees will however, need to have 4 hours of ethics for the licensing period that begins January 1, 2012 in order to renew their license for the period that ends December 31, 2013.



Any ethics credits that you may have taken or will take will still qualify for CPE, but these ethics credits will not carry over into the next biennial renewal period. This change does not affect the current Circular 230 ethics requirement for Enrolled Agents.

**PSPA HAS THE ANSWER FOR ALL OF YOUR CPE NEEDS**

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**ACCOUNTING PROGRAMS**

DATE	TITLE	SPEAKERS	LOCATION	SPONSOR	CPE
October 19	Gear Up Accounting Seminar	Gear Up Speakers	Bethlehem, Best Western	Lehigh Valley Chapter	8 Hours A&A
December 8	Gear Up Accounting Seminar	Gear Up Speakers	Springfield, Springfield Country Club	Philadelphia Tri County Chapter	8 Hours A&A

**TAX PROGRAMS**

DATE	TITLE	SPEAKERS	LOCATION	SPONSOR	CPE
September 20	1120/1065/1120S - Jennings Seminars	Bob Jennings Seminars	Woodlands, Wilkes Barre	Northeast Chapter	8 Hours Tax
September 21	Gear Up Business Entities Seminar	Gear Up Speakers	Springfield Country Club, Springfield	Philadelphia Tri County Chapter	8 Hours Tax
September 26 & 27	Gear Up Business Entities Seminar	Gear Up Speakers	Camp Hill, Radisson Penn Harris	Central/South Central Chapters	16 Hours Tax
September 27	PA Department of Revenue Fall Tax Seminar	PA Department of Revenue	Breinigsville Holiday Inn Conference Center	Lehigh Valley Chapter	8 Hours Tax
September 29	PA Department of Revenue Tax Seminar	PA Department of Revenue	Penn State Middletown Campus	PSPA	8 Hours Tax
October 18	Gear Up Business Entities Seminar	Gear Up Speakers	Pittsburgh, Sheraton Four Points, Mars	Western PA Chapter	8 Hours Tax
October 18	PA Department of Revenue Tax Seminar	PA Department of Revenue	Springfield Country Club, Springfield	Philadelphia Tri County Chapter	8 Hours Tax
October 20	Best Practices: Audit & Appeal, Circ 230, Schedule C	Carol Thompson, EA	Crowne Plaza, King of Prussia	PSPA	8 Hours Tax
October 25	State & Local Tax Update from a PA Business Perspective	McNees Wallace & Nurick	Altoona, Altoona Ramada Hotel	PSPA	8 Hours Tax
October 27 & 28	Gear Up Business Entities Seminar	Gear Up Speakers	Treose, Radisson Hotel	Buxmont Chapter	16 Hours Tax
November 10 & 11	Gear Up 1040 Tax Seminar	Gear Up Speakers	Erie, Courtyard by Marriott	PSPA	16 Hours Tax
November 14 & 15	Gear Up 1040 Tax Seminar	Gear Up Speakers	Altoona, Altoona Ramada Hotel	PSPA	16 Hours Tax
November 16 & 17	Gear Up 1040 Tax Seminar	Gear Up Speakers	Springfield Country Club, Springfield	Philadelphia Tri County Chapter	16 Hours Tax
November 16 & 17	Gear Up 1040 Tax Seminar	Gear Up Speakers	Wilkes Barre, Woodlands Resort	Northeast Chapter	16 Hours Tax
November 17 & 18	Gear Up 1040 Tax Seminar	Gear Up Speakers	Pittsburgh, Sheraton Four Points, Mars	Western PA Chapter	16 Hours Tax
November 21 & 22	Gear Up 1040 Tax Seminar	Gear Up Speakers	Harrisburg, Sheraton Harrisburg Hershey	Central/South Central Chapters	16 Hours Tax
December 1 & 2	Gear Up 1040 Tax Seminar	Gear Up Speakers	Treose, Radisson Hotel	Buxmont Chapter	16 Hours Tax
December 7 & 8	Gear Up 1040 Tax Seminar	Gear Up Speakers	Bethlehem, Best Western	Lehigh Valley Chapter	16 Hours Tax
December 12 & 13	Gear Up 1040 Tax Seminar	Gear Up Speakers	Harrisburg, Sheraton Harrisburg Hershey	Central/South Central Chapters	16 Hours Tax
February 1, 2012	Tax Potpourri	Various	Springfield Country Club, Springfield	Philadelphia Tri-County Chapter	8 Hours Tax



# PENNSYLVANIA TAX UPDATE

By Sharon R. Paxton

## PA BUDGET: NO STATE TAX INCREASES FOR 2011-12

On June 30<sup>th</sup>, Governor Corbett signed a state budget reducing Pennsylvania's state government spending by more than \$1 billion. While the tax news was good at the state level, the state funding cuts (e.g., cuts to support for education) may ultimately impact local tax burdens. Following are highlights of interest to Pennsylvania businesses.

- **Capital Stock & Franchise Tax Phaseout:** remains in place. Rate will be reduced from 2.89 mills for 2011 to 1.89 mills for 2012. The tax will be eliminated in 2014.
- **Corporate Net Income Tax:** rate unchanged (9.99%).
- **Sales & Use Tax:** no change in state rate (6%) and no changes to tax base/exemptions. Semimonthly filings replaced by single filing with 50% estimate for current month and true-up for prior month.
- **Personal Income Tax:** rate unchanged (3.07%).
- **R&D Tax Credit:** annual allocation increased from \$40 million to \$55 million.
- **Job Creation Tax Credit:** allocation reduced from \$22.5 million to \$10.1 million.
- **Film Production Tax Credit:** allocation reduced from \$75 million to \$60 million annual cap; 1-year carryforward.
- **Education Improvement Tax Credit:** continues at \$67 million.

The question of a tax or impact fee on natural gas drilling was deferred until the Fall. It is possible that a Fall tax bill could include minor tax revisions in addition to dealing with natural gas issues.

## PHILADELPHIA PROPERTY OWNERS MAY HAVE OPPORTUNITY TO SIGNIFICANTLY REDUCE PROPERTY TAXES

The State Tax Equalization Board recently dropped the Philadelphia Common Level Ratio ("CLR") from .32 to .181. This significant drop means that many properties in Philadelphia may be over-assessed and results in an opportunity for Philadelphia property owners and others responsible for paying Philadelphia property taxes to significantly reduce their bottom line property tax bill by filing an appeal. The Philadelphia appeal deadline is October 1, 2011.

This drop in CLR has enormous significance for Philadelphia property owners and others responsible for paying Philadelphia property taxes. By way of illustration, consider a property that is assessed at \$1,000,000. Last year, using the .32 CLR, the imputed fair market value of this property was \$3,125,000 ( $\$1,000,000 / .32$ ). Now, with this year's .181 CLR applied, the imputed fair market value has jumped to \$5,524,862 ( $\$1,000,000 / .181$ ). That represents almost a 77% increase in imputed fair market value!

If we assume that the property was properly assessed at \$1,000,000 last year, then the fair market value of the property was actually \$3,125,000. Let us further assume that the fair market value remained the same this year. Therefore, using the new CLR of .181, the

appropriate assessed value (the value on which millage rates are applied for determining taxes) for the property should be \$565,625 ( $\$3,125,000 \times .181$ ) rather than \$1,000,000. A timely filed appeal is the only way for a property owner to get an assessed value lowered—which in this example would result in almost a 44% reduction in taxes.

Obviously, it is highly unlikely that a property's value has increased any significant amount—much less 77%—overnight, especially in this economy. Property owners should evaluate the current imputed fair market value of their Philadelphia real estate and consider whether an assessment appeal should be pursued.

## CORPORATE NET INCOME TAX – NONBUSINESS INCOME, FAIR APPORTIONMENT AND UNRELATED ASSET ARGUMENTS REJECTED

In a recent 4-3 decision, Pennsylvania's Commonwealth Court, in *Glatfelter Pulpwood Company v. Commonwealth*, 19 A.3d 572 (Pa. 2011), rejected Glatfelter Pulpwood Company's request to exclude from its Corporate Net Income Tax base the extraordinary gain on its sale of Delaware timberland pursuant to a plan by which the company sought to dispose of most of its timberland holdings. The timberland was part of holdings the company had used to generate 25% of the pulpwood it sold to its parent, a paper manufacturing company. The subsidiary company historically had made pulpwood acquisitions on the open market to provide the other 75% of its parent's pulpwood requirements. The court refused to grant relief on three basic grounds.

## NONBUSINESS INCOME

First, the court rejected the



*Continued on page 8*



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## **Pennsylvania Tax Update**

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company's argument for "nonbusiness income" treatment. Similar to many other states, in Pennsylvania "nonbusiness income" is income other than "business income," which is defined as:

Income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if either the acquisition, the management or the disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations. The term includes all income which is apportionable under the Constitution of the United States.

The company had made only inconsequential sales of timberland prior to adopting its "Timberland Divestiture Plan." Although a series of sales were made under the Plan, the court majority agreed with the company that the sale of Delaware timberland was not a "transaction ... in the regular course of [Glatfelter's] ... business" – referring to the first part of the "business income" definition, traditionally called the "Transactional Test."

However, the court's majority did conclude that the sale met the second part of the "business income" definition – known as the "Functional Test." Here, the majority believed the management and disposition of the Delaware timberland were an integral part of the company's business. The majority distinguished the Pennsylvania Supreme Court's 1994 decision in *Laurel Pipe Line Company v. Commonwealth*, 642 A.2d 472 (Pa. 1994), on the basis that Laurel had liquidated a distinct part of its pipeline holdings, while Glatfelter continued its business and, in the majority's eyes, did not liquidate a part of its business.

Had the majority viewed the sale as part of a liquidation, it would have needed to address changes made by

Act 23 of 2001 – after *Laurel Pipe Line* was decided – which changed the wording of the Functional Test from the conjunctive to the disjunctive, and added the "apportionable under the Constitution" catchall language to the "business income" definition. A footnote in the majority opinion, however, suggests that the changes would likely yield a different result if facts similar to *Laurel Pipe Line* again come before the court.

Since the three dissenters did not write a dissenting opinion, it is not possible to know whether they disagreed with the majority's nonbusiness income analysis.

### **FAIR APPORTIONMENT**

One suspects, however, that the dissenters may have taken issue with the majority's fair apportionment analysis under the Commerce Clause and Due Process requirements – the company's second argument. The most problematic fact in this case is that, taken together, Delaware and Pennsylvania taxed 142% of Glatfelter's income. Without the gain from sale of the Delaware timberland, the company realized a loss. Delaware taxed 100% of the gain on the land – which one could argue was fair because that state provided various legal, environmental and other protections to the land holding. Pennsylvania, however, attempted to impose a tax of more than \$2 million based on a gain from the sale of property to which it arguably provided few or no benefits and protections.

The majority cited to the four-prong test set out in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), and held that the tax passed muster under the fourth prong of the *Complete Auto* test (which requires that the tax be "fairly related to the services provided by the state") because Pennsylvania hosted the infrastructure used by Glatfelter to deliver all its pulpwood - thereby providing services for which it could fairly ask compensation by taxation. The majority's analysis, however, failed

to address the fact that Pennsylvania provided no services to the Delaware land, itself, and by taxing 42% of the gain on sale of that land, it arguably imposed a tax out of all reasonable proportion to the benefits provided by the Commonwealth.

### **UNRELATED ASSETS**

Glatfelter also argued for relief under Pennsylvania's "Multiformity and Unrelated Assets Doctrine." This doctrine has some similarities to the Unitary Business doctrine. But, since Pennsylvania is a separate-company state, the PA doctrine looks only at the activities and assets of the company being taxed by the Commonwealth. The doctrine excludes lines of business which are not operationally integrated with the business activities conducted by the company within the state, and excludes investments and other assets which are not used in the integrated business conducted in whole or in part in the state. The court majority rejected this argument because Glatfelter had used its timberland holdings as part of its integrated pulpwood production and acquisition business.

Glatfelter has filed an appeal with the Pennsylvania Supreme Court.

### **PAYMENT FOR USE OF COIN-OPERATED AIR VENDING MACHINE NOT SUBJECT TO SALES TAX**

In *Air-Serv Group, LLC v. Commonwealth*, 18 A.3d 448 (Pa. Cmwlth. 2011), a three-judge panel of the Commonwealth Court ruled, with one dissent, that charges for the use of coin-operated air vending machines are not subject to sales tax. The court concluded that the air dispensed from such a machine does not constitute "tangible personal property" and that the process of using a vending machine to pump air is not a taxable service.

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



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# the Pennsylvania Accountant

## Get it Right the First Time: Independent Contractor vs. Employee Status

By Andrew G. Poulos

How does a business determine if its workers are employees or independent contractors? This distinction is not as simple as most may think.

The old adage of “*My workers are subcontractors because they pay their own taxes,*” is not one of the 20 questions that the IRS or state labor agencies use to determine worker classification – and that defense would not ever carry any weight in an employment audit. In an era where worker misclassification and due diligence requirements are at an all-time high, accounting professionals must understand all the complexities. Improper classification not only carries a huge burden on the business, but can also have a significant impact on the worker.

If the IRS determines employees were erroneously classified as independent contractors, the IRS may notify the workers that they are not entitled to deduct their business expenses from gross income on Schedule C and/or that they were not entitled to contribute to a retirement plan

because they are not self-employed. When the IRS prohibits business expense and deduction claims for contributions to self-employed retirement plans, it can be very costly to the worker.

In addition, when a business fails to properly classify its worker as employees, these individuals are unable to participate in benefit programs, such as health insurance provided by the employer. This issue, which usually arises after the fact, can catch a worker by surprise and put them in a predicament that oftentimes they are not prepared to resolve.

Yet, the consequences and impact on the business are far greater than those for the misclassified worker. In most cases, businesses categorize workers incorrectly due to lack of knowledge and understanding of the guidelines. However, in some cases, the misclassification is clearly willful and negligent. There are only so many employments

*Continued on page 12*



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## Get it Right the First Time

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audits the IRS and state labor agencies can conduct, but should a business that is negligent go through an audit, the consequences can be quite severe.

For example, a willfully careless business that has its workers misclassified will not only be responsible for the tax liability, the penalty for improper classification and the penalty for failure to file returns, but will also be responsible for the 100% penalty for willful failure to collect tax. By the time the audit case is closed, a business *may owe three times as much just for improperly classifying their workers.*

Most times, employment classification issues occur at the state level. In today's tough economic times, workers will apply for unemployment compensation, which triggers the state unemployment office to conduct an investigation when it discovers that the business doesn't have the worker classified as an employee. Other times, employment classification issues are triggered by workers' compensation claims, or complaints to the state unemployment board about a work-related situation. As I always say, it's the least expected situation that can get a business under fire for worker misclassification.

While it's quite clear what the consequences are to the business and the worker for improper classification, it isn't always clear how a business determines if its workers are employees or independent contractors. The key issue that the IRS asks about is whether the business had "control" over the worker. Control is the clear-cut word, but how control is determined is not so clear cut.

In order to determine if a business had control, the IRS will generally consider 20 questions in making the final determination of worker classification. Keep in mind that not all these inquiries apply in every worker classification audit. Often, the IRS will use only those questions that apply, depending on the industry the business is operating in. Of these 20 questions, here are nine that most businesses can use to make a fairly safe and correct classification of their workers:

1. Is the worker required to comply with instructions given by the business?

2. Does the business provide the worker with training?
3. Is there a continuing relationship between the business and the worker?
4. Does the business provide set hours of work for the worker?
5. Is the worker required to have substantial hours towards the needs of the business?
6. Who furnishes the worker's tools and materials to conduct the work?
7. Will the worker realize a profit or loss from the services provided to the business?
8. Does the worker work for more than one business at a time?
9. Does the worker receive payment by the hour, week or month?

When conducting worker classification audits, these are some of the questions that are considered by the IRS and state labor agencies. Worker classification audits have a case-by-case basis, so the degree of importance given to the answers of each of the 20 questions will vary depending on the business and its situation.

Remember, too, that a business will be in an industry

where IRS or court case rulings on worker's status exist and set precedence. Therefore, it's not necessarily *where* the business thinks their worker's should be, but rather what prior case rulings dictate.

Helping your clients understand the guidelines and properly classifying their workers can prevent an audit, as well as save the business significant money in penalties and interest. In addition, it can keep you, as the accounting professional, out of the hot seat during these

challenging times when the IRS is mandating higher due diligence requirements. There is nothing better than getting it right the first time!

### About the Author

Andrew G. Poulos, EA, is principal of Poulos Accounting & Consulting, Inc., in Atlanta, Ga., where he focuses working with tax clients and representing clients before the IRS. Andrew is the producer of the QuickBooks Ultimate Lesson Guide, a 16-hour DVD series teaching other accounting professionals and small business owners QuickBooks basics. Contact him at [www.poulosaccounting.com](http://www.poulosaccounting.com). ✓





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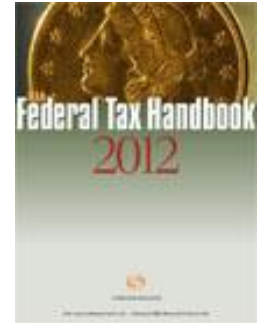


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## **CORNER**

### ***Pennsylvania Department of Revenue Mandates Electronic Filing of Corporate Tax Reports - RCT-101***

The PA Department of Revenue has issued an electronic filing mandate of corporate tax reports – RCT 101 for the 2011 tax year. All preparers who file 50 or more Pennsylvania Corporate Tax Reports are subject to the mandate.

PSPA has been further advised that for Pennsylvania corporate reporting purposes, SMLLCs and LLCs are defined as “corporations” and are required to annually file the PA Corporate Tax Form RCT-101. Unless the entity type is specifically exempted by PA statute not to be a corporation by definition, SMLLCs/LLCs are to be INCLUDED and counted toward measuring 50 corporate report filings. Thank you to David Zalles, Philadelphia Tri-County Chapter for obtaining this clarification from the Department.

The penalty for failure to follow the mandate is 1% of the tax due, with a \$500 maximum penalty. Practitioners should refer to the Pennsylvania Bulletin No. 11-4725 for additional information.

### ***IRS Gives Truckers Three-Month Extension; Highway Use Tax Return Due Nov. 30***

The Internal Revenue Service advised truckers and other owners of heavy highway vehicles that their next federal highway use tax return, usually due Aug. 31, will instead be due on Nov. 30, 2011.

Because the highway use tax is currently scheduled to expire on Sept. 30, 2011, this extension is designed to alleviate any confusion and possible multiple filings that could result if Congress reinstates or modifies the tax after that date. Under temporary and proposed regulations filed today

in the Federal Register, the Nov. 30 filing deadline for Form 2290, Heavy Highway Vehicle Use Tax Return, for the tax period that begins on July 1, 2011, applies to vehicles used during July, as well as those first used during August or September. Returns should not be filed and payments should not be made prior to Nov. 1.

To aid truckers applying for state vehicle registration on or before Nov. 30, the new regulations require states to accept as proof of payment the stamped Schedule I of the Form 2290 issued by the IRS for the prior tax year, ending on June 30, 2011. Under federal law, state governments are required to receive proof of payment of the federal highway use tax as a condition of vehicle registration. Normally, after a taxpayer files the return and pays the tax, the Schedule I is stamped by the IRS and returned to filers for this purpose. A state normally may accept a prior year's stamped Schedule I as a substitute proof of payment only through Sept. 30.

For those acquiring and registering a new or used vehicle during the July-to-November period, the new regulations require a state to register the vehicle, without proof that the highway use tax was paid, if the person registering the vehicle presents a copy of the bill of sale or similar document showing that the owner purchased the vehicle within the previous 150 days.

In general, the highway use tax applies to trucks, truck tractors and buses with a gross taxable weight of 55,000 pounds or more. Ordinarily, vans, pick-ups and panel trucks are not taxable because they fall below the 55,000-pound threshold.

For trucks and other taxable vehicles in use during July, the Form 2290 and payment are, under normal circumstances, due on Aug. 31. The tax of up to \$550 per vehicle is based on weight, and a variety of special

rules apply to vehicles with minimal road use, logging or agricultural vehicles, vehicles transferred during the year and those first used on the road after July.

Last year, the IRS received about 650,000 Forms 2290 and highway use tax payments totaling \$886 million.

### ***New PA Department of Revenue Tax Practitioners E-Hotline Now Available***

For many years the PSPA has requested that a dedicated *Practitioner's Hotline* (similar to what is currently offered by the IRS) be established by the Department of Revenue. The intention of the hotline would be to provide a direct conduit for tax practitioners to communicate with Revenue to maximize the efficiency of resolving taxpayer/client issues. PSPA has repeatedly requested such a hotline at each of our annual Q&A meetings held each Fall; we gave legislative testimony in April 2011 regarding the need for a dedicated hotline for practitioners; and those of you who attended our annual *Day at the Capitol* participated directly in the exchange with Secretary of Revenue, Dan Meuser regarding the need for the hotline.

The Department has recently taken a first step in this regard by establishing an E-hotline (email system) for practitioners, and while it may not be perfect, we are pleased to have had an impact in the initiation of this important and much needed communication vehicle.

This system will allow Revenue officials to address electronically submitted inquiries in a more timely and efficient manner for both the department and the practitioner community. The e-hotline is accessible through the Online Customer Service Center at [www.revenue.state.pa.us](http://www.revenue.state.pa.us).

Practitioners simply need to select “*Submit a Question*” and register for

an account to access the system. Once registered, correspondence can be submitted by returning to the “Submit a Question” tab, then selecting “Tax Practitioners” from the bottom of the “Tax Category” drop-down menu appearing at the top of the message window.

Department representatives will respond to Tax Practitioner email submissions within two business days. Electronic attachments can be included with emails, subsequent inquiries may be submitted similar to back-and-forth email threads and practitioners seeking to speak to a representative by phone can make such a request via the dedicated email system. To request such a call-back, a practitioner should access the e-hotline, selecting the “Tax Practitioner” option from the drop-down menu, then provide a name, telephone number, reason for the call and time of day that would be convenient for a representative to contact the practitioner by phone.

The Department welcomes your input regarding the hotline from practitioners and taxpayers. If you have any comments please forward them to the PSPA Committee on Cooperation with the Pennsylvania Department of Revenue at: [info@pspa-state.org](mailto:info@pspa-state.org). We will be sure to include all comments, suggestions and feedback to the Department officials when we meet with them later this year.

### **Social Security Number Randomization**

The Social Security Administration (SSA) is changing the way Social Security Numbers (SSNs) are issued. This change is referred to as “randomization.” The SSA is developing this new method to help protect the integrity of the SSN. SSN Randomization will also extend the longevity of the nine-digit SSN nationwide.

The SSA began assigning the nine-digit SSN in 1936 for the purpose of tracking workers’ earnings over the course of their lifetimes to pay benefits. Since its inception, the SSN has always been comprised of the three-digit area number, followed by the two-digit group

number, and ending with the four-digit serial number. Since 1972, the SSA has issued Social Security cards centrally and the area number reflects the state, as determined by the ZIP code in the mailing address of the application.

There are approximately 420 million numbers available for assignment. However, the current SSN assignment process limits the number of SSNs that are available for issuance to individuals by each state. Changing the assignment methodology will extend the longevity of the nine digit SSN in all states. On July 3, 2007, the SSA published its intent to randomize the nine-digit SSN in the Federal Register Notice, *Protecting the Integrity of Social Security Numbers* [Docket No. SSA 2007-0046].

SSN randomization will affect the SSN assignment process in the following ways:

- It will eliminate the geographical significance of the first three digits of the SSN, currently referred to as the area number, by no longer allocating the area numbers for assignment to individuals in specific states.
- It will eliminate the significance of the highest group number and, as a result, the High Group List will be frozen in time and can be used for validation of SSNs issued prior to the randomization implementation date.
- Previously unassigned area numbers will be introduced for assignment excluding area numbers 000, 666 and 900-999.

These changes to the SSN may require systems and/or business process updates to accommodate SSN randomization.

If you have any questions regarding SSN randomization or its possible effects to your organization, please see the related Frequently Asked Questions or email your question(s) to [ssn.randomization@ssa.gov](mailto:ssn.randomization@ssa.gov). The Social Security Administration (SSA) is changing the way Social Security Numbers (SSNs) are issued. This change is referred to as “randomization.” The SSA is developing this new method to help protect the integrity of the SSN. SSN Randomization will also extend

the longevity of the nine-digit SSN nationwide.

### **Publication 1586 - Missing and Incorrect Name/TINS**

The IRS has released Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs. The publication provides the information needed to avoid penalties for information return documents that are filed with missing or incorrect taxpayer identification numbers (TINs), describes the actions that must be taken or should have been taken to solicit (request) a TIN, and explains the requirements for establishing reasonable cause.

### **IRS Offers Filing and Penalty Relief for 2010 Estates; Basis Form Now Due Jan. 17; Extension to March Available for Estate Tax Returns**

The Internal Revenue Service announced that large estates of people who died in 2010 will have until early next year to file various required returns and pay any estate taxes due. In addition, the IRS is providing penalty relief to certain beneficiaries of these estates on their 2010 federal income tax returns.

This relief is designed to give large estates, normally those over \$5 million, more time to comply with key tax law changes enacted late last year. Revised versions of the estate tax forms are now available on [IRS.gov](http://IRS.gov), and the carryover basis form will be released this fall.

The IRS is providing the following relief:

Large estates, opting out of the estate tax, now will have until Tuesday, Jan. 17, 2012, to file Form 8939. This special carryover basis form, required of estates making this choice, was previously due on Nov. 15, 2011. Because this is a change in the specified due date rather than an extension, no statement or form needs to be filed with the IRS to have this new due date apply.

2010 estates that request an extension on Form 4768 will have until March 2012 to file their estate tax returns and pay

*Continued on page 22*



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## **NSA State Director's Message**



I would like to begin by thanking the PSPA membership for my endorsement as Pennsylvania's ASO representative to NSA. Based upon your

endorsement, I was elected to a two year term as Pennsylvania's State Director by the NSA membership at the NSA Convention held last month in Anchorage, Alaska. I would also like to extend a special thank-you to Past-State Director Richard Brasch for his six years of dedicated service while in this position and I know I can count on him to provide me with needed advice once I come to fully realize what I have signed up for. The relationship between PSPA and NSA will continue to be strengthened so long as communication and cooperation remain a high priority for each society. I look forward to serving the combined memberships of both PSPA and NSA.

The NSA business sessions were held on both Wednesday August 17th and Thursday August 18th and PSPA had the following members in attendance: District Governor W. Raymond Bucks, President Lamont Anderson, President Elect Frank Cellini, Secretary Frank Kelly and myself. President Donny Woods presided over the convention and gave a summary of the past year achievements during his tenure.

There was one contested race for 2nd Vice-President which concluded with Steve Hanson (MN.) being elected on the first ballot. Elected President was Sharon Cook (MO), First Vice President Harlan Rose (WI), and Secretary/Treasurer Brad Thompson (AR). District Governors from "odd" numbered districts along with State Directors were also elected with no contested races.

On behalf of PSPA, President Lamont Anderson presented a \$1,000 check to the NSA Scholarship Fund in memorial to Robert Zaleski.

IRS Tax Advocate Nina Olson spoke on the second afternoon and gave an update of various changes occurring within IRS. The Service's CAED II System (tape system) is being replaced by a "new" system which will be capable of providing daily adjustments and four day refund turn-around rather than the current weekly posting routine. She also spoke about changes occurring with the Offers in Compromise Program which will change it from its current three city-based approach to a field representative program. More automated notices are in the tax preparers' future due to the 5% decrease in the 2011-2012 IRS budget. At the conclusion of her presentation, President Woods named Ms. Olson as NSA's Person of the Year for her dedication in servicing the needs of both taxpayers and tax professional.

Leann Ruf, IRS Return Preparer Regulations, also spoke on the second afternoon concerning the RTRP program. To-date over 722,000 preparers have registered and have paid the \$64.25 annual fee. She stressed to the attendees that, in addition to the compliance costs, the annual fee is going to be used to educate the public as to who is qualified as a tax preparer as well as fund a referral unit to report problem preparers. The RTRP exam is expected to begin in October 2011 and will be a minimum competency exam administered at nationwide Prometric Testing Centers for an estimated fee of between \$100-125. She also reported that the first round of 100,000 notices sent to the unregistered population

represented the 2010 tax return preparers that lacked a PTIN. Another 900,000 reported as "paid preparers" cannot be properly identified for mailing purposes.

The Friday August 19th session began with an Awards breakfast immediately followed by the NSA Scholarship Auction. PSPA received an award for its monitoring of the State Board of Accountancy and both Lamont Anderson and Frank Kelly received NSA Leadership Development awards for their successful completion of its two year course. PSPA President Anderson was kept quite busy collecting individual awards for those PSPA members serving on NSA Committees who were not in attendance (Brasch-Membership; Brandt-Affiliated Society Relations; Cannataro and Trama-Federal Tax). Congratulations to all!

The Convention concluded on Friday evening with the installation of the new Officers, District Governors and State Directors.

My new duties as State Director are still in the start-up phase and so I encourage any and all members to feel free to contact me concerning any area of NSA/PSPA representation that I may have missed or that you feel needs to be addressed. I welcome any input that you may have.

Respectfully Submitted,

Gerald L. Brenneman, CPA







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**Annual Fees:** \$ \_\_\_\_\_ **Yr. End:** \_\_\_\_\_

Number of billable employees (with years of experience):

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

\*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 percentages 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*	
<b>Total</b>	<b>100%</b>

\*\* Call for a supplement

CLAIMS HISTORY (within the past five years):  None

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

**Please return to** Custom Brokers Insurance, 3659 Green Road Suite 209, Beachwood, OH 44122  
 Tel: 216-831-0333 · Fax: 216-831-6819 · Email: jnovak@cbioh.com · http:www.cbioh.com

**PSPA to Offer IRS Representation Course  
October 20, 2011 - Valley Forge**

According to a statistical report recently released by the *Treasury Inspector General for Tax Administration*, 1 out of every 90 taxpayers was examined by the IRS in fiscal year 2010. The report shows that this figure is up more than 23% from fiscal year 2006 (IRS examined 1 out of every 103 individual tax returns).

The best defense is a good offense – prepare yourself. PSPA will offer a third in its series of IRS Representation seminars. Each course is uniquely different, with new speakers and diverse areas of focus, and they have received rave reviews for the past two years. This year’s program is being held on Thursday, October 20, 2011 at the Crowne Plaza Hotel in Valley Forge, PA. The speaker for this year’s event is speaking veteran Carol W. Thompson, Enrolled Agent.

**CASES AND RULINGS - THE ORIGINALS**

This class will review six of the greatest court cases ever heard – in their original form. No tax preparer should be without these cases in their arsenal for audits and appeals; and to explain deductions and depreciation to their clients. The cases begin in the 1920’s, and span 75 years of tax law, including “The Big 6” - *Whiteco*; *Fox Photo*; *Welch*; *Hradesky*; *INDOPCO*; and *Cohan*.

**AUDIT PREPARATION**

The IRS finally returned to *compliance* after years of restructuring and collecting billions from abusive shelters, scams, and other fraudulent enterprise. While off chasing the billionaires, local compliance fell victim, and taxpayers caught on. Crooked tax preparers worked to steal millions from the government (and their clients) and the tax gap got wider.

Add to this the proliferation of “do-it-yourself” tax programs with ads promising to fill out all of the correct

forms, and we headed into a tax disaster of major proportions. We will look at audit defense preparation. What do you need to know about your client, your client’s business, and what deductions are likely to be done incorrectly. The bonus – knowing how to prepare for an audit increases your skills in preparing your client’s original returns.

**SCHEDULE C**

In today’s economy, more taxpayers are finding ways to be self-employed. With the changes in the economy, jobs are being lost, and people need additional money to live. More people are looking for ways to pay their bills, and many of these taxpayers are turning to some type of self-employment to support themselves or supplement their income. This seminar is designed to cover small business issues, such as:

- Redefining income and expenses for small businesses;
- Record keeping for small business owners;
- Assets vs. expenses (is it depreciable, or is it a *supply?*);

- Assets: bonus depreciation, Section 179, and more;
- New checklists for practitioners;
- And more...

**Ethics - 2 hours**

Focus of this professional ethics segment will be on the massive rewrites of Circular 230 that began in 2008, and are still going on today. The new sections tighten the noose around the necks of tax preparers gone wild. Penalties have been raised and made applicable to all compensated tax preparers. Sanctions have been increased and the IRS has more tools to go after “bad” preparers. This all-new Circular 230 is a *must-read* for anyone in the tax business. We will review important changes, the hottest scams, the biggest penalties, the worst preparers and much more.

The course fee is economically priced for members at just \$155 for registrations received by October 1<sup>st</sup>. The rate for registrations received after October 1<sup>st</sup> is \$180. These rates reflect a reduction over last year’s course! ✓





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Deluxe Edition <i>Plus</i>	x	<del>\$79</del> <b>\$75</b>	= \$
1040 Edition	x	<del>\$45</del> <b>\$42</b>	= \$
1040 Edition <i>Plus</i>	x	<del>\$53</del> <b>\$50</b>	= \$
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Planning Strategies Edition	x	<del>\$45</del> <b>\$42</b>	= \$
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TheTaxLibrary Series Online Tax Research Library	Quantity	Price	Cost
WebPortal (1st User)	x	<del>\$99</del> <b>\$92</b>	= \$
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All States Add-On (Per User)	x	<del>\$42</del> <b>\$37</b>	= \$

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Business Entities	x	<del>\$42</del> <b>\$39</b>	= \$
Advanced Business Topics	x	<del>\$42</del> <b>\$39</b>	= \$
Circular 230 Ethics	x	<del>\$34</del> <b>\$31</b>	= \$
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ClientTaxTools Series Client Booklets (30 pack)	Quantity	Price	Cost
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### STEP 2 Total Quantity and Cost Columns

Total Quantity of All Items	<b>A</b>	Total Cost	<b>B</b>
-----------------------------	----------	------------	----------

## Calculate Your Quantity Discount Here

### STEP 3 Calculate Quantity Discount (Total Quantity × Quantity Discount Per Item)

Total Quantity of All Items (from STEP 2)	Quantity Discount Per Item						Quantity Discount
	1 Item	2 Items	3-5 Items	6-10 Items	11-20 Items	21+ Items	
<b>A</b> (items) ×	\$0.00/ item	\$3.00/ item	\$4.00/ item	\$5.00/ item	\$6.00/ item	\$7.00/ item	= \$ <b>C</b>

### STEP 4 Calculate Shipping & Handling Charge (Total Quantity × S&H Charge Per Item)

Total Quantity of All Items (from STEP 2)	Shipping & Handling (S&H) Charge Per Item						Shipping & Handling Charge*
	1 Item	2 Items	3-5 Items	6-10 Items	11-20 Items	21+ Items	
<b>A</b> (items) ×	\$5.75/ item	\$4.75/ item	\$4.25/ item	\$3.75/ item	\$3.25/ item	\$2.25/ item	= \$ <b>D</b>

\*Exclude TheTaxLibrary Products. Please call for international orders.

### STEP 5 Calculate Order Cost (Total Cost – Quantity Discount + S&H Charge)

Total Cost (from STEP 2)	Quantity Discount (from STEP 3)	Shipping & Handling Charge (from STEP 4)	Order Cost
<b>B</b>	- <b>C</b>	+ <b>D</b>	= \$

### STEP 6 Finalize Your Order

Sales Tax	MN residents add 7.275% (Order Cost from STEP 5 × 0.07275)	= \$
Order Total	Order Cost (from STEP 5) + Sales Tax	= \$

### 2011 ORDER FORM

### MAIL CODE

**3 9 5**

Customer # \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_  
(If P.O. Box, please include physical address)

City, State, Zip \_\_\_\_\_

Email \_\_\_\_\_  
(Needed for order and shipping confirmation)

Day Phone \_\_\_\_\_ Billing Zip \_\_\_\_\_  
(If different, needed for credit card orders)

### PAYMENT OPTIONS Remember to include credit card number & expiration date.

Credit Card:  MasterCard  Discover  Visa  American Express

Expiration Date \_\_\_\_\_

3-Digit Security Code (optional) \_\_\_\_\_  
AmEx (4 digits)

Your credit card will be charged separately for each shipment.

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Orders are shipped first-in, first-out *starting* on the start ship date of the product.

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Toll Free: 866-919-5277  
Local: 952-746-5276  
Fax: 952-746-5278

## **Practitioner's Corner**

continued from page 16

any estate tax due. Normally, a six-month filing extension is automatically granted to estates filing this form, but extensions of time to pay are granted only for good cause. As a result, most 2010 estates that timely file Form 4768 will have until Monday, March 19, 2012 to file Form 706 or Form 706-NA. For estates of those dying late in 2010 (after Dec. 16, 2010 and before Jan. 1, 2011), the due date is 15 months after the date of death. No late-filing or late-payment penalties will be due, though interest still will be charged on any estate tax paid after the original due date.

Special penalty relief is provided to many individuals, estates and trusts that already filed a 2010 federal income tax return, or obtained an extension and plan to file by the Oct. 17, 2011 extended due date. Late-payment and negligence penalty relief applies to persons inheriting property from a decedent dying in 2010, who then sells the property in 2010 but improperly reports gain or loss because they did not know whether the estate made the carryover basis election. Details are in Notice 2011-76 and are available at IRS.gov.

### **Updated Circular 230**

The updated Circular 230, is now available at: <http://1.usa.gov/circ230>. The new regulations reflect the new return preparer oversight program and many other changes. Since every paid tax preparer will be affected by the changes, we recommend you review it.

### **Interest Rates Decrease for Fourth Quarter**

The IRS has announced (Rev. Rul. 2011-18 IRB 2011-39) that interest rates will decrease for the calendar quarter beginning Oct. 1, 2011. The rates will be: three (3) percent for overpayments [two (2) percent in the case of a corporation]; three (3) percent for underpayments; five (5) percent for large corporate underpayments; and zero and one-half (0.5) percent for the portion of

a corporate overpayment exceeding \$10,000.

### **IRS Issues Regs Regarding New Form 990**

The regulations make revisions to the regulations to allow for new threshold amounts for reporting compensation, to require that compensation be reported on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction. The final regulations also eliminate the advance ruling process for new organizations, change the public support computation period for publicly supported organizations to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting. All tax-exempt organizations required to file annual information returns are affected by these regulations.

### **Small Business Health Care Tax Credit**

The IRS has announced (IR-2011-90) a new round of outreach to small businesses and practitioners about the small business health care tax credit. Small employers that pay at least half of the premiums for employee health insurance coverage under a qualifying arrangement may be eligible. The credit is targeted at businesses that employ 25 or fewer workers with average income of \$50,000 or less.

### **State & Federal Disaster Relief Announced**

As this issue went to press, IRS was in the process of announcing tax deadline relief for counties in states affected by Hurricane Irene and Tropical Storm Lee. Please review the most up to date information at <http://www.irs.gov/newsroom/article/0,,id=108362,00.html> or go to [www.irs.gov](http://www.irs.gov) and type "disaster relief" in the search box.

PA, NJ, and NY have also announced relief similar to IRS. Go to the PSPA website at [www.pspa-state.org](http://www.pspa-state.org) for links.

The staff and Board of Directors of PSPA hopes all of our members and their

families came through the storm with minimal damage.

### **Horse Breeding Hobby Loss Victory**

Winning a fight with the IRS over hobby losses is generally tough, even more so when the activity is horse breeding. But in *Mark E. Blackwell et ux.* (T.C. Memo. 2011-188) the taxpayer did just that. The taxpayers had a long string of losses but the Court looked at all the factors and concluded:

- The taxpayers carried on the horse activity in a reasonably businesslike manner, keep reasonably good books and consulted experts and terminated the activity in light of the losses.
- The taxpayers had expertise in business management (the husband) and in horses (the wife).
- The time, effort and financial resources they invested in the activity were not indicative of a hobby.
- They had an expectation that the horses would appreciate in value.
- They had success in other activities and were committed to the horse activity.
- While the losses the taxpayers sustained were substantial, much of the losses were realized in the startup phase.
- An opportunity to earn a substantial ultimate profit in a highly speculative venture may be sufficient to indicate that an activity is engaged in for profit. The taxpayers convinced the Court they had an opportunity to earn a profit.
- While the taxpayers had substantial wealth not related to their horse activity, in light of the minimal recreational aspects of the taxpayers' horse activity, the Court did not regard the taxpayers' wealth as indicative of a nonprofit objective for the taxpayers' horse activity.
- Although the wife had a lifelong interest in horses, the facts did not indicate that the taxpayers' horse activity was motivated or driven by personal pleasure alone. ✓





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*If you would like to submit an article for publication please contact the PSPA Executive Office at 1-800-270-3352 or (717) 737-4439 for submission deadlines and for a copy of the author guidelines.*