

the **Pennsylvania** Winter 2011  
**Accountant**



The Magazine Of The Pennsylvania Society of Public Accountants



- ✓ *Get the Most Out of Your PSPA Membership*
- ✓ *Pennsylvania Department of Revenue Answers Your Questions*
- ✓ *IRS Recognizes Problems with PTIN Registrations*

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## A Message From The President

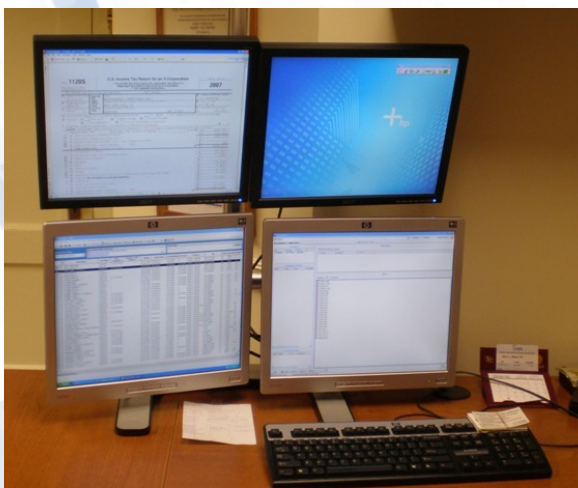


I am writing this message just after completing visits to the PSPA chapters. It was great to see so many members attending these meetings and I thoroughly enjoyed meeting all of you. It is my wish that all members had the opportunity to expand their knowledge about this organization as I have done throughout this past year. Unfortunately most of us have limited exposure to the many things that PSPA does outside of our individual chapters. In this message I would like to bridge that gap by educating you on the many things that PSPA does that often go unnoticed.

It is hard to be anything but proud of how far PSPA has advanced in recent years, and anything but excited about our future. Our membership is strong and has actually enjoyed growth in a time when many organizations are struggling to retain their membership base. You may not be aware of this, but PSPA is one of the strongest of the NSA affiliate organizations in the entire country. We set the tone for others to emulate. This success is the result of the work of many people, not the least of which is our staff. Those of you who attended a Gear Up 1040 Seminar undoubtedly met our Executive Director, Sherry DeAgostino. Sherry's experience and expertise has been the driving force behind our success. All of our marketing efforts for both membership recruitment and retention are the responsibility of our Executive Office. Our staff is committed to the advancement of the PSPA on all levels. They are quick to answer any questions you may have regarding your membership and will assist you in navigating and fully utilizing your PSPA membership.

All of the quality programs and discounts you enjoy as a member are negotiated and maintained by our Executive Office. We have added new programs (dental & vision) this year that further increase the value of your membership. We are constantly monitoring the activity levels, establishing affinity relationships and exploring new opportunities for our membership. A list of all of our benefits is available on our website and is also included on page 4 of this publication.

PSPA has given community accounting firms a voice in Harrisburg. Our Executive Director is extremely committed to advancing PSPA's legislative agenda and making sure that your practice rights are protected. Sherry makes frequent



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trips to the Capitol, attends fundraisers, monitors and reviews legislation and works closely with both our legislative committee and PSPA's outside governmental relations firm, Malady & Wooten. Our Day at the Capitol, which is a free program for members has been met with much success, and has given our members the opportunity to develop a rapport with their elected officials. We are determined

*Continued on page 13*





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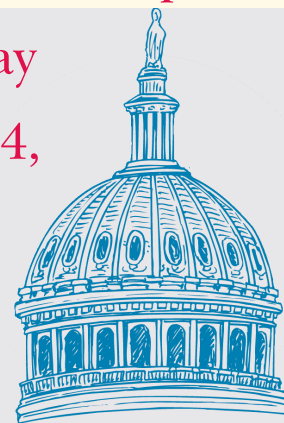
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**Day at the Capitol**

**Tuesday  
June 14,  
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## **Pennsylvania Department of Revenue Answers Your Questions**

The following Q&A is from PSPA's annual meeting with Revenue officials which occurred on October 28th. The following individuals represented PSPA at this meeting: Sherry L. DeAgostino, Executive Director; H. Richard Neidermyer, CPA (Central Chapter), Co-Chairman; Randy L. Brandt, CPA (Central Chapter), Co-Chairman; Donald L. Allen, CPA (Central Chapter); Henry Dobbs (South Central Chapter); Frank H. Kelly, EA (South Central Chapter); Joseph J. Pinnelli, Jr., EA (Philadelphia Chapter); Normal J. Ridder, CPA (Central Chapter); James F. Tice (South Central Chapter); Raymond A. Wolownik, CPA (Central Chapter).

### **INDIVIDUAL TAX**

1. I have a client that files a PA-UE and has travel related expenses while working away from home 132 days during the year. Dept of Revenue questioned the expenses and lodging documentation that was sent substantiating the expenses claimed on the federal and PA returns. The Dept of Revenue sent back an REV-364C denying part of the expenses stating they reduced the lodging expenses based on PA allowance. Does Pennsylvania have an allowance where actual expenses are reduced or disallowed when you have actual supporting documentation? Where is this found in the statute?

**Answer: The Pennsylvania Department of Revenue's (Department) policy and instructions require that expenses must be ordinary, actual, reasonable, necessary and directly related. The expenses in the above mentioned scenario must have been determined to be excessive in amount on several occasions, otherwise the expenses would not have been reduced.**

2. When will the PA Dept of Revenue allow ERO's to request electronic funds withdrawal of estimated payments for the next tax year at the same time the current year's PA-40 is electronically filed instead of having to go to e-tides and enter each estimated payment request? Currently these future estimates may be made with the IRS.

**Answer: The new Modernized e-Filing (MeF) platform will allow individual taxpayers to request electronic funds withdrawal of estimated tax payments for the next tax year. The current Fed/State e-filing**

**platform does not. The Department will be accepting MeF returns beginning January, 2011 for tax year 2010.**

3. Since a high percentage of the notices generated regarding individual tax related to having incorrect estimated payments on the PA-40, are you consider allowing preparers to see client's recorded estimated payments for the current tax year through e-services? It is more beneficial for preparers to see current estimates than previous year's estimates so they can properly reflect them when filling the current year's PA-40. This would save unnecessary correspondence.

**Answer: This information is not available to preparer's through e-services because of security reasons. Preparer's that have a Power of Attorney (POA) for one year may not have a POA for the next year and therefore the system does not allow the viewing of the future year payments.**

**The 1-888-PA-TAXES phone system does allow a person to access the estimated payment balances using a social security number (SSN) and the balance of the tax year being inquired upon. This amount will be zero if no return is filed.**

4. When a taxpayer (union employee) works as a journeyman and works in multiple states and they withhold tax from a different state even if there is a reciprocal agreement between the two states the taxpayer should not be penalized for not making estimated payments as long as he shows proof that the company withheld the other state's tax. In most cases the taxpayer informs the employer, but the tax is still not

withheld. In order to avoid penalties and interest in this case, the taxpayer is forced to pay estimates to two states and then wait for the refund. This has a negative impact on the taxpayer, but it is really a result of an employer failure. Is there a possibility of perhaps adding something to your website that addresses this issue specifically with out of state employers?

**Answer: It has always been the employee/taxpayer's responsibility to self report his income and taxes paid. The Department's instructions are clear when estimated taxes are due and examples include scenarios as depicted above. The Department has a form which permits employers not to withhold state taxes whenever a taxpayer is a resident of a reciprocal state. However, the employer must withhold the other state's income tax in order for non-withholding of Pennsylvania taxes to occur. The employee/taxpayer should check the withholding requirements of the other state to determine whether a similar form exists for the other state or whether his reciprocal state employer will withhold Pennsylvania personal income tax from his compensation. If an employer does not have a Pennsylvania withholding requirement under the law, there is no requirement to withhold Pennsylvania taxes and it will still be the employee/taxpayer's responsibility in this situation to make estimated payments.**

5. We have experienced problems when filing amended PA-40s with the Department. The instructions for filing an amended PA-40 require that if a taxpayer received a refund with the



original return the amount should be added to the PA tax liability. If tax is paid with the original return, it is added to the total payments and credits. This treatment of the original tax refund or tax payment has caused processing problems and confusion. Has the Department considered a separate form for amended returns that will accommodate a clearer treatment of the payments and credits from the original return?

**Answer: The Department has considered issuing a Form PA-40X, but introduction of such a form would require a significant amount of system programming resources. An entirely new form similar to the former PA-40X or the IRS 1040X form would present significant challenges to the efficiency of our aged personal income tax processing system. Unfortunately, the Department currently does not have the technology resources to devote to this. However, amended tax return processing is being studied and is expected to be part of the Department's integrated tax system.**

6. Spouse dies and the couple files separate tax returns along with the Form 459BEX (Consent to Transfer, Adjust or Correct PA Estimated Personal Income Tax Account) which transfers the estimated payments from the deceased to the living spouse. The Department sent a refund to the deceased and charged the living spouse the tax along with penalties and interest even though the proper form was filed to make the transfer of tax. Is this normally what would happen in this circumstance? How would you advise handling this in the future to ensure that the transfer is actually made? The Department's failure to recognize the transfer results in additional unnecessary paperwork for the surviving spouse as well as additional cost.

**Answer: If the department failed to make this change as requested, the surviving spouse should not have been charged the penalty on his or her tax return. The charge for interest may have been appropriate if the surviving**

**spouse cashed the refund check for the deceased taxpayer without first inquiring about the receipt of a refund when none was expected or was for an amount not reflected on the return.**

**In the future, it is advised that the REV-459B be sent separately from the tax returns and well in advance of the separately filed income tax returns. Copies of the REV-459B should also be included with the return.**

7. Does PA allow a tax credit for taxes paid to foreign countries for dividend income? If so, what is the procedure to calculate and apply the foreign tax credit?

**Answer: The Department does allow a resident credit for taxes paid to foreign countries on foreign interest and dividend income. The credit is based upon the interest and dividend income that has had tax withheld on the income. If no tax is withheld on the income, no credit is permitted. In the case of the federal credit for foreign taxes, all the foreign income is permitted to be included in the calculation of the credit, regardless of whether there is tax paid on the income or not. Therefore, Federal Form 1116 is not always the correct document to show the income and taxes paid.**

**Reductions in the amount of the credit often occur when the documentation to support the credit is the Federal Form 1116 alone and the word "Various" is used in place of the name of the state or country on PA Schedules G-S or G-L. The PA Schedules G-S and G-L instructions include that the Department permits the use of the word "Various" for the other state or country name. However, whenever that terminology is used, the taxpayer is also required by the instructions to provide a statement showing the amount of income, tax paid, and resident credit calculation on a country-by-country basis. This statement of the calculation is not always being provided. This requires the Department to ask for the information and in many cases results in a reduction of the credit due to the use**

**of Form 1116 as the primary means of calculating the credit.**

**Once the Department obtains the source documentation to support the income and tax paid, we often find that income has been included where no tax has been paid in the other state or country on that income (even though it is permitted to be included for federal purposes). Therefore, the income cannot be included in the calculation of the credit for Pennsylvania personal income tax purposes and the credit is then reduced.**

### **TAX AMNESTY**

1. Please provide a citing to the regulations where it explains Pa Statute of Limitations for filing Personal and Business tax returns. The recent tax amnesty period showed a real need for a statute of limitations. Taxpayers who received delinquent notices dating back twenty or thirty years are very unlikely to have information or returns dating back that far.

**Answer: Pennsylvania taxpayers are required to file tax returns. There is not any statute of limitations with respect to the requirement of a taxpayer to file a tax return, i.e., even in the event the tax return is not filed in a timely manner, the taxpayer is still required to file the return. In addition, Pennsylvania does not have a statute of repose with respect to the Commonwealth's right to collect Pennsylvania tax liabilities.**

1a. Pennsylvania had a former amnesty period in 1995-1996. Why were notices generated for the recent tax amnesty period to taxpayers for periods prior to 1995-1996? Why wasn't this money collected during the prior amnesty period? For example a client received a notice for a substantial liability exceeding \$10,000. The client does not have information that can prove that he doesn't owe the money. This is the first notice the client received even though there was an amnesty period in 1995-96 when he was more likely to have this information.

**Answer: The 2010 Tax Amnesty Program was created to give all eligible**

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#### STEP 1

Total MVP Items

**A**

Sum of Quantity Column

#### STEP 2 Determine Your MVP Price Column

Order any 1

Total MVP Item, use this price column for the item.

Order any 2

Total MVP Items, use this price column for each item.

Order any 3-5

Total MVP Items, use this price column for each item.

Order any 6-10

Total MVP Items, use this price column for each item.

Order any 11-20

Total MVP Items, use this price column for each item.

Order any 21+

Total MVP Items, use this price column for each item.

#### STEP 3 Calculate Cost

Example: If "Total MVP Items" equals 7 Total MVP Items, then use the "6-10 Total MVP Items" price column for each item.

MVP Items	Quantity	Use the Price Column equal to your "Total MVP Items"												Item Price	Cost	
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What's New 2010 & Beyond	×	<del>\$35</del> \$32	<del>\$32</del> \$29	<del>\$30</del> \$28	<del>\$28</del> \$26	<del>\$26</del> \$24	<del>\$24</del> \$22	\$	= \$							

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Shipping & Handling Charge		Total Quantity of All Items	Shipping & Handling Charge Per Item	Shipping & Handling Charge*			
Total Quantity of All Items × Shipping & Handling Charge per Item		<b>A + B</b>	(see chart below)				
Shipping & Handling Charge		×	\$ /item	= \$			
Shipping & Handling Charge Per Item							
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taxpayers the opportunity to apply for Amnesty. “The program shall apply to a taxpayer who is delinquent on payment of a liability for an eligible tax as of June 30, 2009, including a liability for returns not filed, liabilities according to records of the Department as of June 30, 2009, liabilities not reported, underreported or not established but delinquent as of June 30, 2009.” Taxpayers under criminal investigation by the Department of Revenue for violation of any law imposing an eligible tax can not participate in Tax Amnesty.

To qualify of the 1995 – 1996 Tax Amnesty Program the taxpayer must have failed to file a return or to pay any tax due and payable on or before December 31, 1993.

If the taxpayer referenced in the question above had a liability after December 31, 1993 they would not have received an Amnesty notice for the 1995 – 1996 Amnesty program.

Ib. Can you explain how various notices and correspondence regarding amnesty were generated? Were they generated from returns? The basic question is this, if Revenue has the ability to produce these notices regarding money that is thought to be owed, why would the Department not attempt to collect the money with or without tax amnesty? It seems odd to wait until an amnesty period to send the notices, why not send this information out annually or as soon as it is available?

**Answer:** The Department was required by statute to notify in writing all known tax delinquents at the taxpayer’s last known address of the existence of the Tax Amnesty Program. In addition, nonfilers were also notified of the Tax Amnesty Program. Prior written notices of tax assessments and tax delinquencies were sent to taxpayers.

Ic. Various practitioners have indicated that they have clients who have balances due but did not receive tax amnesty notices. Why?

**Answer:** Over one million notices were sent out to “known tax delinquents.” The most common issue

for taxpayers not receiving notices of any kind from the Department of Revenue is incorrect addresses. But even if the taxpayer did not receive a notice this did not preclude the taxpayer from participating in the Amnesty program.

1d. Does Revenue plan to review procedures and/or put new procedures in place based on what was learned during this most recent tax amnesty period?

**Answer:** The procedures established for the Amnesty program are temporary because the Amnesty program itself is, as defined by statute, temporary.

### **TECHNOLOGY & PROCESS MODERNIZATION INITIATIVE**

1. Can you explain the processing changes that will be made as a result of the technology and process modernization funding initiative?

**Answer:** The Department’s goals for the project include the ability to improve customer service and to streamline processing. Though we anticipate that there will be many processing changes, it is too early to answer this question with the specific changes to be implemented. The Department is beginning the business process redesign and system implementation in December and will be developing processing changes as part of the early stages of the project. The project is scheduled to take 5 years to complete with corporation taxes as the first tax type to be converted to the new system. The Department is mindful of your organization’s interest. We intend to keep our stakeholders up to date on the Department’s progress and the changes we will be implementing through regularly scheduled communications and project updates.

2. We have noticed an increased concern by members regarding the telephone wait time when a taxpayer or preparer calls the Department concerning a notice. Also, the telephone prompts seem to have many inconsistencies. Sometimes

the practitioner is prompted to leave a message while other times they are told to call back later with no option to leave a message. When asked in prior years about a practitioner hotline, the Department has indicated that budgetary constraints prohibit such a hotline. Will the Department consider using any of the funding initiative to establish a practitioner hotline? It seems that providing practitioners a way to efficiently and directly communicate with Department representatives would positively impact problem resolution and would help to improve overall taxpayer services.

**Answer:** At this time, the Department does not have the resources to create a practitioner’s hotline or something equivalent thereto. However, the Department of Revenue always attempts to respond to all incoming telephonic customers within an acceptable time period. The DOR understands the importance of maintaining an efficient, cooperative, and timely working relationship with the practitioners. To that end, the Department continues to emphasize the Tax Professionals website for practitioners to get a variety of tax specific information about their clients. Also, the Department is currently working on its future customer service strategy. As the Department looks to the future there is ongoing discussion on ways to enhance customer service to the practitioners.

Also, the Department maintains the E-file help desk as a dedicated number just for practitioners to use if they file returns electronically. 717-787-4017 is the number.

3. Could you provide PSPA a key contact sheet for Department of Revenue personnel that could be disseminated to our membership?

**Answer:** Yes, the key contact sheet has been provided to PSPA. This information is posted on [www.pspa-state.org](http://www.pspa-state.org).

4. Does the Department notify a taxpayer when filing a lien on real estate? A client discovered a lien when

he attempted to refinance a mortgage. Please explain the Department's procedures regarding liens and notification to the taxpayer?

**Answer: The Department will file a lien against a taxpayer only after the expiration of the appeal period and after the Department has made initial attempts, including telephone calls and delinquent collection letters, to collect the unpaid debt. During these initial attempts, the taxpayer is notified that should the debt not be paid promptly, additional collection efforts such as a lien will commence. In addition, the assessment notice also includes language about the potential for a lien. Once a taxpayer is selected for a lien, the Department will send the lien to the prothonotary in the county that corresponds to the taxpayer's address on the Department's tax system. If the Department is aware of property owned by the taxpayer in a different county, a lien will be filed in that county as well. The prothonotary will docket the lien, and return it to the Department. Upon receipt of the docketed lien, the Department sends a copy of the lien to the taxpayer.**

5. Each year several senior clients receive notices that the proper documentation was not attached to their PA-1000 Property Tax Rebate form; however, all supporting documents were attached originally (as evidenced by a complete scanned copy in our preparer file). Is there anything the practitioner can do to reduce the frequency of or eliminate this type of situation? If the taxpayer files a federal tax return, could a copy of that return be attached instead of requiring copies of all 1099-R's etc?

**All preparers can do to reduce the frequency of these requests, is to make sure their clients are provided with all supporting documents that are required as proof with their claim and that they understand the importance of including all necessary documentation with their claim. In addition, photocopies of the documents on 8½ x 11 paper should be used as they are easier to process by**

**our scanning and imaging equipment and are less apt to become separated from the claim. Although we are aware that sometimes documents become separated from the claim, we also know that sometimes claimant don't send all the supporting documents to the Department, even though it may have been included in the submission packet provided by the preparer to them.**

**Although submitting the federal form 1040 as documentation with the claim is acceptable, the claimant must still submit copies of all 1099's to the Department as eligibility under the rebate program is determined on the gross distribution, not the taxable amount. Again, the Department recommends that all W-2's and 1099's are copied onto 8½ x 11 paper.**

6. A taxpayer received a Use Tax Return (Form PA-1) in the mail and incorrectly entered the dollar value of taxable items (from purchases made over the internet) in the tax due line. The taxpayer remitted the correct amount of use tax due with the return. The taxpayer received a notice for additional use tax due calculated from the difference between taxable items and use tax remitted (plus a penalty) because of the incorrect line entry. What is the procedure for amending a Use Tax Return? Is relief available when an obvious error is discovered 90 days beyond the original due date?

**Answer: In this situation, the taxpayer made an obvious error by entering the total amount of purchases in the tax due line and is administratively correctable even if the taxpayer failed to formal respond within 90 days from the date of the assessment. In such instances, contacting the Bureau of Business Trust Fund Taxes' Sales Tax Division either in writing or at the telephone number listed on the assessment notice should resolve the assessment.**

**In cases where the nature of the erroneous reporting are not obvious, under provisions of Article 2 of the Tax Reform Code, the rules that apply to filing an amended sales tax return apply to filing an amended use tax return.**

7. With the advent of the PAUC change, will the client information from E-Tides be able to be transferred over to the new system?

**Answer: The Department of Revenue does not maintain Unemployment Compensation client information. When a taxpayer logs into e-TIDES and selects Unemployment Compensation (UC), the taxpayer is actually re-directed to the Department of Labor and Industry's UC module to complete a UC registration or file UC tax or wage reports and payments.**

**The Department of Labor and Industry has indicated if the taxpayer is already registered as a business in Pennsylvania and has been filing and paying unemployment taxes, the history and company information will be pre-populated in the Unemployment Compensation Management System (UCMS).**

## **CORPORATE TAX**

1. What is the maximum number of partnership and S corporation Schedule RK-1s that a taxpayer may have and still e-file their PA-40 for 2010?

**Answer: The maximum number for 2010 is 100.**

2. Corporate settlement reports provided the only method of for corporations to know if they had outstanding taxes due. Has the Department considered reinstating corporate settlement reports or finding an alternative for them?

**Answer: A new notice, the Statement of Account, lists all out-of-balance periods subsequent to 1992. Under Act 119, billings (and ensuing assessments) are triggered when a taxpayer underpays its self assessed tax. When tax is increased an assessment is also produced. Billings and assessments are always accompanied by a Statement of Account. Statements of Account are also sent when tax is decreased or appeals are resolved. Additionally, a taxpayer can request a Statement of Account at any time by calling 717-705-6255.**

Act 119 changed the settlement process to an assessment process. The settlement process does not apply to any taxes not settled by January 1, 2008. Under current law there is no authority for the Department to reinstate the settlement process or implement any other method for the processing of corporation tax reports.

### EMPLOYMENT TAX

1. Employer payroll tax returns are filed online. An employer's account may be 'disabled' online but it cannot be closed without mailing in a paper form. It seems counterproductive to not offer the ability to close the account online. Can the system be modified to provide this ability?

**Answer: It is not necessary to complete and mail an account cancellation form to cancel an Employer Withholding Tax account. Employer Withholding Tax accounts can be cancelled online through the Enterprise Maintenance feature in the Department's e-TIDES application. Once successfully logged into e-TIDES, account administrators can select "Enterprise Maintenance" under the heading of "Tax Functions" in the left hand navigation menu, then select "Employer Withholding Tax" from the drop-down menu click "Next", then select the desired withholding account from a drop-down menu and click "Next".**

On the "Enterprise Maintenance Functions" screen, users can select the "View/Update Enterprise Information" radio button, click "Next", then select the "Edit" button at the bottom of the Enterprise Registration Information screen. Users can then select the "Cancel Account" radio button, click "Next", provide an account cancellation date, and click the "Submit" button to process the account cancellation.

The above steps to cancel a business tax account in e-TIDES are also included in the e-TIDES Online Demonstration, which can be accessed directly from the e-TIDES home page.

### SALES TAX

As you know, Pennsylvania's Supreme Court has ruled that transfers of canned computer software are subject to sales and use tax as tangible personal property. (Dechert LLP v. Commonwealth, 12 MAP 2008, decided July 20, 2010). Please elaborate on the taxability of the following items, assuming none of the vendor companies is located in Pennsylvania, and assuming the companies are located in Pennsylvania if the answer changes):

1. Initial purchase of software via download (such as an accounting or tax program)

**Answer: This is taxable if the software is canned. See Dechert LLP.**

2. Online services such an online to do list with nothing downloaded on to your computer. The fee is just the use of the program on the internet

**Answer: This is non-taxable if the server is not located in PA, as there would be no sale of tangible personal property in PA.**

3. Online tax filing services such as efile for Business (prepares 1099 forms online but you can download a PDF file to print out from your computer, and the service mails the forms to recipients from their headquarters outside of PA)

**Answer: This is a non-taxable computer service. See 72 P.S. § 7201(k) (16).**

4. File sharing services such as Sharefile and Online File Folder which provide space on their servers for client's files.

**Answer: This is a non-taxable computer service. See 72 P.S. § 7201(k) (16).**

5. Ongoing maintenance fees for computer program updates (for example, a \$179 per year fee that entitles the buyer to an upgrade should one be issued during the year).

**Answer: This is taxable if the software is canned. See Dechert LLP.**

6. Ongoing online (download) subscriptions to utilities such as anti-virus software

**Answer: This is taxable if the software is canned. See Dechert LLP.**

7. Maintenance fees for support (for example, a \$100 fee buys up to 2 hours support)

**Answer: This is a non-taxable computer service, if it doesn't include updates. See 72 P.S. § 7201(k)(16).**

### E-FILING

1. Please advise if there is any information we should be disseminating to the PSPA membership based on the e-file mandate.

**Answer: A copy of the regulation is posted on the Department of Revenue website and can be found at the following link: <http://www.pbulletin.com/secure/data/vol40/40-27/1219.html>**

2. In the case with forms that require attachments, please explain the procedure for sending them. Please update us on any resulting procedural change.

**Answer: For the next tax year there will be no changes to the requirements for faxing attachments. You will continue to fax attachments that are required as it has been done in previous years.**

The only required document that needs to be faxed is a copy of the Out of State tax return when claiming a credit on line 22 of the PA-40.

**General e-file correspondence  
717-772-4193  
Out of State Returns  
717-705-6651  
e-file Help Desk Fax  
717-772-9310**

3. Will Revenue have a standard or suggested "opt out" form for those clients who do not wish to e-file? Are there plans to accept the federal opt out form once IRS makes it available?

**Answer: There will be no state "opt-out" form but the PA-40 will have and "Opt Out" oval near the signature line**



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that should be filled in if the taxpayer requests the return be filed via paper.

The Department does not plan on accepting the federal opt out form. Please use the oval on the PA-40 to indicate the taxpayer does not want their return e-filed.

A request for a preparer waiver must be made in writing and clearly state the reason why filing electronically causes undue hardship. This request must be submitted before November 30, 2010. The preparer will be notified if the waiver has been granted by the Department. The waiver will be valid for the upcoming tax year only. The request should be sent to the following address:

PA Department of Revenue  
Bureau of Individual Taxes  
PO Box 280507  
Harrisburg, PA 17128

4. When will the Department allow the e-filing of the PA-41 using Federal/State e-file?

**Answer:** The Department currently has no plans on implementing a Fed/State e-file for PA-41s.

### **APPEALS PROCEDURES**

1. Can you please outline best practices when it comes to how practitioners should handle appeals procedures. We have had increased dialogue on our email discussion group among practitioners and many indicate that they initiate an appeal upon receipt of the initial letter from the Department as often a response is received well into the 90 day appeal period. Is this necessary or can you advise of another alternative course of action? Do you anticipate the modernization project to improve the Department's response time in this regard?

**Answer:** The Board of Appeals reviews:

- The Department's final determination of tax liability in the form of an assessment, appraisal or a determination. A document entitled a billing notice, a preassessment, an estimated assessment or a statement of

account is not a final determination of tax liability and thus, it cannot be appealed to the Board of Appeals. If the Board of Appeals receives an appeal to one of these documents, The Board will send you a letter indicating that this cannot be appealed and that the appeal should be filed upon receipt of an assessment, appraisal or a determination

- A taxpayer's request for a refund
- The Department's denial of an application for tax exempt status
- The Department's denial of a Property Tax Rent Rebate Claim and
- Other certain actions by the Department.

If your client receives an assessment, appraisal or determination, the best practice is to file a petition with the Board of Appeals within the appeal period. The notice will provide the date by which an appeal must be filed and instructions on how to file an appeal with BOA. The petition form is a REV-65 and the petition can be hand-delivered, mailed or filed electronically by going to the Board's website at [www.boardofappeals.state.pa.us](http://www.boardofappeals.state.pa.us). If a petition is filed electronically, you will receive a confirmation number that the petition has been received. The Board will also have absolute proof as to the date of filing and can more easily determine if the appeal is timely filed. If a petition is hand-delivered, the Board will time-stamp it to indicate the date of filing. If you bring an additional copy of the petition, the Board will time-stamp it for your records. If the petition is mailed, the Board will accept a United States Postal Service mark or a receipt from a certified mailing as proof of date of filing. The Board will not accept a private meter stamp as proof of date of filing. Please also be aware that the Post Office is not necessarily putting on a postal mark on every envelope so that if there is not a postal mark on the envelope, the Board will use its date of receipt as the date of filing. This means that if the appeal period is about to expire, the best practice is to use the

electronic method of filing as there can be no question as to when the Board received the petition.

The appeal period will not be tolled if you are discussing the assessment verbally or in writing with a taxing bureau or the Taxpayer Service & Information Center. The best practice is to file a petition with the Board of Appeals and provide any copies of correspondence that you may have had with the taxing bureau during the appeal period. If the Board can corroborate that the Department received correspondence regarding the assessment within the appeal period, the Board will review the correspondence to determine if it is a misdirected appeal and if so, will accept the date the Department received that letter as the date of the filing of the appeal.

If your client wants to request a refund from the Department, there are two methods for pursuing a refund claim:

- the filing of an amended return/application for refund or
- the filing of a petition for refund (REV-65) with the Board of Appeals.

The general rule regarding a request for a refund is that the request is required to be filed three years from the payment date of the tax unless an exception applies, such as monies paid as a result of an assessment. The filing of an amended return, or application for refund, is most appropriate when the request involves the correction of income or the request does not involve factual, legal or policy issues, and it is not later than two years from the date of payment. Although the Department endeavors to act upon all amended returns, the Department is not required to do so.

The filing of a petition for refund with the Board of Appeals is the method which ensures that the Department will affirmatively act upon the taxpayer's request for a refund. Accordingly, a petition for refund is most appropriate when the discovery of the error is made close to the time limitation to file a petition for refund (either the three year limitation or the six month

limitation involving assessments). A petition for refund is also appropriate when the petition involves factual, legal or policy issues or where further documentation may be required to support the request for a refund.

### **Additional question**

1. PA law does not require farmers to make estimated tax payments if they file and pay by March 1<sup>st</sup>. Our firm has been diligent in indicating on the front of the PA 40 that these taxpayers are farmers and we have also included the REV-1630 with exception 3 properly completed. However, we continue to receive underpayment of estimated tax notices for these legitimate farmers. Why does the PA Dept of Revenue continue to generate these incorrect notices? Please note that e-filing has not corrected the problem.

**Answer: Upon review of the information provided, it appears that the Department should provide additional training regarding the processing of tax returns where taxpayers qualify for the farmer exception to the estimated underpayment penalty (EUP). The Department is hopeful that by providing additional training and the development of the new form REV-1630A, Underpayment of Estimated Tax by Individual Farmers (first available for use with 2009 tax year returns in February 2010), the Department will be able to eliminate these incorrect notices from occurring in the future. The form will be available for development by e-file software vendors this coming season and should eliminate many of the issues for Department personnel and make it much easier for preparers to calculate the exception and penalty when they apply. Additionally, the REV-1630 is being modified to remove the farmer EUP rules and exception so that the REV-1630A will be the form farmers who meet the 2/3's income test must use.**

**Furthermore, we are also hopeful that with the development of the new integrated tax system we will be able to data capture additional information from this new form. If we can data capture gross income and gross income from farming from this form, we should be able to eliminate many of the suspensions and incorrect notices as well. Currently, the department can only use the Line 4 and Line 9 income from a PA-40 return to determine the 2/3 farming income test and neither of these numbers is accurate for that purpose. ✓**

## **President's Message**

continued from page 2

to pass our legislation this year and will continue to update you on our progress.

The PSPA Committee on Cooperation with the Department of Revenue and our Executive Director meet annually with Department representatives in order to answer questions that are submitted from members. Additionally, PSPA has representation on Revenue's taskforce, and will provide input throughout the implementation of the multi-million dollar technology modernization project.

Our Committee on Cooperation with the IRS is very active meeting several times a year and participating in multiple telephone conferences for the benefit of our membership. PSPA also has representation on a federal tax committee at the national level.

We are adding additional educational opportunities for our members. Courses like the IRS Representation series offer CPE to supplement the annual update courses that our chapters do so well. Be watching for an additional representation course this year as well as a financial statement course with emphasis on OCBOA. Our online webcast CPE through ACPEN offers quality and convenience in a non-traditional format.

Recent updates to our website have increased the overall functionality and ease of navigation. By April, each member of PSPA will be able to view all of the PSPA sponsored CPE they have completed since the beginning of the reporting period. This will be a true benefit when renewing your license at the end of 2011. I encourage you to visit our website on a regular basis. Whether you are interested in the latest industry updates, registering for a course, posting a FREE classified advertisement, or purchasing a discounted technical publication, our website is an excellent resource and one that should not be overlooked.

We receive so much good feedback from our membership on the updates given through the PSPAeLink, our electronic newsletter and we do appreciate your input. This Magazine, the PA Accountant, has received national recognition many times over, and our email discussion group (Listserve) is your best resource for peer to peer interaction and late-breaking information.

Hopefully after reading this you will have gained a clearer understanding of how the administrative arm of PSPA operates outside of your chapter. The bottom line is that it isn't any ONE thing that makes this organization special, it's EVERYTHING and EVERYONE working together toward a common goal.

An often quoted proverb says "Vision without action is a daydream. Action without vision is a nightmare." PSPA embodies both vision and action; a powerful combination that I believe turns dreams into reality.

Have a very prosperous tax season.

Respectfully Submitted,  
Barry L. Meyer PA, EA  
PSPA President



## IRS Recognizes Problems with PTIN Registrations

In Notice 2011-11 the IRS reported that it recognizes that some tax return preparers are experiencing or may experience difficulty in obtaining a PTIN. The notice indicates that if a preparer is unsuccessful in obtaining a PTIN through the online system and that their application was not processed, complying with the instructions prior to the preparation of a tax return will establish that a good faith effort was made to comply with the new PTIN requirement. Preparers who applied for a PTIN using paper Form W-12 prior to the date of publication of this notice (in the Internal Revenue Bulletin) and have not received a PTIN generally will receive a PTIN or an acknowledgment of receipt of the PTIN application within six weeks of the IRS' receipt of the PTIN application (or publication in the Bulletin, whichever is later). The submission of a paper Form W-12 and payment generally constitutes a good faith attempt to comply with the PTIN requirement. These tax return preparers may use a PTIN



issued before September 28, 2010 (or their social security number). Payment of the fee is required, even though the application may be delayed. A copy of the acknowledgment notification or letter should be retained.

The IRS has posted the following update to the Frequently Asked Questions on its website: **Q.** If I don't obtain (or renew) a PTIN by January 1, 2011, can I still prepare returns?

**No.** You must wait until you submit an online or paper application, pay the fee, and obtain (or renew) a PTIN. Exception: Certain individuals who've made a good faith effort to timely obtain a PTIN but experienced processing issues are being advised they may prepare returns during the interim period while their applications are pending. These notifications are being issued on the online system to people who make four unsuccessful attempts to register and in writing (email or letter) to individuals who have timely submitted paper applications and payments. ✓

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## NSA State Director's Message



NSA State Director  
of the Year

### **Tax Season is Here**

Now is the time to join NSA, the Association for Accounting & Tax Professionals! As an NSA member, you'll get immediate access to NSA's newest benefit, "What's New In Tax" Online Center where you can get up-to-the-minute daily tax news, journal articles, tax alerts, newsletters, and other expert commentary from 18 CCH federal and state publications; you can customize and save your searches and even get email updates! To subscribe to these sources would cost you as much as \$1,000, but we're giving it to members FREE. All you have to do is become an NSA member. The National Society of Accountants continues to offer a discounted membership to any PSPA member who joins NSA as a new member incentive. PSPA members can join NSA for \$179, and save \$20 off the regular \$199 membership fee. Call NSA Membership Services toll-free at 800-966-6679 for information.

### **NSA's Tax Help Desk**

With tax season in full swing, NSA would like to remind members of the exclusive benefits available only to NSA membership. As a member, you are entitled to utilize NSA's TAX HELP DESK to have 5 tax questions researched for FREE. When you have a federal tax question, NSA's professional research staff will search its extensive library to provide you with the information you need. Questions are typically answered within three business days or less. When you submit a question, our tax research department will research it and send you Information, usually including cites, that will allow you to resolve the issue for your client. NSA requires

that questions be submitted in writing. There are two easy ways to send your question to the Tax Help Desk:  
Online: <http://www.nsacct.org/Members/Tax/TaxQuestion.aspx>  
Fax: Download the FaxTax Research Form from NSA's website ([www.nsacct.org](http://www.nsacct.org)) and fax it to NSA at 703-549-2512.

### **NSA's Tax Discussion Group**

Don't forget to sign up for NSA's popular Listserv, another great source of support. NSA's version of the networking Listserv is an automated email discussion group designed for interactive discussions with your peers. This is a great medium with which to solicit the advice of your peers, benefit from their experience, and participate in ongoing conversations. Feel free to ask a tax question of your peers, get help with a return for another state, and keep up with the sticky-issues of the 2009 tax-filing year. To subscribe and select your settings, go to the Members Only tab on the NSA webpage [www.nsacct.org](http://www.nsacct.org), log-on with your member name and ID, and then click on NSA Tax Talk Discussion Group box on the left side of the page.

### **Tax Season Time Savers**

NSA continues to have a full menu of professional letters that can be personalized on your letterhead and used with your clients to enhance your image. Some sample letters include Engagement Letters, and client memos. There are many other marketing tools on the Members Only section of the NSA webpage. Simply log on with your user name (last name) and password (ID#) and go to Sample Letters at bottom left side of the page.

### **NSA's 66th Annual Meeting**

NSA's 2011 meeting will be held in Anchorage, AK August 17-19, 2011. The program will start one day earlier than normal, and conclude with the installation of officers on a Friday evening, instead of a Saturday. The

reasoning for this change is to allow those individuals who desire to take an Alaskan cruise the opportunity, since normal departures start on Saturdays.

The site for the 2012 Annual Meeting will be the Hyatt Regency Hotel Resort & Spa in Maui, Hawaii

### **Education**

NSA continues to make quality education programs available on your desktop through ConnectED, a series of one hour webinars to help Accountants and Tax Professionals. For more information regarding the webinars please contact NSA toll free at (800) 966-6679. Recorded Playbacks of all NSA past Webinars are available for purchase on the NSA website. Fee includes all handouts.

### **The Value of Membership**

There are so many additional benefits and resources, including weekly email alerts, access to NSA's bi-monthly news magazine, and IRS updates and Legislative alerts. As a member, all of these benefits are available to you. NSA is here to help you be successful. Remember, the value of your membership cannot be measured by the amount of your dues, but by taking advantage of the many benefits which are available to you.

I wish each and everyone of you a successful and profitable tax season. Please feel free to contact me with any questions via email at [rbraschcpa@gmail.com](mailto:rbraschcpa@gmail.com)

Respectfully submitted,

**Richard Brasch Jr., CPA**

NSA State Director - Pennsylvania





## **CORNER**

### **Taxpayer Denied Deductions Allowed on Previous Audit**

In Darrell Rooney (T.C. Memo. 2010-14) the IRS denied the taxpayer certain depreciation deductions. The taxpayer contended that on a prior audit of his Schedule C he depreciated assets similar to those on the 2003 Schedule C and that the IRS considered the issue during the earlier audit and allowed the deductions. The taxpayer suggested that at the conclusion of the earlier audit he and the IRS entered into a settlement agreement pursuant to which he would depreciate the assets on a 5-year straight-line basis and that he relied on the settlement agreement in computing his 2003 Federal income tax liability. The taxpayer contended that the IRS may not repudiate the settlement agreement and is barred from disallowing the depreciation deductions with respect to the similar categories of assets. The Court disagreed. It noted the record did not support a finding that the parties entered into a settlement agreement with respect to the prior audit. The record

simply reflected that the audit was closed without change. Moreover, the result of a prior audit ordinarily does not bind the IRS because each tax year is to be considered separately. Although reliance on a prior audit may establish reasonable cause and good faith, for the purpose of determining whether the Section 6662 accuracy-related penalty applies, the IRS's failure to challenge a position in a prior audit does not bar a subsequent challenge with respect to a similar position. The Court held the IRS was not estopped from disallowing the disputed cost recovery deduction in 2003 for expenses similar to those that he had allowed in the 1999 audit.

### **IRS Plans February 14 Start Day**

Due to Recent Tax Law Changes The IRS plans a Feb. 14 start date for processing tax returns delayed by recent tax law changes. The IRS reminded taxpayers affected by the delay they can begin preparing their tax returns immediately because many software providers are ready now to accept these returns. The software providers

will hold onto the returns and then electronically submit them after the IRS systems open on Feb. 14 for the delayed forms. Beginning Feb. 14, the IRS will start processing both paper and e-filed returns claiming itemized deductions on Schedule A, the higher education tuition and fees deduction on Form 8917 and the educator expenses deduction. Based on filings last year, about nine million tax returns claimed any of these deductions on returns received by the IRS before Feb. 14.

### **Employer Provided Vehicles**

In Rev. Proc. 2011-11 (IRB 2011-4) the IRS announced the maximum value of employer-provided vehicles first made available to employees in calendar year 2010 for which the vehicle cents-per-mile valuation rule (Reg. 1.61-21(e)) may be applicable is \$15,300 for a passenger auto and \$16,200 for a truck or van.

### **Are medical residents exempt from the FICA tax?**

In Mayo Foundation for Medical Education and Research et al. the U.S. Supreme Court ruled that they are not. The Court noted the Federal Insurance Contributions Act (FICA) requires employees and employers to pay taxes on all "wages" employees receive, and defines "wages" to include "all remuneration for employment". FICA defines "employment" as "any service . . . performed . . . by an employee for the person employing him," but excludes from taxation any "service performed in the employ of . . . a school, college, or university . . . if such service is performed by a student who is enrolled and regularly attending classes at [the school]". Since 1951, the Treasury Department





has construed the student exception to exempt from taxation students who work for their schools "as an incident to and for the purpose of pursuing a course of study." In 2004, the Department issued regulations providing that "[t]he services of a full-time employee" – which includes an employee normally scheduled to work 40 hours or more per week – "are not incident to and for the purpose of pursuing a course of study." The Department explained that this analysis "is not affected by the fact that the services . . . may have an educational, instructional, or training aspect." The rule offers as an example a medical resident whose normal schedule requires him to perform services 40 or more hours per week, and concludes that the resident is not a student. The Supreme Court held that the Treasury Department's full-time employee rule is a reasonable construction of Sec. 3121(b)(10).

### ***Taxpayer May Apply Deferral Method to a Sale of a Giftcard***

Revenue Procedure 2011-18 (IRB 2011-5) extends the advance payment deferral method of accounting of Rev. Proc. 2004-34, to accrual method taxpayers who sell gift cards that may be redeemed by another entity under a gift card service agreement. Rev. Proc. 2011-18 allows a taxpayer to apply the deferral method to a sale of a gift card (or gift certificate) if (1) the taxpayer is primarily liable to the customer (or holder of the gift card) for the value of the card until redemption or expiration, and (2) the gift card is redeemable by the taxpayer or by any other entity that is legally obligated to the taxpayer to accept the gift card from a customer as payment

### ***NJ Form 1099-G Information Now Available Online***

The New Jersey Division of Taxation will no longer be mailing Form 1099-G, Certain Government Payments, to report the amount of a New Jersey



income tax refund a taxpayer received. This information will now be available online.

In the past, this form was only mailed to taxpayers who received a New Jersey income tax refund AND who were identified as having itemized deductions on their federal income tax return. Similarly, Form 1099-G refund information for New Jersey income tax refunds issued during 2010 will only be available for taxpayers identified by the IRS as having itemized deductions on their 2009 federal return. Taxpayers can access Form 1099-G refund information at [https://www1.state.nj.us/TYTR\\_Saver/jsp/TGI\\_1099/NJ1099Login.jsp](https://www1.state.nj.us/TYTR_Saver/jsp/TGI_1099/NJ1099Login.jsp).

Taxpayers must enter their Social Security Number and date of birth to view and print the Form 1099-G statement.

For now, the State will continue to mail a paper Form 1099-INT, Interest Income, to any individual who received interest paid on a New Jersey tax refund or interest paid in connection with an unclaimed property claim during the tax year. Form 1099-INT information is NOT available online.

For more information, view the Frequently Asked Questions on Form 1099-G and Form 1099-INT at [www.state.nj.us/treasury/taxation/faqs1099.shtml](http://www.state.nj.us/treasury/taxation/faqs1099.shtml).

[state.nj.us/treasury/taxation/faqs1099.shtml](http://www.state.nj.us/treasury/taxation/faqs1099.shtml).

### ***Social Security to Require Direct Deposit***

The U.S. Department of the Treasury has issued a final rule regarding payments being received by all Americans receiving Social Security and other federal benefit and non-tax payments. Under the rule, anyone applying for benefits on or after May 1, 2011 will receive their payments electronically, while those already receiving paper checks will need to switch to direct deposit by March 1, 2013.

Approximately 80% of benefit recipients already use direct deposit. Treasury estimates that the elimination of paper checks will save American taxpayers approximately \$120 million annually and will save Social Security \$1 billion over the next 10 years.

### ***The IRS has released updates of the following publications:***

- Pub. 334 Tax Guide for Small Businesses
- Pub. 552 Recordkeeping for Individuals



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 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)	\$ _____	\$ _____	\$ _____

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#### **Editor's Note:**

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