

OCTOBER/NOVEMBER 2002

THE PENNSYLVANIA ACCOUNTANT



The Newsletter Of The Pennsylvania Society Of Public Accountants

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A Message From The President



It's hard to believe that almost one-third of my term has flown by. I want to thank the Chapters that I have visited so far and I look forward to visiting the few Chapters that I haven't been able to visit yet.

As I reported previously, PSPA continues our vigilance of activity on Capitol Hill in order to protect our membership from legislation that could harm our practices. I can say that the recent legislative night functions given by our various Chapters have been very productive in presenting PSPA's name and our position on any legislation that may come up for a vote during the upcoming "sign or die" period when the current legislative term ends later this year.

If you haven't visited our website, please do so and review the new features. Any ideas you may have for the website that can provide additional member services should be passed on to our Tech Committee through the Executive Office.

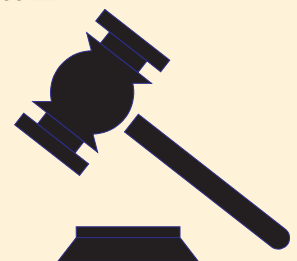
I cannot stress how important membership growth is. It is extremely important to organizations like PSPA to attract new members and show membership growth. The more PSPA demonstrates that it represents the needs of most of the small practices throughout the State, the more difficult it will be for the PICPA to demand changes in the accounting industry. So please support the activities of your Chapter and invite a non-member friend to come to a meeting and show them what PSPA is all about.

Before Christmas you should be receiving a package of material containing information for the upcoming June convention in Gettysburg. We are planning an extra day to do some touring of Washington, D.C., possibly a tour of the Pentagon or White House, on Wednesday, the day prior to our traditional starting day. The reason for the early mailing is to allow members to submit reservations early and lock in one of the seventy rooms available. I promise you a great and fun filled time. So please review the material and I hope to see an all time number of members in attendance at the Convention.

To close, I wish all our members good luck in the upcoming tax season. We all know that there are changes coming in the new year. Some of these will bring demands and additional responsibilities onto the preparers. If PSPA can assist or if you need advice, please contact the Office in Harrisburg for some direction.

Respectfully Submitted,

W. Raymond Bucks, CPA
President





Join the PSPA at the 56th Annual Meeting in Gettysburg, PA.

The Annual Meeting will take place from Thursday, June 19, through Sunday, June 22, 2003.



There will also be a pre-convention trip to Washington D.C. on Wednesday, June 18, 2003.

Many exciting programs have been planned; if you've never been to a PSPA Convention, don't miss this one!

Registration information will appear in the next issue of the PA Accountant.

In this Issue....

A Message From The President2



Pennsylvania Tax Update4

PSPA Members Save 40% on CCH Guides5

Welcome New Members ..8

Legislative Corner9



Chapter Meeting Dates ..10

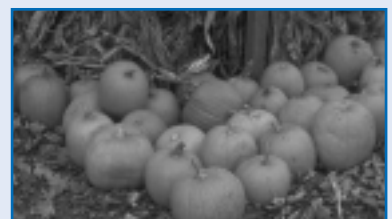
Chapter Seminar Dates..11

Another PSPA Member Benefit13

Odds & Ends15

Classifieds16

PA Department of Revenue - Letter Rulings Online16



DISNEY CLUB TO CLOSE DECEMBER 31, 2003



PSPA members who are currently enrolled with The Disney Club are advised that as of December 31, 2003, The Walt Disney Company will no longer offer The Disney Club. PSPA members who are currently enrolled will still receive membership benefits through December 31, 2003, or through their expiration date, whichever comes first. Also, members who wish to enroll in the Club may do so up until December 12, 2002; applications will not be accepted after December 12, 2002. Individual members of the Club will be receiving letters from Disney that explain the close of the Club, but you may also go to www.disneyclub.com for detailed information.

PSPA to Meet with PA Department of Revenue

The PSPA committee on Cooperation with the PA Department of Revenue will hold its annual meeting with the Department in December 2002. If you have questions or problems that need to be resolved with the Department of Revenue please forward them to info@pspa-state.org or fax to the PSPA Executive Office at 1-717-234-9556.



Pennsylvania Tax Update

By Sharon R. Paxton

RECENT CHANGES TO ABANDONED & UNCLAIMED PROPERTY LAW

General Holding Period Reduced – Effective for 2002, the general holding period for determining when property has become abandoned or unclaimed has been reduced from seven years to five years. Property which became payable or distributable in 1995, 1996 and 1997 must be reported on the 2002 Pennsylvania Abandoned and Unclaimed Property Report.

Wages or Other Compensation – Effective July 1, 2002, the holding period for wages and other compensation for personal services has been reduced to three years.

Payment – Effective with the 2002 Abandoned and Unclaimed Property Report, ALL unclaimed property must be submitted with the Report. Under prior law, amounts exceeding \$100 were not required to be submitted until written demand was received from the Treasury Department.

Aggregate Reporting – Items with a value of less than \$50 (previously \$25) may now be reported in the aggregate.

Exceptions to Abandoned & Unclaimed Property Law – The following types of accounts are now expressly excluded from the Abandoned and Unclaimed Property Law: (1) deposits during any period when withdrawals may be made only upon an order of a court of competent jurisdiction; (2) deposits established under the PA Uniform Transfers to Minors Act or similar law, while the custodianship has not been terminated; and (3) burial reserve accounts and similar deposits established under written agreements to provide for the funeral and/or burial expenses of a person while the person is still alive.

Audit Provisions – Effective July 1, 2002, the Treasury Department has been granted specific statutory authority to estimate a business' liability under the Abandoned and Unclaimed Property Law if the business fails to maintain the required records or if the available records are insufficient to permit the preparation of a report.

Amnesty Program – An amnesty program, which provides for the waiver of penalties for the late reporting of abandoned and unclaimed property with a 5-year holding period under certain circumstances, will be in effect until December 31, 2003.

LITIGATION UPDATE

CAPITAL STOCK/FRANCHISE TAX - FORGIVENESS OF INDEBTEDNESS INCOME INCLUDED IN BOOK INCOME – EVIDENCE INADEQUATE TO ESTABLISH UNCONSTITUTIONAL DISTORTION OF VALUE

In May 2002, seven judges of the Commonwealth Court granted the Commonwealth's exceptions to the Court's initial decision in *Shawnee Development, Inc. v. Commonwealth*. The Court ruled that the forgiveness of indebtedness provisions of the Internal Revenue Code are irrelevant to determining book income for Capital Stock Tax purposes and that Shawnee's forgiveness of indebtedness income was properly included by the Department in book income. The Court recognized that in complex matters such as this, the courts properly give deference to the agency's interpretation of the statute. In this case the Department of Revenue's regulation at 61 PA Code §155.26(h) provides that book income may not be adjusted on account of nonrecurring or extraordinary items.

The Court also refused to grant relief on Due Process grounds, ruling that although the company was insolvent, its stock could still have value, and that Shawnee had failed to establish that the value determined by the Department was so excessive as to violate the Constitution. However, in a concurring opinion, Judge Leadbetter suggested that if Shawnee had produced competent expert testimony that the company was actually worthless, the computed Capital Stock Value would have been so excessive as to produce an unconstitutional result.

An appeal is pending in the Pennsylvania Supreme Court.

CORPORATE NET INCOME TAX - DEEMED GAIN FROM IRC §338(h)(10) ELECTION CONSTITUTES APPORTIONABLE BUSINESS INCOME

In *Canteen Corporation v. Commonwealth*, a divided three-judge panel of Commonwealth Court determined that income resulting from a "deemed" sale of assets under IRC Section 338(h)(10) constitutes "business income" for Corporate Net Income Tax purposes. While the gain on the sale of assets in connection with the liquidation of a business normally constituted "nonbusiness income" under Pennsylvania law during the period at issue, the Court found that this principle did not apply because no actual liquidation had occurred. Canteen Corporation has filed and argued Exceptions and was awaiting a decision on Exceptions at the time this article was written.

See also *Osram Sylvania, Inc. v. Commonwealth*, decided on June 19, 2002, in which a three-judge panel of Commonwealth Court followed the Court's prior decision in *Canteen*, to hold that the deemed gain from an asset sale pursuant to IRC §338(h)(10) should be characterized as business income.

CORPORATE NET INCOME TAX – OBTAINING TITLE TO GOODS NOT NECESSARY TO QUALIFY FOR TAX PROTECTION UNDER P.L. 86-272

In *Schering-Plough Healthcare Products Sales Corporation v. Commonwealth*, a three-judge panel of the Commonwealth Court reversed the Board of Finance and Revenue's determination that a manufacturer's representative, whose activities in Pennsylvania were limited solely to the solicitation of sales for tangible personal property, was subject to Corporate Net Income Tax. The Department of Revenue contended that Schering-Plough was not entitled to the federal exemption from corporate net income taxes afforded by P.L. 86-272 because Congress intended only to protect the actual owner of the property who sells to an in-state customer. Since Schering-Plough never took title to the goods, the Department determined that it did not fall within the protection of P.L. 86-272.

The Court agreed with Schering-Plough that the Department's position adds a condition not contemplated by P.L. 86-272. Based on both the plain language of the federal statute and a review of the history leading to the passage of P.L. 86-272, the Court determined that obtaining title to the goods is not necessary to qualify for tax protection under P.L. 86-272. Rather, the Court concluded that "Congress' intent was to set a clearly lower limit of activity below which no business can be taxed."

Continued on page 6



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Pennsylvania Tax Update *Continued from Page 4*

SALES & USE TAX - PUBLIC UTILITY EXCLUSION APPLIES TO AIRPORT FACILITIES

In a 4-3 decision, the Pennsylvania Supreme Court ruled in *City of Philadelphia v. Commonwealth* that materials used in constructing certain facilities at the City-owned Philadelphia International Airport qualify for exclusion from Sales and Use Tax, because the facilities are used predominantly by common carrier airlines in rendering public utility services. In so doing, the Court overruled *Commonwealth v. Public Constructors, Inc.*, 432 Pa. 589, 248 A.2d 29 (1968), in which the Court had ruled that exclusive use by common carriers was required. (Common carrier airlines account for 88% of takeoffs and landings at the Airport.)

The City argued that *Public Constructors* was incorrectly decided because that decision ignored statutory provisions providing that tangible personal property ("TPP") or services used for both taxable and tax-excluded purposes will be taxable unless the user proves that such TPP or services are used predominantly for tax-excluded purposes. The City pointed out that this "predominant purpose" test was not cited to the Court by the parties and was not discussed in the Court's *Public Constructors* opinion. The majority of the Court agreed with the City, holding that since the statute clearly and unambiguously established a predominant purpose test, it was improper for the Court in *Public Constructors* to require exclusive use.

SALES & USE TAX - CELLULAR TELECOMMUNICATIONS COMPANIES NOT ENTITLED TO MANUFACTURING OR PUBLIC UTILITY EXCLUSIONS

In *Bell Atlantic Mobile Systems, Inc. v. Commonwealth; AWACS, Inc. v. Commonwealth*, the Commonwealth Court ruled that cellular telecommunications companies are not entitled to the Sales and Use Tax exclusion for the manufacture of Tangible Personal Property ("TPP") or for the rendition of Public Utility Service.

The cellular companies argued that their activities constituted the manufacture of TPP because the statute defined TPP to include "telecommunications service" - their product. The Court rejected the companies' argument that the production of cellular communications service constitutes "manufacturing" under the Sales and Use Tax statute on the basis that, *inter alia*, manufacturing involves tangible matter, and not electrical or electronic impulses.

The cellular companies also argued that they satisfied the Department's regulatory definition of Public Utility Service because they perform services for the general public without discrimination, are licensed as common carriers by the Federal Communications Commission and are highly regulated. The Court rejected the companies' argument based on case law holding, in effect, that only recognized public utilities qualify for tax exclusion.

The cellular companies have filed appeals to the Pennsylvania Supreme Court.

REAL ESTATE TAX - REASSESSMENT OF COMMERCIAL REAL ESTATE BASED ON INTERIOR RENOVATIONS TO ACCOMMODATE NEW USE CONSTITUTES ILLEGAL SPOT REASSESSMENT

In *Groner v. Monroe County Bd. of Assessment Appeals*, the Pennsylvania Supreme Court has affirmed a decision of the Commonwealth Court, which held that an increased real estate tax assessment, based on a conversion of commercial real estate

from a women's apparel shop to a brokerage office, constituted an illegal spot reassessment.

The Board of Assessment Appeals asserted that the County had statutory authority to reassess the property based on the \$58,000 cost of the interior renovations. The property owner, on the other hand, contended that the renovations were only cosmetic, converting the property from one use to another. The issue in the case was whether the renovations constituted "improvements" within the meaning of the County Assessment Law. The Court concluded, without explanation, that the subject renovations did not constitute an improvement to the property, noting that "[n]ot every bit of work done to change a building constitutes an improvement."

Two dissenting justices believe that the question of whether renovations are subject to reassessment is "at least a mixed question of law and fact, dependent, for example, upon case-specific facts such as the fungibility of the alterations involved." The dissenters view the majority's decision as suggesting "a per se rule barring any reassessment premised upon interior alterations made to accommodate a new use."

BUSINESS PRIVILEGE TAX - TAX IMPOSED ON ALL OF CONTRACTOR'S RECEIPTS FROM SERVICES PERFORMED IN OTHER STATES

In *Northwood Construction Company, Inc. v. Township of Upper Moreland*, a three-judge panel of the Commonwealth Court has ruled that Upper Moreland Township's imposition of Business Privilege Tax on all of Northwood Construction Company's gross receipts from services performed in New Jersey, Delaware and Maryland does not violate the Commerce Clause of the United States Constitution.

Northwood Construction Company ("Northwood") is a construction company with only one permanent place of business located in Upper Moreland Township ("Township"). Northwood performs construction management, general contracting and related business activities outside the Township at locations in Pennsylvania, New Jersey, Delaware and Maryland. With respect to the Township's imposition of tax on interstate receipts, the Court determined that, under the standards enunciated by the United States Supreme Court in *Complete Auto Transit*, Northwood's interstate receipts were fairly apportioned because (1) there would be an allocation of gross receipts if a similar Business Privilege Tax were imposed by another state in which Northwood had a place of business, and (2) the Township's Business Privilege Tax "taxes only that portion of a company's revenues from interstate activity that reasonably reflects the company's maintenance of a permanent business office in the Township." In essence, the Court determined that the tax was fairly apportioned because Northwood has only one permanent place of business from which it manages, directs and controls all of its interstate business activities.

Northwood filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on August 15, 2002. Commentators have strongly criticized the Court's determination that the Township's imposition of tax on 100% of Northwood's interstate receipts represents a "fair apportionment" under *Complete Auto Transit* and its progeny.

Sharon R. Paxton is a member of McNeese Wallace & Nurick's State and Local Tax Group. Additional Pennsylvania tax information may be obtained at the firm's "Pennsylvania Tax Page" on the Internet at: www.mwn.com/public/patax.html.

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Legislative **CORNER**

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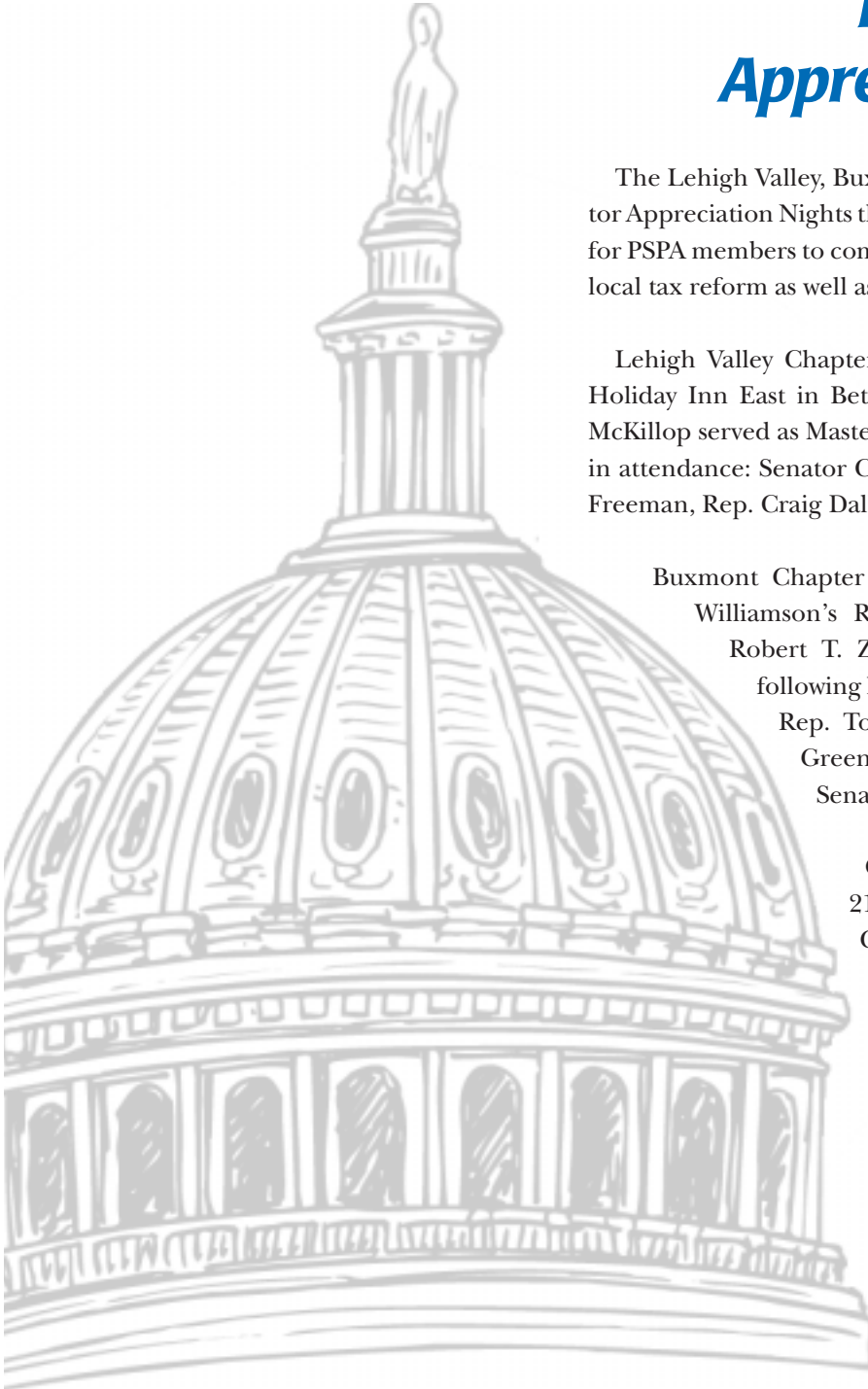
The Lehigh Valley, Buxmont, and Central Chapters each held Legislator Appreciation Nights this Fall. These events provide an excellent forum for PSPA members to communicate with local legislators on issues such as local tax reform as well as other issues pertinent to the industry.

Lehigh Valley Chapter held their event on August 20, 2002, at the Holiday Inn East in Bethlehem. PSPA Governmental Consultant Fred McKillop served as Master of Ceremonies. The following legislators were in attendance: Senator Charlie Dent, Senator Lisa Boscola, Rep. Robert Freeman, Rep. Craig Dally and US Congressman Pat Toomey.

Buxmont Chapter held their event on September 12, 2002 at Williamson's Restaurant in Horsham. PSPA Past President Robert T. Zaleski served as Master of Ceremonies. The following legislators were in attendance: Rep. Matt Wright, Rep. Tony Melio, Rep. Roy Cornell, Senator Stewart Greenleaf, KaSandra Rogiers Legislative Assistant to Senator Connie Williams, Rep. Kate Harper.

Central Chapter held their event on September 21, 2002. H. Richard Neidermyer, Central Chapter President (PSPA Past President) served as Master of Ceremonies. The following legislators were in attendance: Rep. Jere Schuler, Rep. Thomas Caltagirone, Senator Noah Wenger, Rep. Robert Allen, Rep. Samuel Rohrer.

Thank you to the PSPA Chapters and the members who supported these functions for making each of the events a success.





Chapter Meeting Dates

Buxmont Chapter

All meetings are held on the fourth Tuesday of the month at Williamson's Restaurant, Route 611 & Blair Mill Road, Horsham unless otherwise noted.

Visit www.pspabuxmont.org for more information on chapter meetings and seminars.

October 22, 2002

TOPIC #1: Important Tips and Guidelines on Appraising and Handling Coins and Paper Money in Estates.

SPEAKER: Jon Edelman, Edelman's Stamps & Coins

TOPIC #2: Time Management for Professionals

SPEAKER: Jeanine Baron, Streamliners Inc.

CPE: 2 Hours Other

November 26, 2002

TOPIC: Tax Forum

December 17, 2002

TOPIC: Installment Sales

SPEAKER: Peter Gilbert

CPE:

January 28, 2003

TOPIC: Stress Management

SPEAKER: Joel Weintraub

CPE: 2 Hours Other

Central Chapter

All chapter meetings are held on the Inn at Reading in Wyomissing unless otherwise noted.

November 12, 2002

PAYCHEX

CPE: 2 Hours Tax, 2 Hours TBA

January 14, 2003

TOPIC: Package X Seminar

SPEAKER: TBA

CPE: 4 Hours Tax

February 18, 2003

Tax Roundtable I

SPEAKER: TABA

CPE: 2 Hours Tax

March 18, 2003

Tax Roundtable II

SPEAKER: TBA

CPE: 2 Hours Tax

April 26, 2003

After Tax Season Social

PLACE: Rainbow Theatre

May 20, 2003

Time/Stress Management

Memory/Motivational Techniques

CPE: 4 Hours Other

Lehigh Valley Chapter

All chapter meetings are held on the third Tuesday of the month at the Holiday Inn east, Bethlehem unless otherwise noted.

November 19, 2002

TOPIC: PA Tax Update

SPEAKER: Thomas Frascella, PA Department of Revenue

James Fritz & Sharon Paxton - McNeese

Wallace & Nurick

CPE: 4 Hours Tax

December 10, 2002

Breakfast Meeting

TOPIC: FASB and Changes in GAAP Reporting in the Post-Enron Era

SPEAKER: John D. Rossi, III, CPA

CPE: 2 Hours A&A

December 17, 2002

Annual Holiday Party

Northeast Chapter

January 18, 2003

Northeast Chapter Annual Scholarship Dinner
Clarion Hotel, Scranton

Philadelphia Chapter

All chapters meetings are held on the third Monday of the month at Williamson's Restaurant on City Line Avenue (GSB Building) unless otherwise noted.

November 18, 2002

TOPIC: Annual Meeting with IRS

SPEAKER: IRS Representatives

TIME: 5:30-9:00 P.M.

CPE: 2 Hours Tax

December 16, 2002 - Mini Seminar

TOPIC: Mini Accounting Seminar

SPEAKER: TBA

CPE: 5 Hours A&A

January 13, 2003

TOPIC: Philadelphia Tax Update

SPEAKER: Tom Kramer, Philadelphia Assistant Revenue Commissioner

CPE: 2 Hours Tax

February 2, 2003

TOPIC: Federal & State Tax Potpourri

SPEAKER: David L. Zalles

CPE: 5 Hours Tax



Pittsburgh Chapter

All meetings are held at Edgewood Country Club.

November 20, 2002

TIME: 4 to 9 pm

TOPICS: Offers in Compromise/Collections and E-file
Update IRS Representative Estate Planning for
Small/Closely Held Business

SPEAKER: Robert S. Markovitz, CPA, CVA, JD

January 15, 2003

TIME: 4 to 9 pm

TOPICS: PA State & Local Tax Update for
Individuals and Business

SPEAKERS: Charles L. Potter, Jr., JD

Philip E. Cook, Jr., JD

CPE: 4 Hours Tax

February 19, 2003

TIME: 4 to 9 pm

Roundtable Question & Answer Session

CPE: 2 Hours Tax

Thursday, December 19, 2002

Holiday Party

South Central Chapter

All chapter meetings are held on the third Wednesday
of the month at the Mechanicsburg Officer's Club
unless otherwise noted. Meetings begin at 1:00 P.M.

November 13, 2002

TOPIC: VEBA's

SPEAKER: Lance Wallach CLU

CPE: 4 Hours Other

December 4, 2002

Annual Holiday Party

January 22, 2003

Package X Seminar

SPEAKER: Frank Kelly, EA

Offering a morning and afternoon session.

CPE: 4 Hours Tax

April 23, 2003

Roundtable Discussion

West Central Chapter

December 10, 2002

Annual Holiday Party

LOCATION: Toftrees Resort, State College



Seminar Dates

Gear Up 1040 Seminars

All Seminars Offer 16 Hours Tax

October 29 & 30, 2002

Holiday Inn East, Bethlehem

Sponsored By: Lehigh Valley Chapter

November 6 & 7, 2002

Woodlands Inn & Resort, Wilkes Barre

Sponsored By: Northeast Chapter

November 12 & 13, 2002

Springfield Country Club, Springfield

Sponsored By: Philadelphia Chapter

November 18 & 19, 2002/

December 9 & 10, 2002

Harrisburg Marriott Hotel, Harrisburg

Sponsored By: Central/South Central Joint Education
Committee

December 4 & 5, 2002

Radisson Hotel, Trevoze

Sponsored By: Buxmont Chapter

December 12 & 13, 2002

Radisson Hotel, Monroeville

Sponsored By: Pittsburgh Chapter

Now that you
have your
"Tax Season"
nest egg...



...isn't it time
to write that
check...



and invest in
that "put-off"
malpractice
insurance
policy?



Just do the math...

A \$100,000/200,000 policy =
\$500.00 in first year costs !

Divided by the _____ "1040" tax
return clients your office has =
a cost of only \$ _____ per return!

How can you "put-off"
that investment any longer?

1. Name of Firm: _____ Est.: _____
(or simply attach your business card for 1 - 3 below)

2. Business Address: _____

3. Business Phone: () _____ Fax () _____

Please Contact: _____

4. Do you have Accountants Professional Liability? Yes ___ , No ___

Name of Carrier: _____ Renewal Date: _____

Deductible: _____ Limits: _____ Cost: _____

5. What is your current prior acts (retro) date: _____

6. Had a financial institution client since 1991? Yes _____, No _____

7. Do you perform S.E.C. work: Yes _____, No _____

8. Number of: CPAs _____ PAs _____
Staff Accountants _____, Bookkeepers _____, Per diems _____

9. Gross Billings: Last year \$ _____

Anticipated this year \$ _____

10. Had any claims or potential claims? Yes ___ No ___

11. Areas of Practice (%):

Audit - Other: _____% Trustee Activity: _____%

Audit- Public Cos. _____% Securities Activity _____%

Taxes- Personal _____% M.A.S. _____%

Taxes-Business _____% Bookkeeping _____%

Compilation _____% Other () _____%

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Odds & Ends

Optional Standard Mileage Rates Updated for 2003 (IR-2002-100, Rev. Proc. 2002-61)

The IRS has updated the optional standard mileage rates for use by employees, self-employed individuals, or other taxpayers in computing the deductible costs of operating a passenger automobile for business, charitable, medical, or moving expense purposes. The new rates apply to costs paid or incurred on or after January 1, 2003. The standard mileage rate for transportation expense is 36 cents per mile for all miles of use for business purposes, down from 36.5 cents per mile in 2002. A standard mileage rate of 14 cents per mile applies for purposes of computing the charitable deduction for use of an automobile in connection with rendering gratuitous services to a charitable organization under Code Section 170. The standard mileage rate for use of an automobile to obtain medical care described in Code Section 213 or as part of a move with respect to which the expenses are deductible under Code Section 217 is 12 cents per mile, down from 13 cents per mile in 2002.

IRS Revenue Ruling 2002-58 - Section 105

This ruling clarifies that amounts reimbursed under a self-insured medical expense reimbursement plan for medical expense incurred by an employee prior to the adoption of the plan are not excludable from the gross income of the employee under section 105(b) of the Code. (Internal Revenue Bulletin No. 2002-38 - September 23, 2002.)

Revision to PA Corporate Tax Return Forms

The RCT-101 has added a 5th page, which will be used for the check boxes, officers 1605 listing, and "out of existence affidavit". Also, the 3 Scan Pages, which preceded the RCT-101 in past years, have been eliminated.

CHANGED YOUR ADDRESS or EMAIL ADDRESS?

Please direct all changes to the
PSPA Executive Office:

PSPA
900 N. Second Street
Harrisburg, PA 17102
1-800-270-3352
Fax 717-234-9556
info@pspa-state.org

Name _____

Address _____

City _____ State _____ Zip _____

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Email Address _____



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Editor's Note:

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

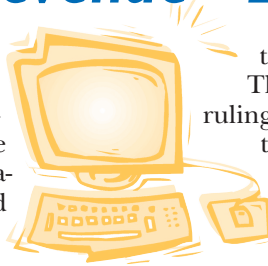


THE PENNSYLVANIA ACCOUNTANT



PA Department of Revenue - Letter Rulings Online

Letter Rulings Back on the Website! - Largely due to practitioner input, letter rulings have been put back on the PA Department of Revenue's website. The rulings can be found under Tax Professionals/ Legal Information/ Letter Rulings. The first batch is limited



to older inheritance and sales tax letter rulings. The Department is currently working to put older rulings involving other taxes online. It is hoped that the rulings will be completely up to date in the near future. All future letter rulings will be placed on the state's website.

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THE PENNSYLVANIA ACCOUNTANT



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