The Tax Times

Wisconsin Society of Enrolled Agents

August 2012

President's Address

This summer has been a busy one for WSEA. Don Wollersheim, our Executive Director for the past 17 years, is stepping down from that role as of September 30th. He has been a terrific ongoing leader in our organization and will truly be missed. In June, the Board of Directors spent a day meeting with Don in an effort to identify all of the activities he has done for WSEA. We then developed a job description for the incoming Executive Director.

At the beginning of July we posted the job opening on the website and notified the membership about the opening. We then encouraged Board Members to also contact individuals outside our organization about the opening so that we might have a variety of applicants.

By the end of the application period, four people have applied for the Executive Director position. The Board will be interviewing each of the four in August, then hiring one of them to succeed Don. I have been very impressed with the Board's thoroughness, imagination, creativity, and cooperation in the process of replacing Don. I am certain that we will have an excellent person to succeed Don.

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I was looking at my calendar recently and realized that this is an excellent time to think about participating in the NAEA National Fly-In day next spring. Wisconsin has only had a couple of people participate in the event, which has Enrolled Agents from around the country coming to Washington, DC to meet with members of the Senate and the House of Representatives (and their staff) to discuss

Inside this issue:

the role of EAs and issues that are important to EAs. May 8, 2013 is the date of the next Fly-In. If you decide to participate, you would want to arrive in Washington early on May 7th, to partake in a day of training with NAEA staff, to learn how to be effective in speaking with the politicians. I intend to participate next spring and I encourage you to join me. Feel free to contact me for more details.

~Joel Guthmann, EA

Current Events

My Tax Account Changes

Many of you are probably Third Party Preparers for your clients on My Tax Account. As of Friday, August 3rd, 2012 , Wisconsin Department of Revenue has made some useful changes to what a Third Party Preparer is allowed to do. All, of course, with the permission of the primary account holder (our clients). These changes give Third Party Preparers "full access".

Full access provides these options in addition to filing returns, making payments and viewing account information:

- change name and address
- request to close or reactivate accounts
- view collection information
- request a payment plan

No more writing a letter to close out an account or trying to find the client's login that you created and they lost and/or changed and can't remember what it is.

Upcoming Seminars

September 20th and 21st – Joint MnSEA Seminar – Days Hotel and Conference Center, LaCrosse, WI

On Thursday, September 20th Beanna Whitlock will be presenting The Ugly 1040, Kids are the Dardnest Things and Ethics and Professional Conduct.

Friday, September 21st presenters include Amy King who will be covering IRS Audit Procedures and Don Wollershiem and Linda Ferwerda speaking on Schedule C and E.

January 11th , 2013 – Holiday Inn, Fond du Lac, WI

David and Mary Mellem will be speaking for a full 8 hours on Federal and State Updates for the 2012 filing season. Register Early – this room will fill quickly.

Don Wollershiem and Pat Handlos will be speaking opposite Dave and Mary on Federal Basics and Updates. This course is designed for office staff and RTRPs.

Look for a seminar notice in Early December or sooner!

May 23rd & 24th, 2013 – Brookfield Inn & Suites , Brookfield, WI

Speakers for Thursday, May 23rd are needed. If you are interested in speaking for 6 hours on a tax topic of your choice, please contact Joel Guthmann or Don Wollershiem.

Friday, May 24th , Tom Zoeller will be presenting a course on S-corporations, Sale of Rental Properties and Tax Planning. A speaker is also needed to speak opposite Tom on Friday.

Welcome New Members

We would like to officially welcome new members! The following people have either just joined or renewed their membership with WSEA. If you see them at an upcoming seminar, please make them feel welcome!

Michelle Antony of Tomah

Paul Broesch of Waukesha

Trish Evenstad of Westby

Peggy Ferkey of Wisconsin Rapids

Peter Kemble of Madison

Michael Leist of Las Vegas, NV

Michelle McBride of Wauwatosa

Abraham Michelson of Racine

Larry Otto, Jr. of Elkhorn

Jane Smolinski of Sheboygan

Larry Sveda of Sun Prairie

Fresh Start Initiative for the Offer in Compromise Program, Katie M. Jansen, EA

In early July 2012, the IRS released IRS Summertime Tax Tip 2012-02. This juicy tax tip listed some new changes in the offer and compromise program. Basically, the IRS revised how they analyze the income and expenses of the taxpayer that are used to determine if a taxpayer qualifies for an offer. To start off the IRS will now only look at one year of potential future income for offers paid in five or fewer months and at two years of future income for offers paid in six to twenty-four months. Previously, they looked at four years and five years, respectively. All offers must also be paid in full within twenty-four months of the date the offer in compromise was accepted.

The IRS is also allowing taxpayers to include as a financial expense making minimum payments on their student loans guaranteed by the federal government as long as proof of payment is provided. Similarly, they are allowing taxpayers to pay monthly on delinquent state and local taxes in certain circumstances.

The final step the fresh start initiative takes is to increase the Allowable Living Expense. This includes expanding the National Standard miscellaneous allowance to include credit card payments, bank fees and charges.

For more information on these changes read through the Form 656-B, Offer in Compromise Booklet. A complete listing of the IRS Collection Financial Standards are also available on the IRS website by type in PDF format at http://www.irs.gov/individuals/article/0,,id=96543,00.html.

OPR Disciplinary Actions – Provided by David J. Fayram, EA

The following individual has been *reinstated* to practice before the IRS.

Juanita A. Gonzales, EA and NAEA member

Palo Alto, California

Reinstated to practice as of January 29, 2012

Dave's Corner – TEFRA Partnerships (A Primer), David J. Fayram, EA

Partnership taxation is its own specialty. There are a number of procedures and terms of art peculiar to this specialty. EAs should have some familiarity with these.

Historically, there are two different ways of looking at partnerships for tax purposes. The definition of a partnership (something like, "a group of two or more entities whose purpose is to carry on a business for profit"[1]) is common to both of them. The first way is that the partnership itself has no separate existence. The result of this view would be that every partner would report separately his, her, or its share of every transaction. The opposite extreme would be the other way of looking at partnerships. That is the partnership existed separately from the partners and is itself responsible for reporting all transactions. The former view is the one which held sway for the first sixty or seventy years of tax practice.

Problems with this approach arose during the 1960s and 1970s when partnerships became very popular as vehicles for tax shelters. Some of these partnerships were perfectly legitimate, but many were not. The illegitimate partnerships undertook bogus transactions and then sold the tax results by passing them through to their partners.[2] When the IRS came to audit these partnerships, it found literally thousands of partners in each partnership. The process involved first auditing the partnership, then identifying (to the extent it could) all the partners, then auditing each of these partners. Many of these audits resulted in statutory notices of deficiency which were then appealed to the U.S. Tax Court. Finally, settlement of the cases resulted in assessments. The whole process could have taken decades. Both the Tax Court and the Examination Division were completely overwhelmed by these cases.

"The illegitimate partnerships undertook bogus transactions and then sold the tax results by passing them through to their partners.[2]"

The government responded to this problem with the *Tax Equity and Fiscal Responsibility Act of 1982*, which was passed by Congress on August 19, 1982. The solution was to change the view of partnerships from the former to the latter of those two described above. In other words, individual partners were cut out of the audit process in many, but not all situations. Partnerships are now considered separate entities for this purpose and are audited in their own right.[3] A determination by the Commissioner in proceedings at the partnership level is referred to as a "final partnership administrative adjustment" (FPAA). The FPAA is the equivalent of a statutory notice of deficiency for nonpartnership audits.

Dave's Corner – TEFRA Partnerships (A Primer), David J. Fayram, EA

At the commencement of a partnership audit the Commissioner must notify some, but not all, of the partners about the audit. If there are fewer than 101 partners, all must be notified. If there are more than 100 partners, then those with less than a 1% profits interest may be excluded. If a group of partners who individually own less than 1% join together in such a way that their total profits interest is 5% or greater, they may request that the Commissioner notify one of their number about the audit. These same rules apply to notice of the FPAA.

"Once these periods expire, the partners' rights expire completely."

From these rules, it should be clear that a partner who owns less than a 1% profits interest might be completely unaware of a partnership audit. The first notice such a partner would receive would be a notice of assessment. Such a partner would have no right to object to the assessment. This is one of the disadvantages to investing in partnerships for small investors.

The tax matters partner (TMP) is the person who will receive notices and correspondence from the IRS. The partnership chooses this person from among the general partners of the partnership. Among the few requirements is that the person actually be a general partner. If the IRS cannot determine who the TMP is, it will send notices to the largest general partner. Notice that an administrative proceeding is under way must first be sent to the TMP. The remaining partners must be notified within sixty days after the notice to the TMP. Once all the notices have been mailed, the IRS must wait at least 120 days before issuing an FPAA.

One ignores any of these notices at their own peril. For example, the TMP has 90 days after the date of the FPAA to petition the Tax Court, the U. S. District Court, or the Claims Court for a redetermination of the FPAA. If the TMP fails to do so, then any partner entitled to notice may do so within 60 days after the expiration of the 90-day period. Once these periods expire, the partners' rights expire completely. There are no extensions available on these periods and no way to recover the rights.

There are many potential problems in this environment, especially when the partners do not agree among themselves. The most common of these is when the partner does not agree with the K-1 which he or she received from the partnership. A cursory examination of the K-1 might reveal that it is wrong. The partner might have records which demonstrate that it is not correct. In this situation, there is a big temptation to simply report the "correct" amounts on Schedule E of the partner's Form 1040 and let it go at that. This would be a very bad decision.

When the IRS notices that the 1040 does not agree with the K-1, it will force the return to agree with the K-1 by making a math adjustment under IRC section 6213(b)(1). Normally one would object to this by demanding an abatement of the assessment within 60 days. Normally when faced with this demand, the IRS must abate the assessment and, if it chooses to continue, issue a statutory notice of deficiency. Unfortunately for an errant partner, the IRS is not required to abate the assessment or to issue a statutory notice of deficiency. The assessment stands and the partner has no right to object. At this point both the partner and the tax return preparer would be subject to various penalties.

Under the TEFRA changes, each partner is required to treat partnership items in a manner consistent with the treatment of such items on the partnership return.[4] The *only* way to preserve the partner's rights is to notify the Commissioner of the inconsistency by attaching a notice to the partner's Form 1040. Form 8082, "Notice of Inconsistent Treatment or Administrative Adjustment Request" may be used for this purpose. According to Form 8082 instructions, the form is to be filed at *both* the Service Center where the partnership return is filed and at the Service Center where the partner's return is filed. The Regulations provide that the form must be filed in accordance with the instructions accompanying the form. Failure to comply (for example failing to mail both copies of the form) may negate its effect. The instructions also mention penalties and state that if a partner disregards the requirements for filing Form 8082, he or she may be subject to the accuracy-related penalty or the fraud penalty. Also, the form might not be available to partners in non-TEFRA partnerships (those formed before 1982) and certain electing large partnerships.

The procedure for correcting errors on partnership returns is complex. First, a partner must file a "request for an administrative adjustment" (RAA). The RAA must be filed within three years of the date the original return was filed and it must precede mailing of a notice of FPAA to the TMP. If the RAA is filed by the TMP, the IRS may respond in one of three ways: (1) go along with the changes and assess any tax as if it was a mathematical error, (2) conduct a partnership proceeding, (3) do nothing. If the RAA is filed by a partner other than the TMP, the IRS may also respond on one of three ways: (1) allow the refund or assess the tax against the partner, (2) examine the partner's return, (3) conduct a partnership proceeding. If the IRS does not adequately respond to the RAA, its decisions can be reviewed by the Judicial Branch.

Dave's Corner – TEFRA Partnerships (A Primer), David J. Fayram, EA

Issues regarding inconsistent treatment of partnership items present a morass of uncertainty in the tax law. The March 2010 issue of *Taxes Magazine* contains an article on the subject by Sheldon I. Banoff.[5] The article covers 79 pages and is followed by 373 footnotes covering twelve pages of fine print. The difficulty arises when there are two equally correct ways to prepare the partnership return but these two ways affect individual partners differently. Partners then might try to file competing partnership tax returns. The IRS doesn't have any rules as to who among the general partners can file the Form 1065. Frankly, if the partners do not agree as to how the return should be prepared, or if the preparer discovers that the return could be prepared in ways that benefit some partners at the expense of others, then tax return preparers should head for the exits in order to avoid difficult ethical issues.

Footnotes

[1] IRC § 761(a), 2012(10), *Stand. Fed. Tax Rep.* (CCH), ¶ 25,600. The definition of a partnership is: "For purposes of this subtitle, the term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title [subtitle], a corporation or a trust or estate."

[2] For example, a partnership might approach a potential partner as follows: "I see you have a fountain pen in your shirt pocket there. I will buy that pen from you for a $10,000 note and no cash. You will show the sale as an installment sale. I (the partnership) will show that I purchased a business asset since the pen will be used in my business. I will depreciate this asset over two years and pass through to my partners an investment credit of $1,000. You will pay me $500 for your partnership interest." There were no basis limits and no passive activity rules which would now prevent the losses on the partner's return. The note used to finance the purchase went into never-never land. It was never forgiven and never paid back.

[3] IRC § 6221, 2012(10), *Stand. Fed. Tax Rep*. (CCH), ¶ 37,565. "Except as otherwise provided in this subchapter, the tax treatment of any partnership item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item) shall be determined at the partnership level."

[4] IRC § 6222(a), 2012(10), *Stand. Fed. Tax Rep*. (CCH), ¶ 37,570. "A partner shall, on the partner's return, treat a partnership item in a manner which is consistent with the treatment of such partnership item on the partnership return."

[5] Sheldon I. Banoff, *Partner/Partnership Wars, Return Preparer Dilemmas and Ethical Conundrums: Inconsistent Tax Reporting Positions in Passthrough Entities*, Taxes, 88, 3, March 2010, at 123.

Pictures from May 2012 Annual Meeting & Banquet

Thursday Morning Sign In

Speaker, Laurie Downs

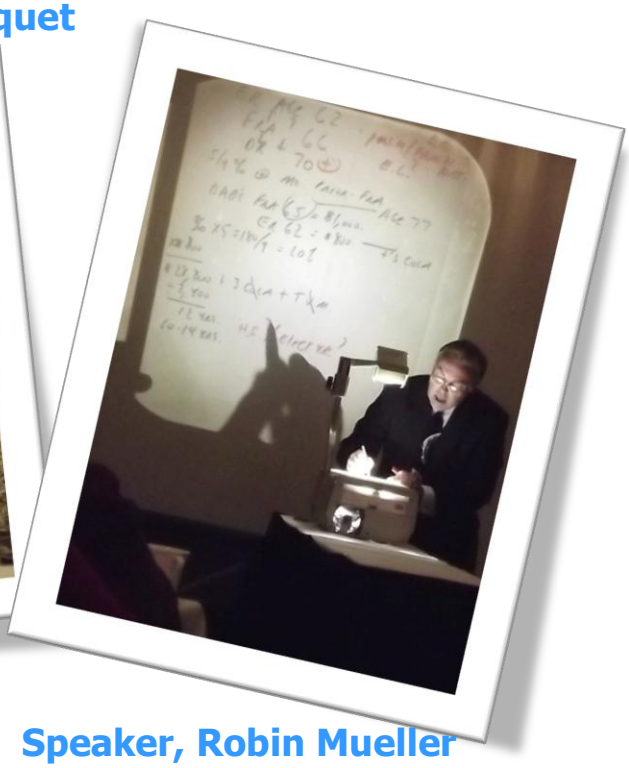
Thursday Seminar

Speaker, Julie Molek

Pictures from May 2012 Annual Meeting & Banquet

Annual Banquet

Friday Seminar



Speaker, Robin Mueller

Friday Seminar

National Taxpayer Advocate Report to Congress, Katie M. Jansen, EA

National Taxpayer Advocate, Nina Olson, issued the required mid-year report to Congress in late June 2012. I would like to touch upon only a couple points I found interesting. This information was taken from IRS Newswire Issue Number IR-2012-6.

The first issue of interest addressed was Expired Tax Provisions. I think it is important that tax professionals keep these in mind when tax planning for 2012. These expired items include the "AMT patch", the deduction of state and local taxes, deduction of mortgage insurance premiums and the provision allowing someone over 70 ½ to use tax-free withdrawals from their IRAs to make contributions to charitable organizations. According to Nina Olson an estimated 27 million more Americans would be subject to AMT and about 15 million people would be impacted by the other two standard Schedule A deductions. We all know that Congress has a reputation and history of waiting until the 11th hour to let the rest of the country know what decisions they have made regarding any expired tax provisions. Combine these provisions with the others set to disappear after December 31st, 2012 (Bush–era tax cuts) and we in the tax industry have a recipe for disaster. Hopefully, having the National Taxpayer Advocate prod Congress about this in June will provide sufficient motivation for them to take action sooner than the 11th hour.

The last issue I want to write about is Tax Fraud, Tax Related Identity Theft and Balancing Speedy Refunds, Fraud Prevention and Victim Assistance. In FY 2011 the IRS's Electronic Fraud Detection System flagged more than one million returns as being fraudulent and blocked another one million refund claims using other means. The problem with this system – tens of thousands of those blocked refunds and flagged returns were legitimate, including at least one of my own clients. Essentially, this system is still in development and clearly needs some work. Another problem is the combination of the staggering number of cases to sift through and the IRS budget limits which has forced the IRS to put "hard freezes" on cases it cannot resolve within 11 weeks. This of course is delaying legitimate taxpayer refunds, which is not good.

The IRS does notify the taxpayer when they are affected by issuing a letter and requesting that the taxpayer call the Taxpayer Protection Unit. The problem with this unit? It has been unable to answer an estimated two out of every three calls made to it. During the filing season this statistic dropped to one out of every nine calls. Those taxpayers who managed to get to a person had to wait on average over an hour to talk to an actual person.

National Taxpayer Advocate Report to Congress, Katie M. Jansen, EA

I was one of those stubborn people who called on behalf of an elderly client in the middle of February and waited about an hour and a half to get to a person. The interesting part about my conversation with this IRS employee was that when I was told to provide additional information on behalf of my client he told me that it would be faster to mail the information in rather than fax it. He was right because recently my client actually got her 2010 $7,000 refund check in the mail. I am unsure what action Taxpayer Advocate can take in regards to resolving this issue. One of my suggestions would be to make the letter taxpayers receive clearer. I had no idea that I was even calling this unit or that this had anything to do with identity theft/fraud. Maybe the unit and reason was not provided on the letter in case the person receiving it actually was committing those crimes. The Taxpayer Advocate Service will continue to focus its attention on these areas and hopefully they can come up with some suggestions for Congress to enact that will improve how identity theft and fraud are handled.

Nina Olson, National Taxpayer Advocate

TAXPAYER ADVOCATE SERVICE

YOUR VOICE AT THE IRS

What does "Contemporaneous" Mean, David J. Fayram, EA

David and Veronda Durden were residents of Texas in 2007. Both were professionals. Mr. Durden was employed as an administrator by the Texas Department of Insurance and Ms. Durden was employed as an administrator by the Texas Department of Aging and Disability Services. They contributed $25,171 to charitable organizations. Of this amount, $22,517 was given to their church named Nevertheless Community Church (NCC). Except for five checks totaling $317, the checks written to NCC were for amounts larger than $250. NCC is a section 501(c)(3) organization eligible to receive tax deductible contribution under section 170(c)(2). They had a letter from NCC dated January 10, 2008 acknowledging the contributions.

Before proceeding, we should consider if we, as tax return preparers would deduct the amounts as charitable contributions based on the information presented.

The Durdens filed their return before April 15, 2008. On April 13, 2009 the IRS sent a statutory notice of deficiency disallowing the deductions. The problem was that the letter from NCC did not contain a statement regarding whether any goods or services were provided in consideration for the contributions. The Durdens responded to the notice by filing a petition with U.S. Tax Court. In support of the deduction they presented a second letter from NCC which contained all of the original information in the first letter along with the missing statement. This second letter was dated June 21, 2009.

The issue in *Durden v Commissioner*[1] was the deduction claimed by the Durdens.[2] The Court made short work of the deduction by citing IRC section 170(f)(8)(A):

> No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

Subparagraph 170(f)(8)(B)(ii) lists the following to be included:

> Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

The Durdens, who are called "petitioners" in this context, represented themselves. They presented the following arguments:

1. That they substantially complied with the statute and are entitled to the claimed deductions.
2. That they fulfilled the essential statutory purpose even though their written acknowledgment does not include the statement.
3. That section 170(f)(8)(B) provides only a "safe harbor" in relation to the content of a written acknowledgment and does not establish the exclusive means by which a written acknowledgment may be deemed sufficient.
4. That the first acknowledgment was sufficient to enable a determination of their contribution amounts because their contributions were of cash and not property that must be valued.
5. That the omission of the statement in the first acknowledgment was sufficient to indicate that no goods or services were provided.
6. That the IRS should be required to consider information beyond that found in the first acknowledgment to determine whether they received any goods or services as consideration.

All of these were rejected by the Court which found that they had failed to strictly or substantially comply with the clear substantiation requirements of the IRC.

Apparently the Durdens prepared their own return, but what if they hired someone to do the return? Taking a frivolous position on a tax return can result in big-time penalties and disbarment. The worst case here would be the situation where the preparer had access to the first letter and knew that it was incomplete at the time the return was prepared. Be careful out there!

Footnotes

[1] *David P. Durden and Veronda L. Durden v. Commissioner*, TC Memo 2012-140, May 17, 2012, CCH Dec. 59,061(M).

[2] The IRS voluntarily conceded the accuracy-related penalty.

Wisconsin Sales Tax Celebrates 50 years, Katie M. Jansen, EA

Those of you who have a little bit of a history buff in you might be interested to know that Wisconsin adopted sales and use tax in 1962. In the Wisconsin Tax Bulletin 176 – August 2012 there was a one-page article about the history of sales and use tax in Wisconsin. For a full copy of Wisconsin Tax Bulletin 176 – August 2012, click here.

The initial tax was adopted on February 1, 1962 and was a 3% tax on "selective" products and services. The items taxed had to be listed specifically in the law. Some examples listed included records, movie tickets above 75 cents and phonographs. Seven years later in September of 1969, a 4% "general" tax on tangible personal property was adopted. This meant that all retail sales of tangible personal property were taxable unless an exemption applied. It was not until 1982 that the 5% base tax rate was adopted. A few years later in 1986 some counties adopted the .5% county tax. There are still some exceptions to that .5% additional county tax today and they include Calumet, Kewaunee, Manitowoc, Menomonie, Outagamie, Sheboygan, and Winnebago counties. In 1996 the .1% Baseball Stadium tax was added in Milwaukee, Ozaukee, Racine, Washington and Waukesha counties. .5 % Brown county football stadium tax came along in 2000 and according to WIDOR, they adopted streamlined sales and use tax laws in 2009. I wonder if anyone from 1962 is still around to contradict their definition of streamlined.

Sales and use tax revenue accounts for nearly 32% of the state's revenue. In 1962 WIDOR collected about $55 million in sales and use tax. Today that number is roughly $4 billion annually. I wonder if the 1969 4% general tax was as confusing as our current sales and use tax laws are. Apparently, Wisconsin also has one of the lowest sales and use tax rates in the country. I believe this, but the Department of Revenue failed to mention that some of those other states have no income tax (Washington, Nevada, or Florida, just to name a few).

The bottom line is no matter what state you live in somehow it has to generate revenue to provide its residents with certain services and features – like decent roads, rest stops or beautiful state parks. I may think Wisconsin sales and use tax law is not streamlined or even simple, but at least I appreciate what the revenue it generates has provided to the residents of this state. For the record I am still not sure if we should "celebrate" the adoption of sales and use tax in Wisconsin, but it seemed an appropriate title for this article.

Wisconsin Sales Tax Celebrates 50 years, Katie M. Jansen, EA

If anyone is interested in a complete list of the tax rates in all the counties it can be found at http://www.dor.state.wi.us/faqs/pcs/taxrates.html#txrate11. WI DOR website also has a tool that allows you to look up sales tax rates by zip code, which can be very handy if you have clients that sell products all over the state.

Wisconsin Tax Bulletin 176 – August 2012 also mentioned free sales and use tax seminars being offered in October by Wisconsin and Minnesota Department of Revenue. They also have other seminars available around the state. Information about these seminars can be found at this link http://www.revenue.wi.gov/training/events.html.

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"Alexander Hamilton started the U.S. Treasury with nothing and that was the closest our country has ever been to being even."
~ Will Rogers

WE SPEAK TAX!

Thank You!

An era is ending. As many of you already know Don Wollershiem, EA will be resigning September 30th as Executive Director of WSEA. After years of service that included early mornings and late nights along with skillful planning and negotiating he has decided to take a well earned permanent vacation. He looks forward to attending a seminar like most of our other members do and not worrying about how much food is left at lunch or how cold the rooms are even though he has asked the hotel staff countless times to adjust it so we all don't freeze. The amount of hard work and personal time donated by Don is probably only known to a few of his closest EA friends and co-workers. If you see him at the September seminar make sure you thank him for all that he has done to help make this organization what it has become. I have a feeling that we will still see him around. Maybe a little more relaxed, but probably still smoking just as much! On behalf of our membership I would like to wish Don the best and make sure he knows that he is still welcome to speak at WSEA Events.

~Katie M. Jansen, EA WSEA Director/Newsletter Co-Editor