The Tax Times

In This Edition

May 2013

Wisconsin Society of Enrolled Agents

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www.wienrolledagents.org

Notes from the desk of the Executive Director

I hope you all had a good ending of the tax season. With any luck you have had some time to relax. WSEA has some great continuing education seminars coming up. Hopefully you are already registered for our upcoming seminar May 23rd and 24th, but if you are not there is still time! Amy King will be there discussing a variety of topics including: Sec 183, E-file Record Keeping, Repairs vs. Capitalization, Auditing Techniques, The Home Office, Beauty Shops, and Earned Income Credit. We will also have Tom Zoeller covering different aspects of S Corporations, Rental Properties and Tax Planning. To get your registration in please visit our website at www.wienrolledagents.org for the announcement or call 920-686-1040 for further details.

Save the dates Thursday, September 19th and Friday, September 20th because we have Mickey Reedy, Don Wollersheim and Pat Handlos speaking. Mickey will be speaking on Representation & Ethics the first day and Schedule D and B the following day. Also on Friday Don and Pat will be covering Entity Selection. The seminar will be hosted in La Crosse at the Days Hotel & Conference Center; we look forward to seeing you there!

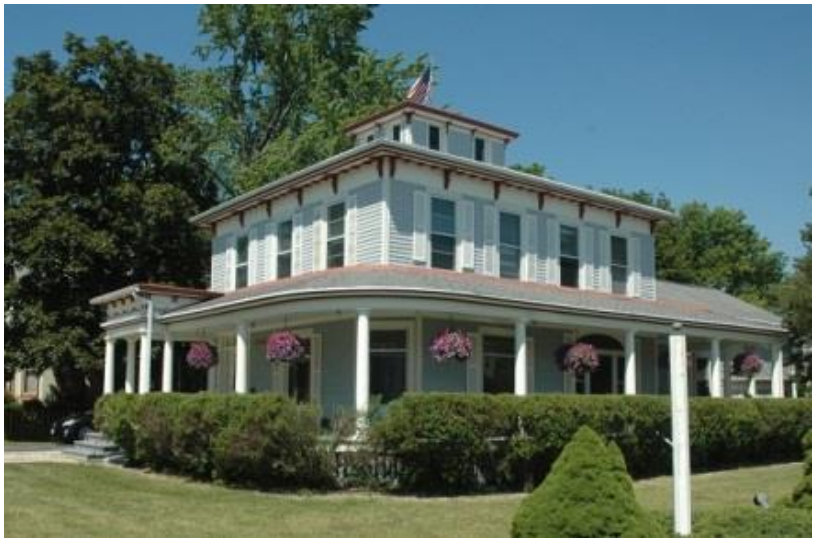
Lawrence Stein, EA

Executive Director

EA or RTRP Wanted!

Come join a small, well established, diversified practice located in beautiful East Troy, Wisconsin.

Contact Eric at etroytax@aol.com.



East Troy Tax Service LLC is located in the heart of East Troy. The office is a home built in 1855 by an early East Troy pioneer. It has had many roles over the years including, a private residence, funeral home, tea room, public library, law office, travel agency and a real estate office. Eric is looking for someone that has tax and accounting background with a strong interest in tax. Contact him for more details at etroytax@aol.com.

WSEA Earns an Award from NAEA

~Julie Molek, EA~

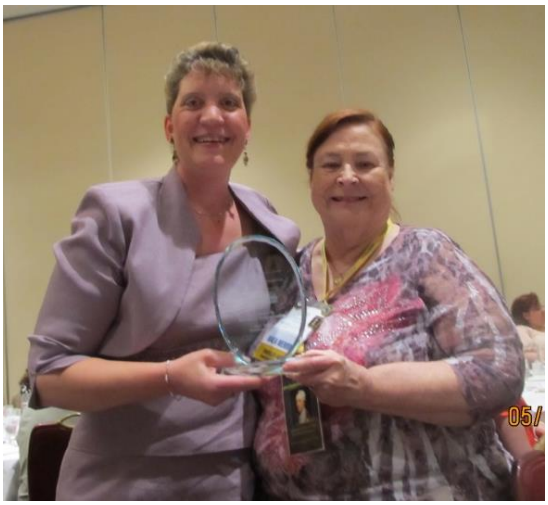
During 2011, new rules for continuing education came into play. At that time, the IRS and Wisconsin Dept of Revenue put on 5 hour seminars for CPE called "Working Together." However, under the new rules, the seminars did not qualify for credit because the Wisconsin portion, took up a larger portion of the time than was allowed under the new rules.

Don Wollersheim, EA, our Executive Director at the time, presented the IRS with a proposal for 8 hour sessions at eight different locations around the state. The sessions included Ethics, Wisconsin Updates, and other Federal Tax Issues. With the agreement of the IRS and Wisconsin Department of Revenue, Tax Updates for Tax Professionals was created.

Through Tax Updates for Tax Professionals, we were able to connect with 831 non WSEA members and provide them, not only with continuing education, but also provided an EA booth where they could learn more information about the role of the EA. There were an additional 61 attendees who were WSEA members. Of those 61, only 9 were familiar faces from previous seminars hosted by WSEA.

As a result of the success due to the hard work on the part of Don and many others, WSEA tied MNSEA for first place in the Education Category. Both affiliates were given an award. Minnesota's educational achievement was due to turning their Seminar program into a profit making venture for their organization.

Laurie Ziegler, EA, Past President and Julie Molek, EA, Vice President were at the APEX meeting to receive the award on behalf the WSEA.



NAEA Director Laurie Ziegler and WSEA Vice President Julie Molek holding WSEA Award

Dates IRS Offices will be closed

For those of you who deal with the IRS on a regular basis it is important to know that their offices will be closed the following days:

- Friday, May 24, 2013
- Friday, June 14, 2013
- Friday, July 5, 2013
- Monday, July 22, 2013
- Friday, August 30, 2013

Watch for additional IRS Updates for two possible days in September as well.

HSA 2014 Inflation Adjustments

2014 HSA annual contribution limit is $3,300 for single coverage and $6,550 for family coverage. This is up from the 2013 amounts of $3,250 for single coverage and $6,450 for family coverage. Please remember that HSAs are only allowable for high-deductible health plans. IRS defines this as a plan having an annual deductible of not less than $1,250 for single coverage and not less than $2,500 for family. The deductible definition has not changed from 2013. Additionally, yearly out of pocket expenses cannot be higher than $6,350 for single coverage and $12,700 for family coverage. 2013 annual out pocket limitations were $6,250 for single coverage and $12,500 for family.

Allowable Living Expense Standards Updated

As of April 1st, 2013 the ALE standards used to help taxpayers figure their basic living expenses when doing an Offer in Compromise have been updated. The ALE standards are available at the Collection Financial Standards Web Page on irs.gov.

IRS has also revised two forms often used when completing an Offer in Compromise. Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals and Form 433-B, Collection Information Statement for Businesses. The last revision of these forms was in January 2008. IRS will still accept the older forms until June 1, 2013.

Report on the IRS 2012 Data Book

~Compiled by Katie M. Jansen, EA~

In March 2013, while the tax industry had its nose to the grindstone, the IRS released its annual report on IRS activities for the Fiscal Year 2012 (October 1, 2011 to September 30, 2012). The full Internal Revenue Service Data Book, 2012 is available for further perusal at irs.gov.

Rather than list everything (it is quite lengthy – 84 pages) I have included some items that may be of interest. Please remember that this data is for 2011 income tax returns.

Total Income Tax Returns filed in the United States **182.3 million**.

Of these 146.2 million were from Individuals, 6.8 million from C and S Corps and 3.6 million from Partnerships.

Wisconsin totals included 2.767 million Individual returns, 94,561 C and S Corporation returns and 60,977 Partnership returns. In case anyone else was curious Wisconsin's estimated population for 2012 according to the U.S. Census Bureau was 5.726 million people.

Over 144.6 million returns were filed electronically of which approximately 81% were individual returns. Tax professionals filed more than 75.1 million of these individual returns and 3.1 million were filed by taxpayers using IRS Free File Program.

Wisconsin had 2.765 million income tax returns e-filed; 2.3 million of which were individual returns.

Total Individual withholding amounts collected (withholding, estimated payments and estate and trust tax) $1.4 trillion. Of that $324 billion was issued back to taxpayers as refunds.

The amounts collected also included $37.3 million in Presidential Election Campaign Funds.

If you are wondering why the government wanted to reduce the Child Tax Credit and has cracked down on Earned Income Credit the amount of refunds from the refundable Child Tax Credit was almost $17.0 million; from EIC nearly $23.5 million.

For 2011 tax returns the IRS examined .9% of all returns filed, 1.0% of all individual returns and 1.6% of C-corp. returns. Out of the 1.5 million individual returns reviewed 54,000 of them resulted in additional refunds to the tune of $1.0 billion being issued!

More than 2.2 billion information returns were received by the IRS in 2011. Of these 88.8% were filed electronically.

Information Returns provide a key tool for the IRS to check tax returns and generate an estimated return for non-filers. The Automated Underreported Program issued notices and resolved 4.5 million cases, resulting in $7.2 billion additional assessments not including interest and penalties.

Report on the IRS 2012 Data Book, Continued

Math errors are also quite common and are checked routinely before refunds are issued. Total math errors on 2011 Individual returns were 2.7 million. 363,798 were from Earned Income Credit errors, 140,685 from First Time Homebuyer Credit, 66,842 from Hope and American Opportunity Credits and 143,869 from Child Tax Credit.

For Fiscal Year 2012 the IRS collected over $31.1 billion dollars in unpaid assessments from returns filed with additional amounts due.

Delinquent Returns filed in 2011 collected $1.7 billion out of the $18 billion assessed. 9% of what was assessed was collected.

Civil Penalties totaling $26.9 billion dollars were assessed in 2011. $13.6 billion were on individual, estate and trust income tax returns. For those unfamiliar with what those penalties are, they include accuracy (negligence: understating income or overstating expenses), bad check, delinquency, estimated tax, failure to pay, fraud, failure to supply TIN and failure to report tip income. Of the assessed civil penalties $11.3 billion were abated.

Offers in Compromise Received – 64,000. Only 24,000 of those were accepted. The accepted offer amounts totaled $195.7 million.

The Criminal Investigation Program, which is split into three areas: legal source tax crimes, illegal source financial crimes and narcotics-related financial crimes, started 5,125 investigations and completed 4,937. 81.5% of the people sentenced were incarcerated.

Taxpayer Advocate received 219,666 cases in FY 2012 and resolved 232,508. Please remember that cases resolved span more than one year. The highest type of case received was Identity Theft with 54,748 cases.

The Appeals department received 135,061 cases and closed 144,453. Cases closed can span more than one year and none of the cases include those assigned to Chief Counsel.

The IRS collected $2.5 trillion and incurred an approximate cost of 48 cents to collect $100. They spent $2.4 billion on taxpayer services, $5.3 billion on enforcement and $4 billion on support operations. They employed a workforce of 97,941 people.

The back of the Data Book is loaded with people's names. The principal officers are listed; all of the IRS Commissioners back to 1862 are listed as well as all of the IRS Chief Counsels back to 1866. The final page is a flow chart of how the IRS is organized.

I tried to condense this, but overall the whole Data Book was both interesting and frustrating to peruse. One frustrating item was the fact that Table 1 has gross collections for individual income tax withheld, but n.a. (Not Available) for refunds and net collections. In reading the footnotes apparently FICA, SECA and OASDHI are combined with the Federal withholding amounts. I found this odd because on every information return I have ever seen these amounts are put into separate boxes, which are all computer read!

For more information on IRS operations follow the link I listed above and check out the 2012 Data Book.

The following items were released in the April 2013 Wisconsin Department of Revenue Tax Bulletin. For a full copy go to http://www.revenue.wi.gov/ise/wtb/179.pdf

Net Operating Loss Carryforwards:

For Individuals, Estates and trusts WI DOR has done a 360 on their position regarding carryforward of an NOL from a return filed after the four-year statute of limitations has expired. This does NOT apply to corporations or partnership returns. If you file an income tax return timely and then later discover an error after the four-year window to amend has passed you are now allowed to carryforward any NOL that error creates. You may not claim a refund for the taxes paid on the return that generates the NOL if it is after the four-year statute of limitations.

Non-Motorized Campers and Sales Tax

Wisconsin retailers must collect the 5% state sales tax on campers purchased by non-residents if the non-resident takes possession of the camper in Wisconsin. The additional county and stadium taxes are also required, but only as follows:

- For a recreational vehicle county and stadium tax must only be collected based upon where the vehicle will be kept.
- For a camping trailer the retailer must collect county and stadium tax based upon where the vehicle is taken possession of.

Sales Tax Treatment of Credit Card "Swipe" Fees

Starting on January 27, 2013 a retailer is allowed to charge a "swipe" fee to customer for using certain credit cards.

Sales tax is charged on taxable items and services after the inclusion of the "swipe" fee.

Example:

TV Purchase - $599.00

"Swipe" Fee (2%) – $11.98

Taxable total - $610.98

Sales Tax (5%) – $30.54

Total Paid by Customer - $641.52

Limousine Fee

Limousine service with a driver is not subject to sales tax. However, there is a 5% limousine fee imposed.

There are some very clear definitions of what is and is not considered a limo for the purposes of the fee.

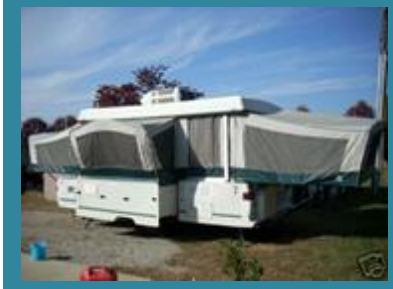
Basically, if there are 10 or less passenger seats, a minimum of 5 located behind the driver, it is operated on an hourly basis and has a prearranged contract for transportation of passengers along a route that the client that hired the vehicle choses it is subject to the limo fee.

Go to the bulletin to see a listing of what is not considered a limo.

Credit for Tax Paid to Illinois on Unemployment Compensation

Illinois/Wisconsin reciprocity agreement does NOT apply to unemployment compensation issued to a Wisconsin resident from the Illinois Department of Employment Security

If the unemployment compensation is taxable to both states, taxpayers are allowed a credit to the extent the unemployment is taxable in both states.



Reimbursements of IRS Administrative Expenses

~ David J. Fayram, EA ~

The IRS usually knows what it is doing. For the most part, problems are caused by taxpayers. But occasionally it happens that the IRS is the problem. In these rare cases, taxpayers might be exposed to substantial professional fees through no fault of their own. If the IRS is clearly at fault, taxpayers who are represented by EAs can be reimbursed for the time spent by the EA at rates up to $180 per hour. In what follows, I hope to summarize the content of IRC Section 7430 as it applies to reimbursements of administrative expenses paid to EAs. This will represent a substantial reduction of the material in Section 7430 because most of the section is devoted to litigation expenses charged by lawyers. Lawyers have been down this path many times and the path is well-worn. There are extensive regulations and court cases. For EAs — not so much. I do not think it happens less often to EAs, I think EAs are not aggressive in filing claims.

Section 7430 defines two kinds of reimbursable costs. The first are "administrative costs," which include those incurred for representation before the IRS. The second are "litigation costs," which includes expenses incurred for representation before the judicial branch. The matter must be completely resolved before costs can be awarded so it is possible that administrative costs will only be awarded after a judicial proceeding. There are four requirements which must be faced in order to obtain reimbursement of either type. Each of these four has an extensive list of subsidiary requirements.

Incur Costs

The taxpayer must incur costs as a result of IRS action. There is a list of covered items, and the list seems to be inclusive, but the main one of interest here is our bill! The law makes clear that our bill must be "reasonable." We must provide complete time records or some other reasonable way for determining the bill. If you charge more than $180 per hour, then your rate will be reduced to $180 per hour.

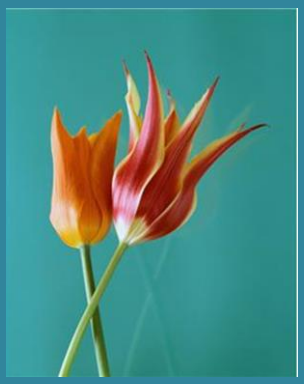
In addition, the costs must be incurred after receipt of the first 30-day letter. The statute reads, "…the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent." Since the Examination Division might issue more than one 30-day letter, it is possible that some administrative expenses could be incurred during representation before the Examination Division.

Exhaustion of Remedies

The taxpayer must have exhausted the administrative remedies available within the IRS. Many taxpayers have been tripped up by this one. If an Appeals Office hearing is granted, then the taxpayer must participate in the hearing before filing a petition in court. On the other hand, if no Appeals

Office hearing is granted, then the taxpayer must request one in writing before the IRS issues a statutory notice of deficiency. Requesting an Appeals hearing is not so easy with the "CP2000" type of audits where the main purpose of the IRS system is to issue the statutory notice as soon as possible. The idea of filing a Tax Court petition and then having the case go back to Appeals will not work here (there are no reimbursements for administrative expenses related to docketed cases, but these might qualify as litigation expenses). You must be aggressive in filing the request for an Appeals hearing in a timely manner.

One could quibble over the definition of "participate" as the term is used above. The thought that you will only put in a performa appearance at Appeals believing that all the costs incurred in Tax Court will be paid by the government is a bad one. First, you are required to disclose, "…to the Appeals office all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party…" We have the burden of insuring that the IRS clearly understands the facts. If we do not do this, a showing of IRS negligence will be impossible. This issue will certainly be raised by the government when the reimbursement is requested. The thought is also a bad idea because it is extremely difficult to recover costs. Things just might not work out! In my own practice, I seriously try to reach accommodation with Appeals. If the client will not go along with this, then we part ways.



In order to recover litigation costs, taxpayers must exhaust all administrative remedies as described above. There is no specific similar requirement for administrative costs. Effectively the requirement remains though because, in order to be the prevailing party (see below), the taxpayer must receive either a notice of decision from Appeals, or a notice of deficiency. There are a few exceptions to this requirement. Most of them have to do with IRS screw ups. One important one is that a taxpayer's refusal to extend the time for the IRS to assess the tax is *not* considered a failure to exhaust his or her remedies.

No Taxpayer Delays

This one is a subjective determination as to whether the taxpayer "unreasonably" protracted the proceedings. You can recover to some extent from the taxpayer who did this before you were retained. If you can show that your part of the representation was not protracted, then costs should be awarded for that part only. This might be an uphill battle unless the taxpayer has a change of heart.

Taxpayer Must Prevail

This sounds simple, but it is not. I will skip over net worth requirements and qualified settlement offers. The first because it will affect few of our clients ($2 million in net worth); and the second because it would justify an article on its own. I am also going to skip procedural requirements which cover about two pages at Regulations Section 301.7430-2(c). These paragraphs describe the actual procedure for making a claim.

The heart of the matter here (ignoring qualified offers) is that the IRS does not establish that its position was substantially justified and the taxpayer substantially prevails with respect to the amount in controversy or the most significant issue(s) present. Here is another uphill battle because the IRS position will be substantially justified if it has a reasonable basis (a low standard) in both fact and law. For administrative expenses, this determination will be a subjective one made by the IRS (subject to an appeal to Tax Court)! There is an extensive body of literature about the prevailing party for litigation costs, but hardly any examples for administrative costs.

Additional Requirements for Administrative Costs

Administrative costs follow the rules above with a couple of additions. The first is that the underlying substantive issues are not, and have never been, before any federal court with jurisdiction over the issues. This does not necessarily prevent the expenses from being recovered; it just means that one must file a motion in a court requesting reimbursement of litigation expenses.

There are also a few specific exclusions from administrative costs which do not apply to litigation expenses. Most of these are of little concern (hearings about revenue rulings, or an application for a letter ruling for example). There is one big one though: collection actions. Taxpayers will not be reimbursed for collection due process hearings. Litigation costs of the appeal of a collection due process hearing to Tax Court might be eligible for reimbursement.

Practice Applications

The preceding paragraphs compress about 120 pages of text down to about one thousand words. Obviously these few words will not be sufficient in the event you have an actual case. Using this brief outline, how can we integrate Section 7430 into our practices?

We should be aware of when we are billing fees which might be reimbursable and we should proceed in such a way that these fees are maximized. Do we have the *first* 30-day letter yet? Have we received the statutory notice yet? Should we file a protest to prevent the issuance of a statutory notice? Has the taxpayer unreasonably delayed an Appeals hearing?

In order to win, we must prove that someone at the IRS was negligent. We must prove that the person repeatedly maintained a frivolous position and that this caused the taxpayer to incur expenses which would not have accrued otherwise.

Reimbursements of IRS Administrative Expenses, Continued

The positions might appear in the notice of decision or statutory notice, but this is not necessary. The person could maintain the erroneous position for many months (or years in today's Appeals Division) and only concede at the last minute. If the issue is not conceded, then a Court proceeding will be necessary before the taxpayer can "prevail." The ideal situation would be where the taxpayer fully participates in a long and expensive Appeals hearing only to have every single issue conceded by the IRS. In this situation, there will be no litigation expenses, and the claim must be filed for reimbursement of administrative expenses with the IRS.

If NAEA is looking for issues which would benefit EAs, this is certainly one. Collection actions are rife with errors and frivolous positions. Extending Section 7430 to collection actions would be a great step toward improving taxpayer rights. Congress did not originally exclude collection actions. The IRS did with Regulations Section 301.7430-3(a)(4). At least this would provide an incentive for the IRS to improve the processing of its collection activities.

January 2013 Update Seminar Pictures

Additional IRS News

New and Now Available! Where's My Amended Return? Tool

Brand new in 2013 the IRS has come up with a tool that taxpayers can access on their website to see if an Amended Return has been processed. Please note that it does take 3 weeks from the date the amended return was mailed to show in this new system. This tool is also not for restricted interest claims or tentative carryback refund claims. To check it out go to

http://www.irs.gov/Filing/Individuals/Amended-Returns-%28Form-1040-X%29/Wheres-My-Amended-Return-1

PTIN Account Improvements

You can now self-correct almost any field at any time under Manage My Account. Some of you may be celebrating, but for security purposes name changes will still need to be done in writing.

You can also now view all of your CPE credits completed through IRS approved providers starting with 2013 courses. Just a reminder as well, the IRS requires EA's to have 16 CPE hours annually, 2 of which need to be on ethics and 72 hours over 3 years. NAEA requires members to complete 30 CPE hours each year, 2 of which also are required to be on ethics.

Please remember that the IRS is not responsible for the hours reported. They are getting your hours reported to them directly from the education provider. IRS urges tax preparers to contact the provider directly if errors in the reported hours are discovered.

If you are planning to take a few years off to recollect yourself and restore your energy you can now inactivate your PTIN through your account. You can also reactivate it when you decide to return to practice.

PTIN holders can also expect to receive more secure e-mail messages from TaxPro_PTIN@irs.gov, which will help you stay aware of any upcoming changes.

Power of Attorney Tracking

If you have ever wanted to know how many active POA's you have on record with the CAF system we have now discovered how to request a listing. Courtesy of our Senior Stakeholder Liaison, Carole Smith we have available on our website a sample letter to request CAF Client Listing. Key items needed in this letter are your CAF number, proof of your identity (driver's license, a notarized statement or a sworn statement) and the expectation that you may need to pay something if you want a paper copy of the listing. Follow this link to see the sample.

Additional IRS News, Continued

CPA Disbarred for Multiple Circular 230 Violations (from IRS Newswire IR-2012-41

OPR obtained disbarment of one Anthony A. Tiongson "for charging unconscionable fees, giving irresponsible advice to clients and making false statements to federal and state authorities, among other things."

Tiongson advised his clients to use Form 2555 to treat California earned income as foreign income. He also used a contingent fee structure and provided false information to an IRS Criminal Investigation official regarding the fee structure. Tiongson also apparently told the CA Board of Accountancy that he stopped advising clients to use Form 2555 when he in fact did not.

Delaying IRS examinations and collections by raising frivolous arguments, threatening IRS employees with a lawsuit, ignoring requests by OPR for information and filing a POA with an unlicensed preparer as the second authorized person are also among his laundry list of Circular 230 violations.

Now we all know that officially, California is NOT another country.

The Administrative Law Judge has prohibited Tiongson from preparing or representing taxpayers before the IRS for a minimum of 5 years. This decision was entered as a "default judgment", which means that Tiongson, despite having representation, did not respond to OPR's Motion to Amend complaint by the deadline of January 4, 2013. Once Tiongson failed to respond a Motion for Decision by Default was filed by OPR. Mr. Tiongson's failure to respond in the time allotted "constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure." The full text of the ALJ decision is available at http://www.irs.gov/pub/irs-utl/Tiongson%20-%20IRS_Decision%20on%20Tiongson%20Motion%20for%20Default%20%28FINAL%29%20-%204-3-13.pdf.

WSEA Past Presidents

A bit of history goes a long way sometimes. It is always good to remember where you have come/grown from so that you can find your way forward. Taking a page from the IRS, (remember the complete listing of the IRS Commissioners at the back of the Data Book) Dave and I would like to include a listing of all of WSEA's past presidents. Several of the names will be familiar if you have been involved with WSEA or attend our meetings on a regular basis. At the next seminar, make sure if you see one of them stop and take a moment to thank them for all of their hard work.

Mike Barnes	*~1986-1987~*	*Roy Kortz*	*~2000-2001~*
Marshall Mennenga	*~1987-1988~*	*Roy Kortz*	*~2001-2002~*
Richard Bast	*~1988-1989~*	*Roy Kortz*	*~2002-2003~*
Dennis Alt	*~1989-1990~*	*Diane Lotto*	*~2003-2004~*
Dennis Alt	*~1990-1991~*	*Diane Lotto*	*~2004-2005~*
Dennis Alt	*~1991-1992~*	*Joel Guthmann*	*~2005-2006~*
David Fayram	*~1992-1993~*	*Joel Guthmann*	*~2006-2007~*
David Fayram	*~1993-1994~*	*Joel Guthmann*	*~2007-2008~*
Edna Kratochvil(Tesch)	*~1994-1995~*	*Laurie Ziegler (Sass)*	*~2008-2009~*
Edna Kratochvil(Tesch)	*~1995-1996~*	*Laurie Ziegler*	*~2009-2010~*
Richard Gause	*~1996-1997~*	*Laurie Ziegler*	*~2010-2011~*
Richard Gause	*~1997-1998~*	*Jeremy Burri*	*~2011-2012~*
Richard Gause	*~1998-1999~*	*Joel Guthmann*	*~2012-2013~*
Roy Kortz	*~1999-2000~*		

The Erroneous Refund Department

~Katie M. Jansen, EA~

In October 2011 a client came into our office and requested assistance with the IRS because he still had not received the 2010 Refund from his joint tax return. For the purpose of protecting my clients I will refer to them as John and Jane Doe. John and Jane Doe were going through a divorce when I first met them.

After speaking with John, he mentioned that there may have been an issue with the 2009 return, but he wasn't entirely certain and requested that I contact Jane. I did so and it turned out that there was.

2009 was the first year of their divorce. When they filed income tax returns both of them initially filed Head of Household and both claimed their children. Once they went to court they were court ordered to amend their 2009 returns and file jointly. They did this and even paid in the amount due that was generated. Gradually, I discovered that they received an additional $8,120.00 refund check from 2009. Neither client understood why they received the additional refund check, but the check was cashed.

I filed a Power of Attorney through E-services, got the Record of Account for both of them and quickly reviewed their IRS records. It appeared that the IRS had received the 2009 Amended return and the payment of the balance due that return generated, but for some reason they did not show a balance due on their calculation of the amended return.

I called Practitioner Priority Services to see if someone could tell me why the 2010 return was being held and why there was no balance due based on the 2009 amended return. The employee at Practitioner Priority confirmed all of what I already knew and had no answer as to why the 2010 refund was being held. They could not tell me why there was no balance due from the 2009 amended return and referred me to Taxpayer Advocate.

Based upon this employee's recommendation I decided that I would try Taxpayer Advocate and see if they could help my clients. The advocate I spoke with really did not help. She told me that once I verified that the client had cashed the additional refund check I should simply call the IRS back and ask them to release the hold on the 2010 refund so that it could be offset against the amount they would owe on 2009 due to the additional refund check being received and cashed. I did not believe her and said so, but she assured me that they would listen to me. After I re-confirmed that my clients had cashed the erroneous refund I mailed a letter and a copy of the Power of Attorney to Taxpayer Advocate explaining the situation again and asking them to please research it and advise me on how to proceed so that I could get this matter resolved quickly. I did get a phone call back from the Taxpayer Advocate office and was told that IRS records showed no record of an amended 2009 return for either the taxpayer or the spouse. This Advocate told me to re-send the amended return and was sure that once it was processed the 2010 refund would be released.

I did as this advocate suggested and sent the amended return in again, with a detailed explanation and pointing out an error that occurred when the amended 2009 return was processed. I had reviewed the Record of Account in closer detail and knew why there was no balance due generated by the amended return. Line 17 on the amended return, Overpayment as shown on original return, had not been accounted

The Erroneous Refund Department, Continued

for by the IRS. That missing amount was the combined refunds that John and Jane had received on their original returns.

I believe that this occurred because the firm that amended the 2009 returns only amended John's return to add Jane. No amended return was ever filed showing Jane's original return as null and void. If that amended return had been filed it would have shown a balance due of whatever Jane's original refund had been and then the additional refund check would have never been issued.

In January 2012, I received a form letter from the IRS that thanked the taxpayer for their correspondence and said that they had not finished researching the matter, but they would contact the client again in 45 days. In February 2012, John and Jane came in together to have their returns completed – this time filing individually because their divorce had been finalized in December of 2011. I asked them if they had received any further correspondence from the IRS and both of them said that they had not. They wanted to know if both of their 2011 refunds would be held. I told them that there was a chance that John's refund might be held. I explained that all of the issues were attached to John's social security number because he was the primary taxpayer on the returns.

After several months of not hearing anything from either client or the IRS, I got a phone call from John in August 2012 asking me to find out why his 2011 refund had not been issued. In retrospect, I should have been calling the IRS between February and August on this issue myself, but I felt no rush on this from the clients and was not expecting the IRS to resolve the matter quickly. Based on the client's renewed concern I contacted Practitioner Priority on this issue again.

The employee I spoke with was very nice and provided an explanation for the situation. He told me that the 2011 refund was being held because of the erroneously issued refund check from 2009. I asked him to offset the 2010 refund against the balance due from 2009 and he said that in his experience the client would have to pay back the erroneously issued refund check plus penalties and interest before the holds on the 2010 and 2011 refund checks would be released. I told him that the client cashed the erroneous refund check and did not have the funds to pay the amount back and would like the 2010 refund applied to the balance due on the 2009 return.

Based upon this request he put me on hold while he conferred with his immediate supervisor and the research department so that he could figure out how to resolve the situation. After a lengthy period on hold, he told me that he did not have the authority to offset the 2010 refund against the 2009 balance due because the balance due was generated from an erroneous refund check. He did a referral to the Erroneous Refund Department and told me that they would call me back within 30 days. I was also told that in 2010 this issue had been referred to the same department. It may have seemed paranoid, but I asked him if someone in the Erroneous Refund Department would have the authority to offset the 2010 refund against the 2009 balance due. He assured me that someone in that department would have the authority to complete the offset. I also asked him if the Erroneous Refund Department had a phone number because if he gave it to me I would call them

The Erroneous Refund Department, Continued

myself. He chuckled and based upon his answer I got the impression that there was a phone number for the department, but not one he could give out. I also expressed my concern of not receiving a call within the thirty days from this department. He told me that if I did not receive a call from them within the 30 days I should call Practitioner Priority back and that they would then refer the case to the Taxpayer Advocate.

In early October I was preparing to call Practitioner Priority regarding my clients, but before I managed to, John called frantic because he had received a balance due notice for 2009 income taxes. I calmed him down and had him drop off the IRS letter.

Upon receipt of the CP503 I was hoping that this case would be resolved quickly. I called Practitioner Priority and spoke with Miss W. I explained the situation and requested that the 2010 refund be released and applied to the 2009 balance due. She carefully reviewed all of the correspondence that accompanied this issue. After review she contacted her supervisor and completed my request. She told me that John might not receive any of his 2010 refund. I corrected her and said that based upon the CP503 balance due of $8,149.87 my client should receive approximately $993.13 of the 2010 refund. After some calculations, she agreed with me. She also removed the freeze on John's 2011 refund. She told me that John should receive his refund checks within 4-6 weeks. It is of interest that the refund I used and the IRS employee agreed to was based upon the 2009 amount due *before* interest and penalties.

John called in early January 2013 to let me know that he had still not received his refund checks. I called Practitioner Priority again. This time I was told that the freeze was still in place on the 2010 and 2011 refunds. The odd thing about this was that the Record of Account showed a credit for 2009, 2010 and 2011. I guess that was an improvement from having a balance due. This employee said that the computer did not process the release on the freeze and had no idea why. Again I was told that a release was put in and the client would receive his checks in 3 to 4 weeks.

3 to 4 weeks passed and I found myself on the phone again to Practitioner Priority services because no refund checks had been issued or received by my client. By this point my client had already filed his 2012 return even though I told him that his refund would be frozen just like 2009, 2010 and 2011 refunds. This IRS employee told me that the release was set to go through on February 18th. The only problem I had with that is it was February 21st when I called. She also brought up possible statute of limitation issues because this involved a 2009 return. At this point I was annoyed with even the suggestion that the 2009 issue could not be resolved. She told me that a referral was being put in the next day to the erroneous refund department and that if this referral did not go through she would call me back within 30 days.

March 20th arrived and I received no phone call and no information regarding my client's refunds. In frustration I contacted our Senior Stakeholder Liaison, Carole Smith. I explained the situation briefly to her and she had me provide

The Erroneous Refund Department, Continued

her with the clients SSN so that she could have someone in the Taxpayer Advocate Office look at it.

March 28th my client received a letter from Taxpayer Advocate Service requesting that he call them by April 24th so that the Advocate could go through some of the details with him. April 2nd John and I called Ms. R. at the advocate's office and touched base with her. She told us that she should have this resolved by April 24, 2013 and that she would contact both of us at that time. Interestingly, she said that she had several other cases like this and did not understand why no one at Practitioner Priority could fix them.

Shockingly, she called me back on April 24, 2013 with mixed news. The refunds were released, but all of them were taken to cover other past due obligations. In order to find out what obligations were paid John would have to call the Financial Management Service number. I was provided with the amounts that were intercepted and was pleasantly surprised to find that the IRS included interest on the amounts my client was owed. I notified my client of the outcome and officially this case is closed.

Overall, I was disappointed and frustrated with the whole IRS system. Some IRS employees were more knowledgeable than others and some just frustrated me. I am glad that I trusted my instincts to not believe the first Taxpayer Advocate employee when she told me to simply call the IRS back and tell them to fix the problem by offsetting 2010 against 2009. I am also extremely grateful to Carole Smith for the actions she took to help me resolve this issue that has been ongoing for nearly two years. I think that often tax professionals do not make use of the resources available to us. Contacting our Stakeholder Liaison when you are unsure of the next steps to take worked well for me.

Taxpayer Advocate is another overlooked resource. They have, admittedly, cutback on the number of cases they accept, but it is important to know under what circumstances they will accept a case. If one looks carefully at Form 911 Request for Taxpayer Advocate Service Assistance under Section III, number 7 there are 9 criteria listed:

- The taxpayer is experiencing economic harm or is about to suffer economic harm
- The taxpayer is facing an immediate threat of adverse action
- The tax payer will incur significant costs if relief is not granted (including fees for professional representation)
- The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted
- The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem
- The taxpayer did not receive response or resolution to their problem or inquiry by the date promised

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- A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS
- The manner in which the tax laws are being administered raise considerations of equity, or have impaired or will impair the taxpayer's rights.
- The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers (TAS Use Only)

I also want to stress that we need to educate our clients so that they are ALWAYS suspicious of a refund issued to them when they don't know what it is for or from. Additionally, I encourage preparers to try to think like the IRS does. This whole problem occurred because the firm that amended the returns did not think like the IRS. We need to be very clear when we deal with the IRS and realize that in a situation involving two people with two unique returns previously filed that the IRS sees two unrelated returns. If you amend only one of those they still see two unrelated returns, instead of one. I know that logically the IRS should be able to match the secondary social security number on an amended return to the primary on another, but here is proof that their systems do not function that way. I think most of us already know that government, in general, is rarely logical. I also think it is important for us and for our clients to realize how limited the IRS funds and thereby their staffing is. Like any business they made cuts to try to stay viable – budget cuts, staffing cuts, service cuts. Patience and persistence are must have traits in the tax profession.