

**WSEA**WISCONSIN SOCIETY
OF ENROLLED AGENTS

POWERING AMERICA'S TAX EXPERTS

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President's Message

By Crystal Wheeler, EA, WSEA President

Greetings, fellow members of WSEA. Thank you for giving me the privilege of serving you as your president for the next year. My goal is to increase the visibility of the EA credential and help our society improve at meeting the needs of our members. To that end, if you have any concerns or suggestions, please don't hesitate to email me at crystal@wheelerstax.com.

I had the privilege of attending the Affiliate Presidents Exchange in Washington DC back in May. While there, I had the opportunity to learn what is happening with various departments at the national level.

***Government Relations** reported that we had a grEAt fly-in and you may have heard that Congress just passed the Taxpayers First Act, for which NAEA provided white papers. NAEA's PAC has a new third party administrator platform, called Aristotle, which offers better design and functionality of the website, the ability to make monthly contributions, and features a single login through NAEA's website to access the PAC information. On the PAC website, you can see all of the contributions that the PAC has made.

***Membership Committee** reported that as of 4/22/19, NAEA had 10,373 members. This is down 587 from the prior year. Their goals for 2019 include building a real time dashboard for tracking membership, building better and more content for the organization, and managing churn. One of the main anti-churn strategies that they plan to focus on is top of funnel recruitment. This means targeting students and unenrolled preparers and converting them to EAs. The biggest reason that people cite for not renewing their membership is lack of perceived value. If you have any concerns about value or suggestions for adding value, please don't hesitate to share them with me or with the national membership committee so that we can address them for you.

***Public Relations Committee** President-Elect Jerry Gaddis shared his vision for the Public Relations committee. During his term as president of NAEA, he has many goals planned regarding Public Relations. He would like the committee renamed **Public Awareness** to better reflect the mission statement of NAEA and would like to see it broken into three subcommittees: Media Relations, Social Media, and Content Development.

***Educating America** is undergoing some changes. Our contract with Gleim to provide study materials for the Educating America program expired in June 2019 and we have a contract with Surgent moving forward. Surgent presented information about their programs and they sound very exciting.

***Affiliate Governance** shared with us that NAEA updated their bylaws last year and reminded us to review our own to ensure their compliance. We are able to submit our bylaws to the national committee for review.

It was a very full and informational week in Washington DC, as I started with the fly-in, then attended APEX, and stayed for the national board meeting. Having an experience like that truly helps one see so much of what NAEA does for us, but also brings home the fact that it wouldn't exist and none of this would happen without members getting involved. Remember that our society is only what we make it. During my short time in leadership so far, I have grown so much personally and professionally. I highly encourage all of you to find the aspects that you're passionate about and get involved!

Crystal

So Long, Farewell, Auf Wiedersehen . . .

By Laurie Ziegler, EA

If you're familiar with musicals, you may recognize the title of this article from the *Sound of Music*. I'm passionate about music and musical theater. I am also passionate about being an Enrolled Agent, but it wasn't always that way. I started in this industry in the early 1990s, not intentionally but rather out of necessity. Back when my business began, I planned on doing primarily accounting and payroll. As my company grew, the tax planning and preparation became more in demand. Although I had an accounting degree, I was not a Circular 230 practitioner. The further I got into my career, the more it became clear that I either needed to become a CPA or an EA in order to give my clients the best possible representation. Since, at that point, the tax part of my business was more than half of the work I did, I decided to become a tax expert and sit for the SEE exam. Even though it wasn't required of me (yet), I was doing a lot of continuing education. Most of it was coming through NATP. At that time, WSEA and the Wisconsin Chapter of NATP were doing combined seminars. It was at one of those joint ventures that I met several members of WSEA. They were also present at the test site and

I knew that if I accomplished my goal, I would join the only organization that represents Enrolled Agents exclusively. Well, I passed all four parts of the test on my first try.

As soon as I had my credential, I joined NAEA and WSEA. I attended local seminars and enjoyed the networking and that was enough – at first. Then, I wanted more, so I joined the WSEA board the same year I began attending the National Tax Practitioner Institute (NTPI), which was 2005. I completed my NTPI journey in 2007 by becoming a Fellow. While attending NTPI for three years, I went to the NAEA and Education Foundation annual board meetings and became more interested in the leadership of the organization. When the opportunity presented itself, I stepped up on the state board and became President. This was about the time that NAEA realized it needed to offer more to the affiliates, so the Affiliate Presidents’ Exchange (APEX) was born. WSEA provided the funds for me to attend this semi-annual gathering where ideas were shared amongst the Presidents and Executive Directors of various states. It was there that I learned of the Affiliate Council, the group whose job it was to organize and oversee these assemblies. I decided to seek election and served for a two-year term. The APEX meetings were held in conjunction with the NAEA board meetings so that those in attendance could understand the big picture. The more I attended, the harder it was to hold myself back from becoming involved on that board. I sought and won election, first as a director, and then two terms as the NAEA Secretary/Treasurer.

I have made many true friends through my membership in NAEA and WSEA. When it came time, due to my health, to sell my business, I was able to call on some of them for advice as to how to proceed. Finding myself without a tax practice as of January 7th of this year, a couple more people gladly set me up to work remotely for them. After my doctor strongly recommended a move south, there were several friends who helped me deal with the reality of moving out of state for the first time in my life. I don’t know where I would be without all of them, all of you. What started out as an eagerness to belong to an association with my peers ended up giving me much more than I ever gave. I was thrilled to be President when WSEA celebrated its 25th anniversary. I had the distinction of being the first WSEA member to serve on the national board and am so proud of Trish Evenstad, EA, for following in my footsteps!

So now I call Kentucky home. I am a Salaried Professional for Robert Half. As it says in their promotional materials, “Robert Half salaried professionals are highly skilled professionals with deep, diverse experience. Over the course of their careers, they’ve tackled challenging and complex assignments for companies of various sizes, in a wide range of industries. They thrive on the change that project work provides. And they’re able to immediately mesh with your team and get to work.” I enjoy the work I do, the people I do it for, and the colleagues I work with.

I’m not sure how my story is going to end. As it says in the song I referenced at the beginning of this article, “I hate to go”. I’m not going to say, “Goodbye”, but will say, “Until we meet again.”

[Laurie’s new contact information is: 125 Westwoods Drive, Georgetown, KY 40324; 414-531-3226; sassacc93@gmail.com.]

SE Wisconsin Tax Circle Update

By Michelle Gross, EA

In May, the SE WI Tax Circle kicked off its third year of meetings. For the past two years, a group of about ten tax professionals has been meeting to share their knowledge about tax law, practice management, and technological issues. Typically, topics are selected in advance and volunteers accept responsibility for researching and presenting to the group. We focus both on tax theory and on application of knowledge to tax return preparation, which greatly increases retention of the subject matter. Occasionally a member brings a “case study” of a particularly difficult or complicated tax situation and together we help solve the tax problem.

This valuable resource is open to all tax professionals, regardless of credentials or professional membership affiliation. We meet at the Waukesha Public Library from 9 am to 11:30 am one morning each month from May through December. There is no cost to attend. If you are interested in joining us, contact Connie Thomas, tipsr@ymail.com or Michelle Gross, mgross@grosstaxservice.com.

Tentative Meeting Schedule* for 2019:

July 18
August 15
September 19
October 18
November 15
December 13 (lunch to follow)

***Note:** The meeting schedule is dependent upon meeting room availability, which can only be reserved one month in advance.

If you would like to join us or if you would like to be on our mailing list for meeting announcements, contact Connie Thomas: tipsr@ymail.com.

Mark Your Calendar

9/19-20/2019 – Join us at the Great Wolf Hotel in Wisconsin Dells. Our speaker will be Kathy Morgan.

11/1/2019 – Second Annual WI DOR Collections Workshop in Madison. Watch for more info.

1/10/2020 – The WSEA Federal and WI Tax Update Seminar is in Fond du Lac with David and Mary Mellem

Second Annual WI DOR Collections Workshop - November 1, 2019

Connie Thomas and Tasha Spears are working on this meeting. The WI Department of Revenue (DOR) has agreed to provide speakers on the morning of Friday, November 1. Connie and Tasha hope to have the meeting at a hotel near the DOR in Madison, as we did last year. They also hope to add a roundtable lunch after the meeting. When the information becomes final, WSEA will notify you via email through Constant Contact. Last year, the meeting was extremely successful. Several top administrators involved in collections provided useful information. This meeting is for members only.

Wisconsin Scheme to Fully Deduct Wisconsin Income Taxes

By David J. Fayram, EA

On Friday, December 14, 2018, Governor Scott Walker signed the *2017 Wisconsin Act 368*. This law provides an entity-level tax election available to tax-option (S) corporations for taxable years beginning on or after January 1, 2018. Under this act, S corporations may elect to be taxed at the entity level rather than having their income passed through and taxed to their individual shareholders for Wisconsin purposes.

This election would affect the following forms for 2018 and subsequent years:

Form 1120S, *U.S. Income Tax Return for an S Corporation*

Form 5S, *Wisconsin Tax Option (S) Corporation Franchise or Income Tax Return*

Form 1040, *U.S. Individual Income Tax Return*

Form 1, *Wisconsin Income Tax Return*

Each of these returns should be considered in two versions: one without the Wisconsin election in place and the other with the election in place. The scheme depends on a complex interaction among these eight returns. There would be more returns if the corporation had more than a single shareholder. The computations would be very difficult and the Wisconsin Department of Revenue does not yet know how to process them. There is a draft of Schedule 5S-ET on the Department's web site. The Department estimates that it will be ready to process these elections after July 19, 2019.

On first reading about this, Mike and I could not figure out who would make such a foolish move. After some thought, we realized that the difficulty started with the *Federal Tax Cuts & Jobs Act* enacted in December 2107. That act severely limited deductions for income taxes and real estate taxes paid by Wisconsin residents on Federal income tax returns. Wisconsin Act 368 is a scheme to recover the deduction on Federal returns for Wisconsin income taxes paid on Wisconsin S corporation income. In our opinion, this scheme will probably work, but the IRS might object to it and there could be lengthy litigation if this happens.

There is a further caution. The entirety of Act 368 is currently being challenged as unconstitutional in *League of Women Voters et al, v. Evers*, Case No. 2019CV84 which was filed March 22, 2019 at the Wisconsin Court of Appeals. The case is now at the Wisconsin Supreme Court. This case could take a number of months to resolve and will remain a cloud over the law until it is settled.

EAs should evaluate their client base to locate the clients who are affected by this because very large savings are available to a few clients. We have some experience with this having done it for our clients.

The first step is to compute the entity-level tax, which would be paid by the corporation. You can use the draft of Form 5S-ET on the DOR web site. The Wisconsin tax rate used at the entity level is 7.9%.

Since the Wisconsin tax rate used at the entity level is higher than all individual rates, the entity tax will always be higher than the tax paid by the stockholders on the same income (one of the reasons for an S election in the first place!). The Wisconsin tax paid by the stockholder must be recomputed by removing the corporate income from the Wisconsin return. The difference is the Wisconsin cost of the election.

To understand the Federal side of the situation, start with what happens to state income taxes when computed for a C corporation on Form 1120. For an **accrual** method corporation, the software will compute the state tax, accrue a business expense deduction on the Form 1120 and add the back deduction to income on the state return. This deduction for state taxes on the Federal corporate return has never been controversial. The deduction was left fully in place by the *Federal Tax Cuts & Jobs Act*. If an S corporation

elects to pay the tax at the entity level, the same thing would happen. The tax would be deducted as a BUSINESS expense on the Federal return and passed through to the shareholders under the S election. Under the scheme, the state tax deduction avoids Schedule A altogether. In order to compute Form 1040 under the election, you must reduce corporate net income (and QBI) by the amount of the state income tax paid by the corporation (the amount computed on Form 5S-ET).

Now we can compare the extra Wisconsin tax caused by the difference between the entity level tax and the reduction in income taxes on Form 1 against the savings caused by the extra deduction on Form 1040.

After doing several computations, it became apparent that only those in the highest Wisconsin tax bracket are likely to benefit. The reason is that the highest individual tax rate for Wisconsin is 7.65%. This is only 0.35 percentage points less than the 7.9% corporate rate and transferring income from one rate to the other costs relatively little. The next lower tax bracket is 6.27%, 1.38 percentage points lower. The Wisconsin cost goes up rapidly as the rate goes down while the Federal savings remains the same.

In order to find clients who might benefit, use your software to select returns with K-1s from Wisconsin S corporations. From those returns, select returns based on Wisconsin Form 1, line 18 (taxable income) according to the following table.

Filing Status	WI Taxable Income
Single or Head of household	Greater than \$252,150
Married filing jointly	Greater than \$336,200
Married filing separately	Greater than \$168,100

Then, for the remaining returns, you should compute the actual savings to see if the election would be justified. In order to simplify things, we assumed that the corporations used the **accrual** method of accounting. Otherwise, the deduction caused by 2018 income would be deducted in 2019 when paid. We found a couple of clients who would have benefited from the election, but the recomputed Wisconsin tax included Alternative Minimum Tax, which eliminated any benefit.

Here is a spreadsheet we use to summarize the results for our clients:

SAVINGS			
Original Federal Tax (2018 1040, Page 2, Line 15)		450,000	
Federal Tax After Election		434,000	
Federal Savings			16,000
COST			
Extra Tax to Corporation (2018 Schedule 5S-ET, Line 18)		57,000	
Original Wisconsin Tax (2018, Form 1, Page 3, Line 39)	115,000		
Wisconsin Tax After Election	60,000		
Net Wisconsin Savings On Form 1		-55,000	
Net Extra Wisconsin Cost			2,000
TOTAL NET SAVINGS			14,000

There are many fine points, but this should get you started. We have found only a few clients who will want to make the election, but the savings have been in the neighborhood of \$15,000 for each client.

S corporations with a **fiscal year** will not be able to make the election until the year beginning after January 1, 2018. Therefore, the election will first affect 2019 personal income tax returns. We are waiting until after the 2018 fiscal years are over before doing these computations.

NOTE: The election will first be available to **partnerships** for years beginning after January 1, 2019.”

Administrative Law Advances

By David J. Fayram, EA

Sometimes it happens that people are correct about the future. I was surprised to find that it happened to me. Here is the first paragraph from an article I wrote for the Fall 2017 issue of this newsletter.

The EA profession now finds itself entangled in a struggle as to how the United States should govern themselves. At stake is the power that federal administrative agencies exercise over citizens. Many are now arguing that this power is excessive and that it is not constitutional.¹ This general topic is far too broad for this article, but the point here is that EAs test the limits of administrative authority every time they represent a client before the IRS. Those EAs who are not aware of the controversy will be less effective in representing their clients. In addition, no matter how the controversy is resolved, the resolution will change the relationship between EAs and the IRS. The EA profession is likely to be in a state of turmoil during the period of resolution – which might be a long time.

The title of the article in the *Fall 2017 WSEA Newsletter* was, “The EA Profession, Administrative Law and Ridgely,” and there I argued that certain applications of a Supreme Court decision called *Chevron*² caused unconstitutional results in some tax situations. I also mentioned the *Administrative Procedure Act*, which was enacted on June 11, 1946. My concern was that these issues would become important in tax practice.

The purpose of the *Administrative Procedure Act* was to overcome a problem with the US Constitution. The problem was that Congress possesses exclusive authority to write laws under the Constitution. Put another way, the problem was that the Executive Branch could not write laws. Many agencies of the Executive Branch wanted to write laws now called “Regulations.” The *Administrative Procedure Act* offered a way for Administrative Agencies to write laws.

From the beginning, the IRS has had an uncomfortable relationship with the *Administrative Procedure Act*. The IRS issues a blizzard of pronouncements and it assumes these are binding on taxpayers. Sometimes it tries to comply with the *Administrative Procedure Act*, other times it makes a half-hearted effort to comply, most of the time it ignores the *Act* completely, arguing that compliance would be impractical or burdensome. For the last 73 years, both the Congress and the Judiciary have gone along with this. *Chevron* (from 1984) is the case where the Courts most explicitly conceded “deference” to the Executive Branch with regard to the *Administrative Procedure Act*.

There are several people involved in recent events. President Donald Trump has an immediate subordinate named Steven Mnuchin who is Secretary of the Treasury. Subordinates of Mr. Mnuchin, among many others, are David J. Kautter, Assistant Secretary for Tax Policy, and Brent J. McIntosh, General Counsel. Mr. Mnuchin has another subordinate: Charles P. Rettig, Commissioner of the Internal Revenue Service. All of these people are employees of the Administrative Branch and therefore could be expected to favor the current state of “deference” as expressed in *Chevron*. Instead, as explained below, these people have acted *voluntarily* to

reduce the scope of *Chevron* and to bring the IRS somewhat more in compliance with the *Administrative Procedure Act*.

As EAs, we are familiar with Policy Statements written by the Commissioner. These can be found in the *Internal Revenue Manual* and they should be binding on IRS employees. Unlike the IRS policy statements, Mr. Mnuchin has issued a policy statement written by Mr. Kautter and Mr. McIntosh. The policy statement will be binding on all employees of the U.S. Treasury including Mr. Rettig and the IRS. The new policy statement is three pages long, it is dated March 5, 2019 and it is signed by Kautter and McIntosh.

The policy statement defines “subregulatory guidance” to include revenue rulings, revenue procedures, notices and announcements. The policy statement makes three changes to current policy:

1. The IRS must include a statement of good cause in the preamble of temporary regulations. (This is among the requirements of the *Administrative Procedure Act* for regulations.)
2. “The Treasury Department and the IRS ... will not argue that subregulatory guidance has the force and effect of law. In litigation before the U.S. Tax Court, as matter of policy, the IRS will not seek judicial deference under *Auer v. Robbins*, 519 U.S. 452 (1997) or *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), to interpretations set forth only in subregulatory guidance.”
3. “... the Treasury Department and the IRS will include a statement in each future notice of intent to issue proposed regulations stating that if no proposed regulations or other guidance is released within 18 months after the date the notice is published, ... the Treasury Department and the IRS will not assert a position adverse to the taxpayer based in whole or in part on the notice.” (Here we have subregulatory guidance in the form of a “notice of intent to issue proposed regulations,” which the IRS used in the past to detour around the *Administrative Procedure Act*. The IRS might issue a notice of intent to issue proposed regulations, then never issue the proposed regulations, then argue in court that taxpayers were bound by the notice under *Chevron*.)

By these changes, the current IRS is making clear that the *Administrative Procedure Act* will be more important in tax practice. If this is so, then EAs should become more familiar with it. The “comments” from the public required under the *Act* are crucial. The IRS must have a well-reasoned response to each of these. If it does not, then the regulation can be voided by a Court. If this happens, then the entire regulation can’t be used against taxpayers and the IRS loses! EAs should write more comments in the hope of improving our position in future disagreements with the IRS.

Violation of these rules could be used before any employee at the IRS. However, revenue agents and revenue officers are usually bound by IRS pronouncements and they will be reluctant recipients of these arguments. In the future for example, if the eighteen months has elapsed, the third statement is broad, saying, “the Treasury Department and the IRS will not assert a position adverse to the taxpayer based in whole or in part on the notice.” This language seems to include Revenue Agents and Revenue Officers. Who knows how this argument might turn out? If the employee is an Appeals Officer or a Settlement Officer, they are fully authorized to settle based on hazards of litigation. In a Collection Due Process Hearing, the Settlement Officer will be required to verify the eighteen months. You should make sure this is done.

Lawyers have already been successful in challenging regulations based on the *Administrative Procedure Act*. One of the successful lawyers is Elizabeth Nelson who wrote an article about her experience.³ Nelson discovered that a regulation, written under the *Affordable Care Act*, was not compliant with the *Administrative Procedure Act*. This regulation imposed a penalty of \$50,000 on her client. The reason for noncompliance was that the IRS had changed the word “**may**” in the proposed regulation to “**will**” in the final regulation. Here is what she says about IRS Appeals:

Due to the increasing role of the *APA* within tax controversy litigation, research of a regulation’s enactment to confirm it meets the *APA*’s requirements should now be the first step in defense of your client within Appeals.

In reviewing the enactment of Treasury regulations, tax controversy and tax litigation attorneys must now become *APA* experts.⁴

EAs will never become experts in the *Administrative Procedure Act*, but we should at least pay attention to what lawyers are doing to win against the IRS.

¹ Philip Hamburger, *Is Administrative Law Unlawful?*, University of Chicago Press, 2014. Professor Hamburger is the Maurice and Hilda Friedman Professor of Law at Columbia Law School. When people refer to “The Administrative State,” they are probably referring to the ideas in this book. Hamburger wrote the book as if it were a textbook for a course in law school. The author of this article talked to Hamburger on the phone and found him to be very personable. Hamburger was surprised when the author said he liked the book – Hamburger does not normally receive adulation for his academic writing.

² *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 US 847 (1984).

³ Elizabeth K. Nelson, *Settling with the IRS in Appeals: The New Importance of the APA*, *Journal of Tax Practice & Procedure*, October-November 2018 at 37.

⁴ *Ibid.* at 38.

WSEA Board of Directors – Contact Info

<p>Crystal Wheeler, EA, President Wheeler’s Tax Service 734 W 8th Street Appleton, WI 54914-5233 920-731-7859 crystal@wheelerstax.com</p>	<p>Connie Thomas, EA, Vice President Connie Tax Waukesha, WI 262-622-5660 tiprs@ymail.com</p>
<p>Jim Barsul, EA, Secretary 4976 N 73rd Street Milwaukee, WI 53219 414-462-3002 jbarsul@msn.com</p>	<p>Megan Steinfeld, EA, Treasurer Cream City Accounting 10125 West North Avenue Wauwatosa, WI 53226 262-649-2069 megan@creamcityaccounting.com</p>
<p>Tom VanDeLoo, EA, Director VanDeLoo & Associates PO Box 200 Forest Junction, WI 54123 920-989-2238 vandelootax@tds.net</p>	<p>Joel Guthmann, EA, Director Guthmann Tax Service 11040 West Bluemound Road, Suite 200 Milwaukee, WI 53226 414-453-0627 joel@guthmanntax.com</p>
<p>David J. Fayram, EA, Director Motiff & Fayram, Ltd 402 Gammon Pl, Suite 200 Madison, WI 53719-1073 608-833-2111 dave@madcitytax.com</p>	<p>Trish Evenstad, EA, Past President Evenstad Tax Service, LLP 114 S Main Street Westby, WI 54667-1329 608-634-6887 evenstadtax@gmail.com</p>

WSEA Committees

(If you would like to help, please contact us — we'd love to have you!)

Audit – Joel Guthmann	Finance & Budget – Megan Steinfeld
By-Laws – Trish Evenstad, Crystal Wheeler	Publications – Dave Fayram
Educating America: Jeremy Burri, Crystal Wheeler	Nominating –
Education – Crystal Wheeler, James Wheeler, Trish Evenstad	Public Relations – Trish Evenstad
Government Relations - Crystal Wheeler, Joel Guthmann	Professional Responsibility – Dave Fayram
Membership – Tom VanDeLoo, Connie Thomas	Webpage/Facebook –

WSEA Presidents – Past & Present

It is always good to remember our WSEA Presidential roots. Several of the names listed below will be familiar if you have been involved with WSEA or attend our meetings on a regular basis. At the next seminar, if you see one of these past Presidents, please take a moment to thank them for all of their hard work.

President's Name	Date Installed	President's Name	Date Installed
Michael D. Barnes, EA	June 21, 1986	Joel Guthmann, EA	May 19, 2005
Marshall D. Mennenga, EA	July 10, 1987	Joel Guthmann, EA	May 18, 2006
Richard J. Bast, EA	September 8, 1988	Joel Guthmann, EA	May 17, 2007
Dennis C. Alt, EA	October 20, 1989	Laurie Ziegler, EA	May 15, 2008
Dennis C. Alt, EA	October 19, 1990	Laurie Ziegler, EA	May 28, 2009
Dennis C. Alt, EA	October 18, 1991	Laurie Ziegler, EA	May 13, 2010
David J. Fayram, EA	October 16, 1992	Jeremy Burri, EA	May 19, 2011
David J. Fayram, EA	October 8, 1993	Joel Guthmann, EA	May 24, 2012
Edna Kratochvil, EA	October 21, 1994	Julianne Molek, EA	May 23, 2013
Edna Kratochvil, EA	October 19, 1995	Michelle D. McBride, EA	May 19, 2014
Richard L. Gause, EA	October 17, 1996	Michelle D. McBride, EA	May 18, 2015
Richard L. Gause, EA	October 24, 1997	Trish R. Evenstad, EA**	August 22, 2015
Roy B. Kortz, EA	October 23, 1998	Trish R. Evenstad, EA	May 23, 2016
Roy B. Kortz, EA	October 8, 1999	Trish R. Evenstad, EA	May 22, 2017
Roy B. Kortz, EA	October 19, 2000	Trish R. Evenstad, EA	May 21, 2018
Roy B. Kortz, EA*	October 18, 2001	Crystal Wheeler, EA	May 20, 2019
Diane M. Lotto, EA	May 15, 2003		
Diane M. Lotto, EA	May 13, 2004		

*Mr. Kortz was president from his election in October 2001 until Ms. Lotto was elected to replace him in May 2003.

**Ms. Evenstad stepped up from VP to President when Ms. McBride moved out of WI.

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Visit our Website: <https://wienrolledagents.com/>

>> Newsletter content, articles, comments, suggestions, ideas, tidbits, Q & A are always welcome, as are Getting to Know You articles. Submissions can be in any format, but preferably a Word document. Please submit articles to: Dave Fayram, EA & USTCP at: dave@madcitytax.com.

>>This Newsletter is intended to provide accurate and complete information to tax professionals. Although every effort has been made to assure that accuracy, neither the Wisconsin Society of Enrolled Agents nor the individual writers assume any responsibility whatsoever for the accuracy or completeness of the information contained herein. The reader should independently verify all the material before applying it to a particular fact situation, and should independently determine both the tax and nontax consequences of using any particular technique before recommending its implementation.