

CalCPA Committee on Taxation
Cumulative Major Issues Submitted to IRS
with IRS Summary Comments or Resolution Referrals Noted

Deducting Real Estate Taxes: Larry Levine

The instructions for Form 1040 Schedule A regarding Real Estate Taxes state “include taxes (state, local, or foreign) you paid on real estate you own that was not used for business.”

IRC Section 164(a)(1) states that real estate taxes can be deducted as an itemized deduction.

Based upon the language of IRC Section 164(a)(1) please explain why real estate taxes paid on a real estate rental property cannot be deducted on Form 1040 Schedule A, rather than Schedule E.

IRS Summary Comments or Resolution Referral: Further clarification regarding question/issue is required.

Community Property, Separate Returns: Mary Kay Foss

Individuals in community property states must split income, deductions and credits based on state law instead of reporting Form W-2 and 1099 amounts. In July 2010 the IRS Chief Counsel announced that California Registered Domestic Partners must report on half of community income on his or her personal federal income tax return.

Could IRS develop an income tax form to provide this information and decrease potential inquiries about federal tax withholding?

IRS Summary Comments or Resolution Referral: Form request should be submitted to IRS’ “Tax Forms & Publications” program.

E-Services: Mary Kay Foss

We’re pleased with the information available through E-Services but it would be more helpful if we could obtain Form 1099 transcripts this way. Currently any practitioner can obtain transcripts by calling the priority number; this service should be available to those registered for E-Services without an additional telephone call.

IRS Summary Comments or Resolution Referral: Transcripts are already available through IRS E-Services program.

Extension Approval Flexibility: Craig Malmgren

A partnership with 11 partnership investments with large investment income requested the additional extension to file Form 1042-S because most of the partnerships had not issued their K-1s yet. The partnership was unable to make any type of reasonable determination of the total investment income subject to withholdings for foreign partners, who owned most of the partnership.

The IRS denied the extension request because it did not meet the specific guidelines included in the Form 8809 instructions that an extension would only be granted if there was a catastrophic event or extreme hardship.

Apparently, the inability to obtain correct income from outside sources to determine the required withholding does not meet the guidelines.

Why can't the Service have more flexibility in granting extensions when it would be in the best interest of the taxpayer and the Service not to have to file amended information forms, such as 1042-Ss, due to missing information beyond the control of the taxpayer?

IRS Summary Comments or Resolution Referral: Issue should be submitted to IRS Taxpayer Burden program.

Electronic Signatures for Taxpayers: Mary Kay Foss

We're striving to have 100% of our clients file 1040s, 1065s and both 1120 forms electronically but we're having difficulty in receiving all of the 8879 forms in a compressed period. Currently most forms are faxed to us. The difficulty with receiving Form 8879s electronically is that the taxpayer must sign them manually, then scan them and email them to us.

Is there a way that the process can be simplified by having the taxpayers sign the forms electronically?

Taxpayers do not receive the Form 8879 until the return has been completed and we do not expect a solution that would change that procedure. We are interested in a creative way to make it easier for our clients to return the approved forms to us for transmittal.

IRS Summary Comments or Resolution Referral: Request would require tax law change through Congress.

Reasonable Basis for Adequate Disclosure: Stuart Josephs

Sec. 6662(d)(2)(B)(ii)(II) requires a reasonable basis for the tax treatment of an item in order for the disclosure of such item to be adequate to avoid the 20% accuracy-related penalty for substantial understatement of income tax.

Regs. Sec. 1.6662-3(b)(3) reads, in pertinent part, as follows:

“If a return position is reasonably based on one or more of the authorities set forth in §1.6662-4(d)(3)(iii)..., the return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial authority standard as defined in §1.6662-4(d)(2).”

Regs. Sec. 1.6662-4(d)(3)(ii) concludes as follows:

“There may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.”

Regs. Sec. 1.6662-4(d)(3)(iii) describes the types of authority to determine whether substantial authority exists. These types of authority include the Internal Revenue Code, regulations thereunder, and other authorities. However, this particular regulation does **not** include a well-reasoned construction of the applicable statutory provision even though such a construction could constitute substantial authority.

Since substantial authority is a higher standard than reasonable basis, such a statutory construction also should constitute a reasonable basis. Therefore, can Regs. Sec. 1.6662-3(b)(3) be amended to state the following:

There may be a reasonable basis for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may also have a reasonable basis for a position that is supported only by a well-reasoned construction of the applicable statutory provision.

IRS Summary Comments or Resolution Referral: Issue should be submitted to IRS’ “Guidance Priority List” program.

Examination Procedures: Stuart Josephs

Practitioners holding valid Powers of Attorney complain that Revenue Agents ignore them and deal directly with the taxpayers.

Such conduct is contrary to Sec. 7521(c) and Procedural Regs. Sec. 601.506(b).

Can the IRS increase its efforts to ensure that Revenue Agents comply with the above authorities?

IRS Summary Comments or Resolution Referral: Major issue broadened to cover audit process in general; Examination Procedures approved as topic for November IRS Liaison Meeting. Powers of Attorney issue submitted to IRS Issue Management Resolution System (IMRS) program.

Economic Substance Doctrine: Stuart Josephs

Why is the IRS opposed to issuing detailed and specific guidance to implement the clarification of the Economic Substance Doctrine set forth in Sec. 7701(o)?

The IRS' former Chief Counsel and other government tax officials opposed the codification of this doctrine before it was enacted as Sec. 7701(o) in 2010. Is there any connection between this previous opposition and the current refusal to provide this much-needed guidance?

IRS Summary Comments or Resolution Referral: Economic Substance Doctrine approved as topic for November IRS Liaison Meeting.

Registered Domestic Partner Tax Filing Rejections: Greg Bogdan

The IRS has now mandated, effective for the 2010 tax year, that Registered Domestic Partners of community property states such as California allocate items of community property income and expenses between the domestic partners for federal filing purposes. (CAA 201021050). In addition, the CCA allowed, but didn't require, domestic partners to file amended tax returns for 2007, 2008 and 2009.

Some of the amended returns I filed were processed without any problems. However, some of the amended returns resulted in IRS correspondence accusing the taxpayer of filing "frivolous" tax returns and threatening them with civil and/or criminal penalties. (See attached correspondence).

For the 2010 tax year filings, many practitioner's including myself, have received what are famously known as "J. Bell" letters (Is this a real person?) which states that:

"Your tax return includes income.... for more than one taxpayer, other than a husband and wife for a "married filing jointly" return". (See attached).

The returns were not filed as "Married Filing Jointly", but were filed as "Single". In addition and per IRS advice, reference to the CCA was included at the top of the 1040

and the appropriate schedule per IRS publication 555 was attached showing the allocation of the community income and deductions.

What has the IRS done to prevent this type of correspondence?

IRS Summary Comments or Resolution Referral: Invited to attend a September Town Hall Meeting(s) wherein the major issue will be discussed.

Appeals Coordinated Issue: Stuart Josephs

Rev. Proc. 79-34, Section 2.01 read as follows:

“The mission of Appeals is to resolve tax controversies, without litigation, on a basis that is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. It is accomplished through a program of considering appeals, holding conferences, and negotiating settlements in nondocketed cases and cases docketed before the United States Tax Court in a manner which ensures a prompt conference, a high quality decision in each case, and a satisfactory number of agreed settlements.”

If an issue is designated as an Appeals Coordinated Issue, the assigned Appeals Officer (AO) must secure the review and concurrence of the appropriate Appeals Technical Guidance Coordinator (ATGC) before discussing and finalizing any settlement with the taxpayer (TP).

There are communications and discussions between the AO and the TP and between the AO and ATGC. However, there is no ability for the TP to discuss the case with the ATGC.

In one recent situation involving an Appeals Coordinated Issue;

1. The TP discussed the issue with the AO
2. The AO made a determination favorable to the TP
3. The AO then consulted with the ATGC; and
4. The ATGC reversed the AO.

This final result could have been different if the TP could have discussed the issue with the ATGC.

The Appeals process is greatly weakened if the TP can only discuss the issue with the AO, but not with the final decision-maker, the ATGC.

Can Appeals revise its procedures to allow a TP to discuss a coordinated issue with the ATGC?

IRS Summary Comments or Resolution Referral: Should be submitted to IRS Systemic Advocacy Management System (SAMS) program.

Private Equity Fund K-1s: Greg Bogdan

Schedule K-1s received from Private Equity funds and Hedge funds are complex. A majority of the information on a Schedule K-1 is often in the footnotes of the K-1 and not on the individual line items of the K-1.

How does the IRS expect to match information from Private Equity and Hedge fund K-1s to a taxpayer's tax return?

IRS Summary Comments or Resolution Referral: Further clarification regarding reason for asking question is required.

Practitioners be Given Access to IRS Record of Estimated Tax Payments Made by Client: Leonard Williams

This is a National Office issue, but I feel that it needs to be repeated until some action is taken. Its implementation will save time and money for the IRS, taxpayers, and practitioners alike.

The State of CA already has such a system, so there is no need to re-invent anything. Simply ask the CA Franchise Tax Board how it's done, and take it from there.

IRS Summary Comments or Resolution Referral: Payment records are already available through IRS E-Services program.

Foreign Bank Account Reports: Barbara Aue

Practitioners are aware of new guidance on what accounts to report on the Foreign Bank Account Report. We believe more guidance is needed in areas where filing criteria are currently unclear with regard to both who must report and what must be reported. Examples of needed guidance in addition to the guidance presented in the IRS webinar presented on June 1, 2011, are in the questions following:

1. Would it be possible to publish a more detailed list of account types that are required to be reported (obviously with the caveat that it is not an exhaustive list)? Last year we were told to report credit cards, lines of credit, and similar accounts, none of which were mentioned in the webinar.

2. Would it be possible to publish more advice such as that in the latest published guidance relating to what does not have to be reported? Again the webinar listed a few things not to report, but left a lot of questions.
3. This practitioner received guidance from Ellen White from the BSA Compliance department that defined benefit pension plans do not have to be reported. Could you please disseminate this information to the practitioner community at large?
4. Would it be possible to publish a list of visas and give the criteria for each visa regarding when a foreign person who is here in the United States has to report on a Foreign Bank Account Report. The webinar said to apply the substantial presence test to foreign persons who are here (non-citizen, non-green card) Here is one example of the problems we face: A professor on a J-1 visa is not counted as present in the United States for purposes of the substantial presence test for a certain period of time. There is a formal exemption from the substantial presence test. However, he/she is actually living and working here. Is this professor required to file Foreign Bank Account Reports while working here?

IRS Summary Comments or Resolution Referral: Foreign Bank Account Reports approved as a topic for the November IRS Liaison Meeting.

Agent Extension Numbers: Laura Ross

A quote from one of my co-workers:

One huge problem I am experiencing is that you can no longer call examiners and agents directly. In the past year, their extension numbers were taken away. They can call you but you can't call them, and you often don't know the name of the examiner. All you can do is call an 800 number and beg the person in charge of the case to call. This has made communications very difficult.

Today an examiner called me (fortunately I was at my desk, since they can't leave a call back number), and said that the new system was a disaster.

IRS Summary Comments or Resolution Referral: Details of specific occurrences are required.

Statutory Notices of Deficiency Issued Prior to Close of Exam: Gina DeRosa

In correspondence audits, 90-day letters are being issued while information submitted to the audit group is still being considered. Taxpayers pay \$60 to file a Tax Court petition only to find later that the exam group closes the case. 90-day letters should never be issued until exam has closed the case.

IRS Summary Comments or Resolution Referral: Issue should be submitted to IRS Issue Management Resolution System (IMRS) program.

Release of Tax Returns of Non-Audited Entities: Michael O'Connor

The Internal Revenue Service in its manual requires the tax auditor to ask for the tax returns that the taxpayer has on ownership interest. We are in a delicate position as a tax return preparer. Does IRC §7216 prevent the taxpayer and the representative from releasing these returns since the entity is not being audited. While an exception exists with regard to examinations by the taxing authorities, the information is requested for an entity not being examined and may contain private information for other taxpayers. (S corporations and entities treated as partnerships.)

IRS Summary Comments or Resolution Referral: Should consider sanitization of documents prior to submission.

*Compiled by Stuart R. Josephs, CPA
CalCPA Committee on Taxation*

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