FICPA Federal Taxation Committee Questions for the IRS
For Submission October 2010

Question 1

If there are stimulus payments to taxpayers for a tax year after 2009, will IRS instead (or in addition) send taxpayers a 1099-type form reporting the payments (e.g., like IRS does for interest paid on tax refunds)? Especially for self-prepared returns, issuing 1099-type forms could increase compliance and reduce subsequent IRS corrections actions including adjustment notices. (For tax years 2008 and 2009, the taxpayer needed to check the IRS website to determine or confirm the amount of economic stimulus payment(s), if any, the taxpayer received. Taxpayers often did not check the website or delegated that responsibility to tax return preparers. What is more, the website information for 2009 payments was not available until late March 2010.)

Answer:

Stimulus payments were non-taxable, so issuing a Form 1099 would be inappropriate and potentially very confusing, also. IRS does send statements confirming the reason for the check that is issued, which should be saved and used at the time the return is prepared. The statement was sent separate from the check because the Department of Treasury's Financial Management Service (FMS), issues IRS tax refunds, not the IRS itself. This is also the reason that IRS cannot enclose a notice in the same envelope as the refund check.

Question 2

Will IRS change the EFTPS payments deadline so it is the same as the non-EFTPS payments mailing postmark deadline? The proposed change would only reduce the current 5-day (or more) IRS advantage by one day. (EFTPS payments now are due a day prior to the non-EFTPS mailing postmark deadline. For example, a payment that would have a March 14 EFTPS payment deadline would instead be a March 15 postmark mailing deadline for a paper check. Because of mail delivery, check processing and check clearing time, IRS has access to EFTPS funds 5 or more business days before non-EFTPS payments.)

Answer:

As of January 1, 2011, there will no longer by paper coupons that are currently taken to a financial institution. The proposed regulations (REG 153340-09) would eliminate the rules for making federal tax deposits by paper coupon because the paper coupon system will no longer be maintained by the Treasury Department after December 31, 2010. Deposits can be made online with a computer or by telephone. Some businesses paying a minimal amount of tax may still make their payments with the related tax return, instead of using EFTPS. More details regarding taxes required to be deposited using EFTPS, including dollar thresholds and other specific requirements, are in the proposed regulations. There is information on EFTPS, regarding same day deposits, which can be found at https://www.eftps.gov/eftps/. When you click on the “attention line”, you are directed to https://www.eftps.gov/eftps/direct/DownloadDocuments.page On this page, scroll down and there is a worksheet, Same Day Payment Worksheet. You can fill this form out and then take it to your financial institution. Fees may be involved by the financial institution.

Question 3

If a taxpayer has losses from an S corporation in which he owns stock that exceed his basis in the stock and loans to the corporation, he may not deduct those losses in the current year. If the losses would also be disallowed under the "at risk" rules of section 465, is the taxpayer required to file Form 6198, At-Risk Limitations?

Answer:

There are three shareholder loss limitations (1) Stock and Debt Basis, (2) At-Risk and (3) Passive Activity Losses. If the shareholder cannot claim a loss due to stock and debt basis limitation, it should not be claimed or included on the Form 6198, At-Risk Limitations or Form 8582, Passive Activity Loss Limitations.

Disallowing S Corporation losses pursuant to I.R.C. §1366(d) does not negate a taxpayer’s obligation to file a Form 6198 where the losses would also be disallowed under the at-risk rules of I.R.C. §465. A taxpayer is required to file a Form 6198 for any year a loss is reported for an at-risk activity with any amount that is not at risk regardless of whether the loss is also barred pursuant to I.R.C. §1366(d). Sections 1366(d) and 465 are separate and distinct tests that involve loss deferral and therefore require annual calculations to ensure accuracy in the current, and later, taxable years.

Question 4

If a taxpayer has S corporation losses from a prior year that were not deductible in the prior year due to the lack of basis, and he has taxable income from that S corporation for the current year, so that he now can deduct the prior year loss, how and where should the prior year loss be shown on this year's Form 1040?

Answer:

IRC §1366(d)(2) holds that any loss suspended because of lack of stock and debt basis shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder. Note: Although suspended losses are treated as incurred in the current year, if the S corporation has income of the same character, it is not netted with the suspended losses. Therefore if the corporation had $10,000 worth of ordinary income it will increase basis before distributions even if the taxpayer had a suspended ordinary loss carryover from the prior year. Treas. Reg. 1.1366-2(a)(3)(i).

When basis is restored by income or additional contributions or loans are made it can free up basis and allow prior year suspended losses. These losses will be claimed on the shareholders Sch. E, separate from the current year loss allocations.

For example, if the current year ordinary income from Corp ABC is $10,000 and the suspended ordinary loss is from 2008 and 2007 is ($8,000), the $10,000 ordinary income would be reflected on Schedule E, Part II line A and the suspended loss carryover would be reflected on Schedule E, Part II, Line B and titled Corp ABC Suspended Loss Carryover

Question 5

If the beneficiary of a Qualified Subchapter S Trust (QSST) has made the QSST election with respect to an S corporation and the corporation issues a Form 1120S Schedule K-1 to the Trust showing its share of the income, expenses, etc., how does the Trust show the income, expenses, etc. to be reported by the beneficiary? Are they shown on a separate schedule attached to the Trust's Form 1041 or are they shown on the Trust's Form 1041 Schedule K-1 issued to the beneficiary?

Answer:

In reporting the S corporation's items of income, deductions and credits to the beneficiary, such items are not reported by the trust on Form 1041, but are instead shown on a statement attached to that form. Treas. Reg. §1.617-4(b)(2)(iii)(B). The beneficiary of the QSST is required to report all of the information from the S corporation's K-1 on his or her Form 1040, Individual Income Tax Return.

If a valid QSST is an S corporation shareholder, the portion of the trust holding the S corporation stock is considered a grantor trust with the beneficiary being the owner. As a grantor trust, the QSST is disregarded for federal income tax purposes and the S corporation flow-through income/loss is reportable on the beneficiaries Form 1040 as if the beneficiary was the true shareholder. The beneficiary would report the flow-through ordinary income/loss on his/her Schedule E, Part II as S corporation income. The QSST is required to file a Form 1041 but the S corporation flow-through items, such as items of income, deductions and credits to the beneficiary, are reported on a separate schedule attached to the Form 1041, not reflected on the Form 1041, Schedule K-1

Question 6

When can we expect guidance on the "carry over basis" regime? How can taxpayers protect themselves when filing 1040's when they are unsure of their basis?

Answer

Prior to 2010, property received from a decedent generally received a basis of the fair market value at the time the decedent dies. For 2010, because of the temporary repeal of the estate tax, property received from a decedent does not receive a step-up in basis. Rather, a beneficiary receives a basis pursuant to I.R.C. §1022 that is the lesser of the adjusted basis of the decedent ("carry over basis") or the fair market value of the property at the date of the decedent's death.

The Office of Chief Counsel is currently working on guidance on the carry over basis regime but a potential release date is not available. There is a push to release the guidance prior to next filing season. The guidance will likely address how taxpayers should treat their basis if they are unsure of the carry over basis. Keep abreast of news updates that will be posted as they become available on www.irs.gov.

Question 7
Has the Service increased the enforcement of "reasonable compensation" for S-Corporation shareholders in the examination process?

Answer:
S corporation inadequate compensation continues to be an issue which is seen by the Service. We continue to have a number of efforts to address these cases. The employment tax groups and income tax groups both have initiatives to address this compliance issue.

Question 8
If a form 1099-MISC recipient cannot get the issuer to amend the 1099-MISC to $-0-, what should the recipient do when neither a 1099-MISC nor a W-2 should have been issued because there were only nontaxable foster care payments received? (At least one such recipient sent IRS a form SS-8 (Determination of Worker Status), but nonetheless received an IRS matching notice increasing taxable income and income tax. Form SS-8 Part I line 2 says "Explain your reason(s) for filing this form (for example, you ... believe you erroneously received a Form 1099....)". Otherwise, though, the form SS-8 is only designed to say a W-2 should have been issued instead of a 1099-MISC, as the SS-8 title implies: "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding".)
This issue arises when a foster care placement agency places a child with a foster parent for non-emergency foster care, pays the foster parent an amount toward the child's expenses and incorrectly issues a 1099-MISC to the foster parent - in at least one case incorrectly reporting the payments as rental income, all pursuant to incorrect advice by a tax practitioner.

Payments received from an agency for foster care generally are not included in income, and there is no income if there is only one child and the payment is not for emergency foster care. What is more, even under other situations where the payment would be taxable income it would be Schedule C self-employment income (not rental income). Reference: Identical IRS publication comments in IRS Pub. 17 – Your Federal Income Tax (2009) - Page 94, beginning at the first column's last paragraph, and IRS Pub. 525 – Taxable and Non Taxable Income (2009) - Page 33, beginning at the second column's last paragraph.
Related Questions:
1. Going forward, will the IRS consider:

- developing a dispute form different from form SS-8 for the situation where a 1099-MISC is issued but there is neither 1099-MISC nor W-2 compensation - only nontaxable foster care payments?
- pursuing legislation imposing penalties on the 1099-MISC issuer - and on the tax practitioner who prepares or advises preparation - of a 1099-MISC for nontaxable foster care payments (or for taxable foster care payments incorrectly shown as rental income instead of nonemployee compensation subject to self-employment tax)?

2. What route(s) can a 1099-MISC recipient take to advise IRS about a tax practitioner giving its foster care agency client(s) incorrect advice about forms 1099-MISC issued for nontaxable foster care payments (or for taxable foster care payments incorrectly shown as rental income instead of nonemployee compensation subject to self-employment tax)?

Answer:
Current IRS procedures for "Non-Receipt, Incorrect, or loss of Form W-2, 1099, and 1098 - Information Returns" can be found in IRM 21.3.6.4.7.1: "For taxpayer inquiries regarding...Form 1099, Information Return, advise the taxpayer to contact their financial institution or payer to obtain the missing or incorrect information reported on these Forms. Form(s) 1098/1099 are not required to be attached to the filed return. Advise the taxpayer if they are unable to obtain the information, they should file their return estimating interest, dividends and/or payments received, and federal income tax withheld.
In addition to filing a Form SS-8, Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. serves as a substitute for Forms W-2, W-2c, and 1099-R and is to be completed by taxpayers or their representatives when (a) their employer or payer does not give them a Form W-2 or Form 1099-R, or (b) when an employer or payer has issued an incorrect Form W-2 or Form 1099-R. Attach this form to your income tax return. If you do not receive the missing or corrected form **by February 14th** from your employer/payer, you may call the IRS at 800–829–1040 for assistance. You must provide your name, address (including zip code), phone number, Social Security Number, dates of employment, **your employer/payer's** name, address (including zip code), and phone number. The IRS will contact the employer/payer for you and request the missing form. IRS will also send you a Form 4852 (PDF), *Substitute for Form W-2 or Form 1099-R*. If you do not receive the missing form in sufficient time to file your tax return timely, you may use the Form 4852. If you receive the missing or corrected Form W-

2 or Form 1099 after you file your return and a correction is needed, use Form 1040X (PDF), *Amended U.S. Individual Income Tax Return*.
For more general tax information on foster care providers and difficulty-of-care payments, go to www.irs.gov . To read an explanation in layman's terms about exempt status for personal care and residential habilitation service providers, go to http://www.irs.gov/pub/irs-pdf/p17.pdf, page 94, Chapter 12 of the IRS Publication 17. Refer to "Foster Care Providers," "Difficulty-of-Care Payments," and "Reporting Taxable Payments."

Question 9
In light of Judge Tuaro's decision in Gill vs OPM that the Defense of Marriage Act is unconstitutional should we be filing protective claims for same sex couples for open years?

Answer
It is the position of the IRS that the Defense of Marriage Act has no bearing on whether two individuals may file a joint federal return because I.R.C. §6013 and the related regulations allowing the filing of joint returns refer to "husband and wife" not "marriage" or "married." Furthermore, the Gill opinion recognizes that the power to define marriage lies with the states. Massachusetts recognizes same-sex marriages while Florida does not.
We can't provide advice on whether to file protective claims, but no tax refund can be made unless a timely claim is filed.

Question 10
In Tony R. Goolsby v. Commissioner, TC Memo 2010-64, the court states: "Petitioners filed an election to treat all interests in rental real estate as a single rental activity pursuant to section 469(c)(7(A) and section 1.469-9(g), Income Tax Regs. Accordingly, their compliance with the requirements of section 469(c)(7) is measured by treating all of their interests in rental properties as one real estate trade or business." Does the IRS agree with the judge that the single rental activity election of section 469(c)(7)(A) applies to the real property trades or businesses of section 469(c)(7)(B)?
Or alternatively is it the position of the IRS that the election only applies to treat all interests in real estate as one activity, determined only after (and if)a taxpayer has met the requirements of section 469(c)(7)(B)? Under this alternative reading of the statute the one activity election of section 469(c)(7)A) has absolutely no bearing on whether a taxpayer is a real estate professional (i.e., on whether the taxpayer meets the conditions of section 469(c)(7)(B)).

Answer
The circumstances when this will be an issue are probably rare – in most cases, a taxpayer will or will not qualify under I.R.C. §469(c)(7)(B) regardless of whether the taxpayer is able to treat all the taxpayer's interests in rental real estate as one activity. Many taxpayers do not qualify for I.R.C. §469(c)(7)(B) treatment on the basis of the "one-half of all services" test alone – their non-real estate activities take up too much of their time, regardless of time spent on their real property trades or businesses.
The analysis under I.R.C. §469(c)(7)(B) is performed without regard to the I.R.C. § 469(c)(7)(A) election. Each real property trade or business of the taxpayer -- whether a rental real estate trade or business or not -- is evaluated separately to determine if the taxpayer materially participates in such trade or business. Only the taxpayer's time spent in those trades or businesses in which the taxpayer materially participates will be considered towards the "onehalf of all services" and "750 hours" tests of I.R.C. §469(c)(7)(B). If a taxpayer passes these tests, then an I.R.C. §469(c)(7)(A) election will allow the taxpayer to treat all interests in rental real estate as one activity for purposes of determining whether the activity is passive.

Question 11
The definition of a tax return preparer in the PTIN (preparer identification number) proposed regulations uses a facts and circumstances test. The definition includes signing preparers and non-signing preparers who contribute to the preparation of all or substantially all of the return that is not purely administrative. Because the membership of the FICPA includes many small and mid-sized firms, we are concerned by the potential reach of these regulations and their associated costs for our members. For example, will interns, who may help prepare tax returns, be required to be tested and fulfill continuing education requirements? If so, certainly fewer interns will be hired, and the experience of those who do will be diminished. Will it be IRS policy that all non-federally authorized tax practitioner staff who contribute to the preparation of tax returns in a manner that is not purely administrative (or characterized as simple data entry) must be registered?

Answer:
From www.irs.gov, the PTIN scenarios include the following 2 questions, which address the situation you

described:
1. I am a tax return preparer, and I have a PTIN. Every tax filing season I hire two paid interns from the accounting program at a local college to help me during the busy season. The interns perform data entry from the tax organizer that my clients fill out, and assemble the documentation that the clients have submitted. Where clients have submitted incomplete information, or more information is needed, the interns may call clients to gather information missing from the tax organizer, but they are not allowed to provide advice or answer tax law questions. I prepare and sign all my clients' returns. Do my interns need to have a PTIN? (posted 9/28/10)
No, the interns are not tax return preparers, and are not required to have a PTIN.
2. Same facts as above, but in order to help my interns get exposure to the tax system, I allow them to work with clients who have very simple tax situations, and prepare the Form 1040-EZ. I review the forms carefully, and sign them. Are my interns required to have PTINs? (posted 9/28/10)
Yes, the interns are tax return preparers and are required to have a PTIN, whether or not they sign the returns.

Question 12
Refund checks: Why does IRS not send an explanation of account refund adjustment with the related refund check? I am seeing a number of instances where IRS sends a refund check with no enclosed explanation of an account adjustment originating a refund (or adjusting the amount of a claimed refund), or only enclosing a letter saying the explanation will be sent by separate mailing ... with that separate explanation then coming sometimes within just a few days.

Answer: See answer to question 1. IRS does not send out the refund check, the Department of Treasury's Financial Management Service (FMS) does.

Question 13
I have a question regarding a systemic problem. The IRS sends refunds separately from any explanation of the refund. Taxpayers usually deposit the refunds immediately. However, if it is an erroneous refund, the taxpayer has not only to return the money but incurs an interest charge. Would the IRS consider changing the process so that the explanation accompany the refund, or have a brief note accompany any refund noting the consequences of depositing or cashing the refund without verifying its accuracy?

Answer:
IRS does not send out the refund check, the Department of Treasury's Financial Management Service (FMS) does. Therefore, the IRS has no means to have an explanation accompany the refund in the same envelope.

Question 15
Taxpayer is both a US resident (green card holder) and a foreign country resident. His main tax home and main income is in the foreign country. A few years ago, based on treaty "tie breaker" rules he elected to be taxed in the US as a non-resident, and he files 1040NR every year, reporting only his US source income. Taxpayer surrendered his green card in 2010.
In 2009, the taxpayer is a category 3 filer of form 5471 since in 2009 he disposed sufficient stocks in a foreign corporation to reduce his interest in it to less than 10% (actually he sold all his position). As a result of the disposition, he has no access to the foreign corporation financial statements – but as a category 3 filer he must report the balance sheet and income statement of this corp. What can you do in situations like this one to avoid the $10,000 or more penalty? This is not a CFC.

Answer:
As described in instructions to Form 5471, the taxpayer is a Category 3 Filer since during 2009 the taxpayer disposed of sufficient stock to reduce his interest to less than 10%. Taxpayer is required to complete Form 5471 and Schedule O. Form 5471 includes Schedule C (Income Statement) and Schedule F (Balance Sheet). Taxpayer claims that as a result of the disposition of his entire interest in the foreign corporation he or she does not have access to financial statements of foreign corporation. The question is whether the taxpayer can be relieved of the $10,000 penalty under I.R.C. §6038(b) for failure to provide the information on Schedules C and F on the Form 5471. This is a question of fact and depends on each case. Treas. Reg. §1.60382(k)(3)(ii) provides "to show that reasonable cause existed for failure to furnish information as required by section 6038 and this section, the person required to report such information must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement containing a declaration that is made under the penalties of perjury."

In addition, the regulation states that "in the case of a return that has been filed as required by this section except for an omission of, or error with respect to, some of the information required, if the person who filed the return establishes to the satisfaction of the district director or the director of the service center that the person has substantially complied with this section, then the omission or error shall not constitute a failure under this section." If the taxpayer provided documentation that he/she attempted to obtain the information from the foreign corporation and documentation that foreign corporation refused to provide the financial records (and the taxpayer provided all other information on Form 5471 and Schedule O), then the taxpayer would probably not be subject to the $10,000 penalty. However, if the taxpayer did not provide sufficient documentation of reasonable efforts to obtain the financial information, then the $10,000 penalty should apply. There is no safe harbor. Each case has to be reviewed on an individual basis.

Question 16

I work for a rather large community bank. We are required to file 10's of thousands of 1099's. Despite our best efforts, we have 1099 mismatches, errors, etc. Each year the IRS sends us a letter with a proposed penalty and we have to explain our "due diligence" to get this information, as well as, more often than not, demonstrate that the information we provided is what the customer certified to us. The error rate is like .005% - very minor. Every time, we get different people and processes involved from the IRS. They do not seem to understand the rules that say it's ok to have a small error rate, and there should be no penalty, etc. Since it's impossible to be perfect, and not required to be, what can we do to eliminate the backend problems with IRS on these filings?

Answer:
These notices should not be going out in the future, so there shouldn't be a need for future training. If you get another notice, please let your local Stakeholder Liaison Specialist know.

Question 17

Currently the authority granted by the third party designee check box expires one year from the unextended due date of the return. This makes the box ineffective for some late-filed returns. Is the IRS open to expanding the time limit beyond this one-year period?

Answer:
Many tax returns and forms now contain the **Third Party Designee** authorization – commonly referred to as the **"Checkbox".** This third party is the **Designee.** Their authority is very limited. It allows the exchange of information for the purpose of processing of that tax return or form. This authority is recorded on the tax period for which that tax return was submitted. It's **not** recorded on the CAF.
This type of authority allows the taxpayer to designate a third party directly on their tax return.
The Checkbox allows the designee to exchange verbal information with the IRS regarding return processing, payment and refund issues and will allow the designee to receive written account information upon request. This is done by completing the Checkbox area on the return. You would sign the designee line, and provide a personal identification number (PIN) that you create for yourself.
The Checkbox will NOT allow the designee to represent or otherwise practice on behalf of the taxpayer. It also will NOT allow the designee to receive IRS refund checks or sign documents on behalf of the taxpayer.
The Checkbox authority has a limited time duration – The Third Party "Checkbox" designation automatically expires on the one-year anniversary of the due date of the tax return (excluding extensions). This would include any amended returns filed within this limited time period as well.
The IRS cannot extend third-party designations beyond 12 months, but if you still have a need to assist your client after that time, you may complete a Form 2848. If you wish to have further authority than is allowed through the Checkbox, you may wish to complete a Form 2848. If you contact IRS to request assistance on a client's account where "checkbox" authority was established, please be prepared to provide us with your PIN for verification purposes.
See Publication 4019, Third Party Authorizations, for further information.

Question 18

Please clarify what the check box does and does not cover. How long does this POA last?

Answer: See Answer 17.

Question 19

Although we practitioners love the idea of the check box, in practice we've not found it to be of much use, because it doesn't seem to authorize us to resolve most issues that come up (for example, questions about deductions). Is the IRS open to expanding the powers authorized by the check box?

Answer: See Answer 17.

Question 20

I have had a number of notices from IRS regarding the Qualified Charitable Distributions from retirement accounts. We file our returns electronically so there shouldn't be any problems. They have sent notices that totally disregard the reporting of the QCD and bill the client for the additional tax due as if they received the distribution. How do we report this so we don't get notices?

Answer:
We apologize if the returns were processed disregarding the reporting of the qualified charitable distributions from retirement accounts during tax year 2009. If you will contact your local Stakeholder Liaison Specialist with specific examples, we will be happy to have the cases reviewed to determine if this is a systemic problem.

Question 21

It is rumored that IRS auditors are now being issued QuickBooks programs and are requesting electronic files from taxpayers.
I am against providing electronic files because they contain more than the period under audit and providing the electronic file would be an expansion of the audit or give IRS access to periods beyond their original requests. Therefore I intend to provide paper records of the YTD general ledger. Will they accept this and if not, why not?

Answer:
While there is very little we can do to alleviate this concern for tax years not under the audit scope, going forward you can suggest that the taxpayer start to make single year QuickBooks backups. This can be done by creating a new company file (working file) each tax year using a slightly different company name and then at the end of the year create a backup of the file. Then the next year create a new company file and create a backup at year end, and so on for each year. For example, for the 2008 data a company file named "ABC Company-2008" could be set up and backed up by the taxpayer shortly after year end. In 2009, a new company can be created named "ABC Company-2009", and so on. Such a backup practice will allow the taxpayer to limit the amount of QuickBooks data that he or she must provide to the IRS for future tax years should they be examined.

If the taxpayer's QuickBooks backup file contains transactional data for several years that are outside the scope of the audit, examiners should only review data for tax year(s) currently open for examination. Examiners may review transactions for the month prior to and the month after the tax year under examination only if the transactions in these month are relevant to the data sought. For example, if the IRS was exploring whether to reconstruct a taxpayer's income, then certain information for the immediately preceding and following tax periods would clearly be relevant. Or for example, if a business taxpayer under examination is an accrual basis taxpayer, then it will also customarily be relevant for the IRS to examine transactions for the month prior to and the month after the tax years under examination. Please see IRC § 7602 and United States v Goldman, 637 F. 2d 664, 667 (9th Cir. 1980); see also United States v Carriger, 592, F. 2d 312 (6th Cir. 1979).

However, if electronic records are maintained, IRS can request them even if they are also maintained in paper format.

Our legal authority for requesting a taxpayer's electronic QuickBooks backup files and other relevant accounting records is based on IRC § 6001, Treas. Reg. § 1.6001-1(a) and -1(e), Rev. Rul. 71-20, and Rev. Proc. 98-25.

IRC § 6001 provides that taxpayer must keep such records as the IRS prescribes. The requirement to keep records does not distinguish between paper or electronic records. There is a small business exception to maintaining electronic records in Rev. Proc. 98-25. This exception provides that a taxpayer with less than $10 million in assets does not have to comply with Rev. Rul. 71-20 or Rev. Proc. 98-25 in maintaining their electronic records, if all the information required by § 6001 is maintained in the

taxpayer's hardcopy books and records. If the taxpayer does not meet this requirement to the exception, then the taxpayer must maintain electronic records and the IRS agent has the authority to request the QuickBooks records in electronic format.
Rev. Proc. 98-25 does not exempt a taxpayer from providing electronic records if such records exist. Rather, it provides an exception that does not require small businesses to maintain electronic records so long as all the information required by IRC § 6001 is retained in the taxpayer's hardcopy books and records. If there is any question as to whether the taxpayer meets the small business exception, consult §3.02(2) of Rev. Proc. 98-25. In short, if a taxpayer otherwise meets the small business exception, but chooses to maintain electronic records, the electronic records are subject to inspection under IRC § 6001 and § 7602 and the small business exception does not apply.
Authority to compel the taxpayer to provide a QuickBooks backup file is IRC § 7602. Section 7602(a)(1) grants the Service the authority, for purposes of determining whether a return is correct, making a return where none was made, or collecting a liability, to examine any books, papers, records or other data which may be relevant or material to an inquiry. This would include a QuickBooks backup file or working file.

Question 22
Does the IRS ever introduce suggested legislation?
Two areas where the tax law seems to be antiquated are: (a) Capital loss limitation of $3k a year. In this economy some taxpayers would have to live 200 yrs to recover their capital losses, which will die with them. (b) Alternative minimum tax. This tax affects more and more people each year and should have higher income limits or exclusions.

Answer:
Under our system of government and by law, tax legislation can only be introduced by the US House of Representatives, Ways and Means Committee. If they ask for input from IRS, it is provided as shown in the two policy statements and IRM section below. If IRS is not asked for input, they give none. Once the House initiates legislation, the Senate gives its input. The Joint Committee on Taxation (Congresspersons and their staffs) develops the final product to be voted upon. Once it is passed, Treasury is charged with developing the regulations in support of the law. The regulations are developed using the law with the Congressional Record, which establishes Congress' intent behind the final wording of the code section. This is the point at which IRS is usually involved in the process. Example: IRS is now involved with Treasury in development of the regulations and procedures in support of the health care legislation. IRS Chief Counsel has a staff of several hundred attorneys that specialize in various aspects of the Code. They may be involved in the regulation process and they author Revenue Procedures, Revenue Rulings and Private Letter Rulings.
Policy Statement 1-24:
(1) **Comments on legislation**
(2) Although the chief responsibility for tax policy matters, including proposed tax legislation, is with the Office of the Secretary, the Commissioner, and other appropriate Service officials when authorized by the Commissioner, can comment on tax policy matters, including proposed tax legislation, in certain circumstances. These circumstances include situations in which the Commissioner, or other authorized Service official, is commenting on provisions that are administrative in nature, or assessing or commenting on the effect on the Service or on tax administration of certain existing or proposed provisions.

Policy Statement 1-26:
(1) **Legislative assistance to other agencies must be authorized**
(2) When authorized by the Commissioner or the Office of the Secretary, the Service will furnish technical assistance in preparing drafts of tax legislation and related documents to Congressional Committees, Committee staffs, the House and Senate Legislative Counsels' Offices and other Government agencies concerned. The Service will not furnish assistance in drafting legislation to individuals outside of the Department, including individual members of Congress, except that in certain circumstances and with the Commissioner's authorization, Service personnel can give technical comments and assistance to individual members of Congress concerning proposed legislation that affects the Service or tax administration.

Also from irs.gov:
11.5.2.5 (03-01-2006) Legal and Policy Considerations
1. Congress, the Office of Management and Budget (OMB), Treasury, and the Service have all placed restrictions on the various aspects of the substance, extent, and the manner of congressional communications. Governmental Liaisons must be mindful of these restrictions during their interactions with Members of Congress and their staffs. Questions or specific situations should be referred by memo to the National Director, Legislative Affairs, via the GLD Area Manager.

A. Congress has prohibited any "lobbying" by the executive branch of government using appropriated funds; lobbying has been defined as trying in any way to influence a Member of Congress to vote a certain way on a certain bill. The Comptroller General (GAO) has ruled that this also applies to "grassroots" efforts by agencies to have other groups lobby Congress. (18 U.S.C. § 1913)

B. OMB rules require that all official agency comments on pending legislation be cleared through them. CAP coordinators in the field cannot provide legislative proposals or comments on pending legislation to a Member of Congress or a staffer without first clearing it with the Legislative Affairs Division at Headquarters. (OMB Circular A-19 and Treasury Directive 28-02)

C. Any discussions concerning the IRS budget must be handled very carefully. While CAP coordinators are generally allowed to discuss the use of existing resources locally, it is best to avoid discussions of the overall IRS budget and its policy/program implications. (OMB Circular A-11)

D. Comments on legislation may only be made with the approval of the Commissioner or designee, and must be limited to the administrative aspects of the legislation. For example, a GL, with prior approval, could discuss how a proposed bill might affect taxpayers and/or the IRS administratively. (IRS Policy Statement P-1-24) …

E. When authorized by the Office of the Secretary or the Commissioner, IRS can furnish technical and drafting assistance with tax legislation to congressional committees, their staffs, the legislative counsels in the House and Senate, and other government agencies. In certain circumstances, and when authorized by the Commissioner, IRS can furnish assistance on proposed legislation affecting the IRS or tax administration to individual Members of Congress and individuals outside the Treasury Department. (IRS Policy Statement P-1-26)

F. Employees may not use government time, money, or property to influence Members of Congress to favor or oppose legislation. (IRS Rules of Conduct 217.3)

The National Taxpayer Advocate is allowed to recommend possible legislation. IRC § 7803(c) (2), provides for this unique role within IRS stated below:

(2) Functions of office

(A) In general, It shall be the function of the Office of the Taxpayer Advocate to -

(i) assist taxpayers in resolving problems with the Internal Revenue Service; (ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service; (iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and (iv) **identify potential legislative changes which may be appropriate to mitigate such problems.**

The law further requires the National Taxpayer Advocate to provide these items in an annual report. In the Annual Report to Congress (ARC), usually published in the first week of January, the National Taxpayer Advocate has repeatedly recommended tax simplification. She has recommended legislation on a wide array of topics, much of which has been introduced and passed. The alternative minimum tax has been addressed in the ARC by the National Taxpayer Advocate in every report except last year's. (It was not in last year's because Congress had done a two-year fix the prior year.)

On irs.gov, Taxpayer Advocate page, there is a link to the Systemic Advocacy Management System (SAMS). On this site, you are welcome to enter your ideas and suggestions for improving the tax system, such as the issue with the capital loss limitation rules. This system is used to develop items to be included in the ARC.

The ARC is available for review on www.irs.gov, Taxpayer Advocate section, if you want to see all of the items that have been proposed. It also shows which items have been introduced in Congress and the current status.

Question 23

Offers in compromise (OIC): Because of the JK Harris's and Omni's and Tax Masters of the world the rejection rates for OICs is somewhere north of 75%. Does IRS plan to start going after these people who are taking advantage of taxpayers owing money? We have many people come to us who have paid these outfits $2,000 to $4,000 for doing nothing. It seems the IRS is no longer interested in accepting offers because of these outfits that submit offers that don't qualify or don't properly represent their clients. This makes it hard for taxpayers who have legitimate offers to make (no future income stream, no assets, etc. etc.)

Answer:

Due to privacy laws, IRS cannot disclose ongoing investigations. However, you may wish to visit The Department of Justice, Tax Division site at http://www.justice.gov/tax/. The Department of Justice, Tax Division, working together with the Internal Revenue Service, has intensified its efforts to shut down fraudulent tax return preparers and promoters of tax-fraud schemes, using both civil and criminal enforcement. Under the Tax Division's civil injunction program, the Division files a lawsuit seeking a court order that prohibits a person from engaging in certain activities (for example, to stop promoting tax-fraud

schemes or preparing tax returns), or requires a person to take certain affirmative actions (for example, to notify customers of the injunction order.

Also, TIGTA investigates practitioners' misrepresentations (i.e. stating you are a CPA in the State of Florida in good standing when actually you are not).

Question 24

CP 2000: When IRS does matchups, whenever the taxpayers have Social Security income, which has been reported, but other income is missing, IRS consistently claims on the CP2000 that the social security income was not reported, even though it has been reported. What are they doing to correct this problem?

Answer:
According to IRM 4.19.7.8.14 (1), it appears the taxpayer's reported amount from the return should be entered in the examiner's screen. A zero would be entered when there is no reported amount on the original return. If the amount is entered incorrectly by the employee, then this could be a training issue. If you will contact your local Stakeholder Liaison Specialist with examples, we will be able to have the accounts researched and further investigate the origin of the problem. Also, see answer to Question 40.

Question 25

Why does any correspondence I send to the IRS (like S elections, late S elections, NOLs, responding to IRS requests for more information, etc.) take 3 - 9 months for a response?

Answer:
Due to the recent tax law changes, the IRS is experiencing higher than expected inventory levels of Forms 1040X, *Amended U.S. Individual Income Tax Returns.* Due to these inventory levels, the processing timeframe has been extended to at least 12 - 16 weeks (normal processing time is 8 - 12 weeks). Delays are also being experienced in the processing of other returns. If you have a specific situation that needs expedited service, you may wish to contact the Taxpayer Advocate's office for assistance. Also, see answer to Question 40.

Question 26

Why doesn't the IRS person that sends my clients a letter requesting more information provide a phone number to call them back so that the matter can be resolved more quickly? When the IRS mails something it takes another 3 - 9 months for a response. I have even included a POA and a request to be called by phone if there are any questions. For example, I am working on a clients NOL carryback which has been sent back 4 times asking for more information and this has dragged on for 2 years while a phone call to me would clear it up immediately. If I could have a conversation with the IRS agent it would take minutes to answer their questions instead of months and months with back and forth correspondence. Answering one of their questions frequently leads to the next question which involves endless time delays. Even better why don't they call when they have a question instead of write?

Answer: See answer 40

Question 27

Why does the IRS periodically reject late S elections even when the taxpayer completely complies with the late election Revenue Procedures? Why do they do this without any logical explanation why the late S election was rejected?

Answer:
S Elections are handled by the IRS campuses, not local Examination Division employees. If you will provide your local Stakeholder Liaison Specialist with specific examples, we will be happy to look into whether this is a systemic problem, or a case-by-case situation of a rejected election.

Question 28

Why doesn't the IRS have a broader range of phone numbers to call? No matter what the subject it seems I have to call the same number and go through multiple menus and multiple wait times to speak to the correct person. Why not have different phone numbers to talk to IRS employees who specialize in areas like Schedules A, B, C, D and E, Forms 1120S, 1065, 1045, and 1040X, NOLs, 1099-R, etc?

Answer:
As you are aware, there is a cost for each different number, as well as the cost to have specific experts waiting for a call on their "subject", as well as marketing in such a way to have this information in a venue that taxpayers would be aware of the numbers. Currently, assistors on specialized numbers change

categories when their lines are free, so there is less wait time for people needing assistance. However, your suggestion has been forwarded to our headquarters office for future consideration.

Question 29

I was told by the IRS' OPR head that the IRS has no meaningful link between their CAF, POA, PTIN and other databases, which is why we are all asked to fax in a POA copy every time we call and get a different agent on the phone. Does the IRS have any plans to consolidate their preparer databases? Likewise, are there any plans to link or share the IRS, EFTPS, and E-File databases? We are registered/listed multiple times in all of these databases, yet every time we call we still have to fax in a POA.
In addition, are we going to have to reregister under the new PTIN program (even though we are supposed to be able to keep our existing PTINs, CAFs, etc.) and pay the fee for doing so, even if they have our names, numbers, etc. already on record?

Answer:
A Centralized Authorization File (CAF) number is assigned to a tax professional when a taxpayer submits either a Form 2848 or Form 8821 to the CAF designating the tax professional as a representative or an appointee. The EFTPS database, CAF database, and E-File database all have different purposes, and different sensitive information covered by taxpayer privacy rights. The public database of certified paid tax return preparers will be a completely different system. At a minimum, it is anticipated that it will include the names, and contact information of preparers who have passed the competency exam. Other information about what will be included is not yet available. Stay tuned to the IRS.gov Tax Professionals page for information on this issue.
And yes, all federal tax return preparers, even those who already have a PTIN, will need to register in the new system. All paid preparers will need to be registered on the new system and have a PTIN prior to filing any return after Dec. 31, 2010. If the IRS can validate the ownership of the existing PTIN, the same number will be reassigned once the appropriate information is provided and the user fee is paid.

Question 30

I'd like to know if it is now common practice for IRS field auditors to call third parties to inquire about audits, without first informing the POA or the taxpayer? I made a call to the supervisor to determine why this occurred, and she indicated to me that the agent had discussed it with her and that we had not been forthcoming with info and that this had been going on for some time – although the audit field work only began 8/19, and we've responded to all subsequent document requests in a timely fashion. When I told her this, the supervisor did not remember the case clearly and said she would get back to me after speaking with the auditor (unfortunately I was out of the office yesterday and now she will be out of the office until Oct. 4).

Answer:
When circumstances such as are described in this question occur, the Service takes steps to secure the information necessary to conclude the examination. One of the foremost responses the Service receives during its annual Customer Survey is the fact that taxpayers want examinations concluded as quickly as possible. Third party contacts are often made with that goal in mind. IRC Section 7602(c) (1) authorizes third party contacts and states that, "An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made." The advance notice requirement is met when Publication 1 is issued at the beginning of each examination (see the section entitled, "Potential Third Party Contacts"); no further notice to the POA or taxpayer is required.

Question 31

What amount of time should a practitioner who is serving as a POA on an audit spend responding to requests from an auditor which seem to be things they should know or determine on their own? I am referring to a particular case in which the auditor did not think that the taxpayer was allowed to carry back a 2008 NOL from an S-corporation for 5 years as an ESB because her research showed that only partnerships and sole proprietors were ESB's. And she did not think we properly elected the carryback – even though for 2008 the IRS waived the formal election requirement. I provided her with IRS Rev Proc 2009-26. Should we spend time proving facts that are obviously ascertainable if the auditor were to do proper research – or just tell them they need to look it up again? And this was relating to a 2008 audit of the taxpayers partnership, so the S-corp NOL carryback doesn't even seem to be relevant to the audit. How far is an auditor allowed to deviate from the subject of their audit?

Answer:
The Service expects practitioners to work with examiners in order to provide the necessary records to

demonstrate the facts and justify the position taken on the tax return. This would include providing the legal authority. Once legal authority is provided, it is not anticipated that you hold the examiners hand and do their research. Recommend that the examiner re-consider the research provided, and if they continue to not understand, request to discuss the issue with the manager.
Generally the examiner is requested to audit the "taxpayer" which can include consideration of a Net Operating Loss taken on the tax return and whether or not its source is valid. If it is believed that the examiner is going beyond their authority, a managerial conference should be sought.

Question 32
When will the new IRS form be released for decedents dying in 2009 to report their assets and their original cost and new fair market value allocation?

Answer:
The anticipated form number will be Form 8939, Allocation of Increase in Basis of Property Received from a Decedent. The form is not in the draft stage as of yet, so that number is only the anticipated one. Unfortunately when it will be drafted or released it is a question that I cannot answer. We hope it would be released by the end of the year. Please continue to check our website for updates. Draft forms can be accessed at http://www.irs.gov/app/picklist/list/draftTaxForms.html.

Question 33
We electronically filed a 1040 for a long time client prior to April 15th. We got an e-file rejection notice stating that a return had already been filed under that SSN. Knowing that we submitted the return under the correct SSN we contacted the IRS number on the rejection notice 866-2550654. The IRS personnel we spoke with checked the IRS records and confirmed that a return had been e-filed under that SSN (by another e-file provider) with an address in another state and referred me to the Fraud Hot Line 800-829-0433. The individual on the Fraud Hot Line said there might be an issue of identity theft, advised us to file a paper return and referred us to the Practitioners' Hot Line. The person we spoke to there researched the records under our client's SSN and said a return was filed under that SSN and the same name as my client, from a different state. That return was filed as a single return (my clients file MFJ) from a different city and state with the same types of income, interest, dividends, military retirement, but in much smaller amounts than my clients' and a refund was issued. She instructed us to file a paper return and do due diligence by contacting the three credit bureaus, monitoring credit reports, credit card statements, bank accounts, filing Form 14039 – Identity Theft Affidavit, etc. A paper return was filed on April 13th.
We discussed the clients' concerns about identity theft with the Practitioners' Hot Line and I asked if there was anything we could do to expedite the resolution of this issue. She explained that nothing could be done until the paper return was filed and processed and a duplicate return was noted in the IRS data base at which time the client would receive correspondence from the IRS.
After not hearing anything from IRS regarding this issue I contacted the Practitioners' Hot Line again on May 25th to inquire about the status. I was told the records indicated the second return was received on May 3rd (we mailed on April 13th – she could not see the postmark date) and it would take 12 – 16 weeks to process! I expressed our concern about identity theft and asked if the process could be expedited, the answer was no. She went over the steps the client could take again to protect against identity theft and also said they could file a police report using the account transcript information I printed using the IRS Transcript Delivery System showing the other person's name (which was the same as my client's), address, and items of income reported on that return.
Having no correspondence from IRS still on September 9th I contacted the Practitioners' Hotline again. I was told the records indicated the case was being worked and based on past history they know that my clients' tax return is the correct one. The records also indicated that information was ordered from SSA on July 16th and it would take another six to eight weeks from July 16th. The day I called it was already seven weeks from that day. I expressed my clients' fear and frustration, not to mention that they were due a sizable refund they had not received, and again asked if anything could be done to expedite the process. She explained there were detailed processes defined in IRS guidelines they were required to follow and unfortunately they took time. All the IRS personnel I spoke with were very sympathetic to my clients' dilemma but unable to help in any way other than to tell us where the return was in the process. I am writing this on September 23rd and we still have heard nothing. The only contacts we have had with IRS regarding this matter are from the ones we initiated. We never received notification when the paper return was received and was identified as a duplicate or at any time as the return moved through the processes.

In this day and age of rampant identity theft, the time, money, frustration, credit problems, nightmares, etc. that individuals go through to correct it, not to mention the fact that the IRS may have been defrauded when it issued a refund (and if so this could be a very sophisticated and far reaching fraud involving any number of taxpayers) there must be a way to expedite suspected fraud cases before the

situation gets way out of hand. If there is not, why not and why isn't the process being developed?

Answer:
See IRM 21.9.2.2 (revised 10/01/2010) on Identity Theft – Expanded Procedures. In part, it states " In compliance with Commissioner Shulman's testimony before Congress on April 10, 2008, Accounts Management (AM) has adopted a proactive stance against identity theft. As a result, AM has established Identity Protection Specialized Units (IPSU) to assist taxpayers that are, or may become, victims of identity theft. IPSU Teams are comprised of paper and phone teams. A toll-free number, 800-908-4490, established specifically to receive identity theft related calls, provides taxpayer access to automated messages and assistors. The hours of operation are 8:00 am to 8:00 pm (taxpayer's local time). Guidance will be provided to the individuals identifying themselves as potential victims of identity theft, including actions to take when there is currently no tax-related impact or tax related ID theft.
The Identity Protection Specialized Units strategy is to: track taxpayers who currently have tax problems related to ID theft, track taxpayers who report ID theft to IRS with no current ID theft tax problems, assist in distinguishing legitimate returns from fraudulent returns, track ID theft, refund crime and phishing victims,.
From Taxpayer Advocate Office: Based on his/her description, taxpayer qualifies to come to TAS for assistance. TAS cannot act directly to correct the ID Theft issue, meaning we have to work through it with the IRS function that specializes in this. Since his/her client is experiencing financial difficulty and needs refund, we can usually expedite receipt of the refund, since IRS has already acknowledged that they know his client is the correct taxpayer.

Question 34
For several years now I have filed Form 8379 Injured Spouse Allocation with the taxpayer's originally filed return. Each year the taxpayer has gotten a letter from the Financial Management Service indicating that they will not get the expected refund. The Form 8379 clearly indicates that all of the taxes paid in are from the spouse.
My question is: Why does this happen when we follow the correct procedures and include the appropriate forms to make sure this doesn't happen? I have had this situation occur with other clients where it seems that the service does not process the complete package of forms submitted.
I also have this issue with Form 2848 POA, where we send it in with correspondence and it never gets put into the system.

Answer:
TAS personnel assist people with hardships who experience the issue on delay in processing the Forms 8379, as described in this inquiry, or if they have attempted to get it corrected and aren't successful.
It is our understanding that the Form 8379 is separated from the Form 1040, because each goes through a different processing function, and this is where problems can occur.

As background: An injured spouse is an individual who files a joint tax return, on Form 1040, and all or part of the tax refund overpayment was, or is expected to be, applied against a debt of one spouse's past-due Federal tax account, child or spousal support, Federal non-tax debt or to a State income tax obligation. The injured spouse may request his or her share of the joint overpayment when certain conditions are met and he or she file Form 8379, Injured Spouse Allocation. In general, there are four requirements to be considered for an injured spouse allocation. First and foremost, a joint return must be filed and the injured spouse is not required to pay the past-due debt amount. In addition, the injured spouse has or will report income such as wages, taxable interest, unemployment compensation, etc. or will report payments such as Federal income tax withholding from wages or estimated tax payments, or claim earned income tax credit or other refundable credits. If the injured spouse's domicile is in a community property state at any time during the tax year then the injured spouse may file Form 8379 as long as a joint return is filed and he or she are not responsible for any portion of the established debt.

Suggestions: Form 8379 is a legal instrument used to apportion the tax refund overpayment on a jointly filed Form 1040. Form 8379 should be filed when the taxpayer becomes aware that all or part of their share of an refund overpayment was, or is expected to be, applied (offset) against their spouse's legally enforceable past-due obligations. Form 8379 needs to be filed for each year the injured spouse meets this condition and wants their portion of any offset refunded.
Oftentimes, the IRS receives Forms 8379 incorrectly. For example, individuals file the Form 8379 when he or she are not filing a married filing joint return or where a debt does not exist at either IRS or FMS. This also includes debts that the taxpayer may have owed previously but have been satisfied. We have also seen Forms 8379 filed because the taxpayer owed a personal debt such as a utility bill. If a Form 8379 is filed for any of these instances, it will only delay the refund issuance. Be sure to use the January 2009 revision of Form 8379 in which we added a series of questions to assist in determining whether the spouse is truly an injured spouse. Please refer to **Part I, Should you file this form?** on the Form 8379.

This will assist in determining whether the Form 8379 should or should not be submitted. Pay special attention when completing **Part II, Information About the Joint Tax Return for Which This Form is Filed**, of the Form 8379. Be sure that the injured spouse is correctly identified. We have received cases where the incorrect taxpayer is marked as the injured spouse when, in fact, the injured spouse is the other spouse on the joint Form1040.

In order to distribute the refund overpayment to each spouse appropriately, the division of income, payments, and credits needs to be identified on the Form 8379. To properly determine the amount of tax owed and overpayment due to each spouse, an allocation must be made as if each spouse filed a married separate tax return instead of a joint tax return. Therefore, it is important that each spouse's wages, self-employment income and expenses, including self-employment tax, and credits such as education credits, are correctly identified in the appropriate column.

Special rules will apply to the injured spouse refund calculation for taxpayers domiciled in a community property state. In order to allocate the injured spouse's portion accurately, be sure to include the community property state where the taxpayers resided. In community property states, overpayments are considered joint property and are generally applied to legally owed past-due obligations of either spouse; however, there are exceptions. The IRS will use each state's rules to determine the amount, if any, that would be refundable to the injured spouse. For more guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability, please review the Revenue Rulings mentioned on page 3 of the Form 8379 Instructions or refer to Publication 555, Community Property. three common errors regarding Part III, Allocation Between Spouses of Items on the Joint Tax Return, of the Form 8379.

Inappropriate allocation of wages and payments: Taxpayers often neglect to appropriately apportion the correct amounts of income and credits attributed to each spouse. The correct separation of reportable income, (including wages and taxable interest), Federal income tax withheld from wages, estimated tax payments; earned income tax and other refundable credits is essential. Items of income, expenses, credits and deductions should be allocated to the spouse who would have entered the item on his or her separate return. For joint estimated tax payments, allocate in any way the taxpayers choose as long as both spouses agree. If the taxpayers cannot agree, use the formula located on page 4 of the Form 8379 Instructions.

Inappropriate division of standard or itemized deductions: If the taxpayers are claiming the standard deduction, each spouse is entitled to one-half of the basic standard deduction shown. If the taxpayers itemize their deductions, enter each spouse's separate deductions. For example, an employee business expense. Allocate other deductions that may not clearly belong to either spouse (for example, a penalty on early withdrawal of savings from a joint bank account) as the taxpayer determines.

Inappropriate division of dependents or exemptions: Dependents and exemptions are not appropriately split between both spouses. Be sure to allocate the exemptions claimed on the joint return to the spouse who would have claimed them if married filing separate returns had been filed. Enter whole numbers only. For example, you cannot allocate 3 exemptions by giving 1.5 exemptions to each spouse. Also, the injured spouse cannot claim the other spouse as an exemption.

Please refer to Publication 4183, Injured Spouse, for other common errors and frequently asked questions. The IRS does not have creditor information available. The taxpayer should contact FMS to confirm and verify if a Federal non-tax debt has occurred or to furnish the creditor agency information. FMS cannot provide the taxpayer with the total amount due on a particular debt. The taxpayer should contact the creditor agency to obtain the pay-off amount or to dispute the legality of the non-tax debt certified to FMS.

FMS will:

* Explain the Offset Process at FMS,
* Confirm Federal non-tax debt,
* Advise taxpayer if debt is subject to offset,
* Explain FMS Notice of Offset,
* Re-issue or provide copy of FMS Notice of Offset, upon written request
* Verify Federal non-tax debt offset that occurred after 01/01/1999,
* Furnish creditor name, address and telephone number,
* Report incorrect contact information to the appropriate creditor agency. FMS will not:
* Provide debt balance,
* Establish payment agreements,
* Accept any payments,
* Refund any money taken in error, or
* Remove a debtor or change status of debt from the debtor database.

(Please note that is is up to the creditor agency to assist the taxpayer with the situations just discussed.)

On a weekly basis, FMS provides IRS with debtor and debt information such as the fact that a debt exists and the aggregate amount; however, IRS does not know the creditor agency nor the

amounts of separate debts administered by FMS. This information is used to set the debt indicator at IRS.

When an offset occurs at FMS, FMS sends a record to IRS that indicates the offset occurred with the total amount of offset from a particular refund. If the taxpayer owes more than one debt and all or part of their refund offset to the multiple debts, FMS only provides one offset record with an aggregate amount to IRS for posting to the taxpayer's account.

Should you have a client that has an outstanding Federal non-tax debt or state income tax obligation, you may contact FMS for assistance at **(800) 304-3107**. FMS does not accept Form 2848 or Form 8821. They have their own authorization form. You must submit FMS 13, Authorization for Release of Information, directly to FMS.

If you feel that FMS incorrectly allocated the withholding, you may contact IRS at 1-800-8291040. If you have already attempted to correct the situation and have been unsuccessful, you may wish to contact the Taxpayer Advocate Office at 1-877-777-4778.

Regarding the non-processing for Forms 2848, we have recently confirmed that further training has taken place regarding the correct processing of Forms 2848, through the CAF system, when it is appropriate. Hopefully, you will see improved service. If you continue to have problems, please contact your local Stakeholder Liaison Specialist.

Question 35
I have had 2 occasions where the agent on the phone (both in California) asked for my Florida CPA Certificate number. Is this a new policy?

Answer:
Although it is not a requirement that IRS employees verify a representative's status (CPA, Attorney, Enrolled Agent) to ensure the representative is authorized to act for the taxpayer, an employee may choose to verify a representative's eligibility to ensure the representative is authorized to act for the taxpayer and that the Service can disclose return information within the scope of the tax matters for which the taxpayer has authorized representation. Individuals are required to certify their eligibility to practice before the Service on the Form 2848.
References: Collection IRM 5.1 Guidelines Collecting Procedures page 8
http://irm.web.irs.gov/Part5/Chapter1/IRM5.1.1.pdf
Examination IRM Part 4 -- 4.1.10.11 Misrepresentation by Preparers of Powers of Attorney refer to number 2 A and B http://www.irs.gov/irm/part4/irm_04-001-010-cont01.html#d0e1707

Question 36
System problem CAF system and POAs--There is a CPA in Miami whose name is the same as mine. Throughout the years the IRS has registered many of his POAs under my name and vice versa. I know how frequently this happens because I start getting CAF copies of notices issued to the Miami CPA clients and vice versa. --My guess is that the IRS agent entering a new POA picks the first Carlos name that matches from the list without verifying the CAF numbers. --I requested in writing that the CAF unit verify my CAF number and info in my record and to note the problem with the name mix up. I provided copies of FICPA registrations of both CPAs and copies of various notices issued to the wrong CPA. So they had all the info they would needed to address the problem. --I have re-sent these letters for four years in a row and the CAF unit has not replied to any of my requests or fixed the system problem. --I wonder if this is a unique problem or if other CPAs are having similar problems with the CAF unit.

Answer:
For authorizations that are recorded on the CAF, each third party is identified by a CAF number. A CAF number is assigned to you the first time you file Form 2848, 8821, or complete an online form using e-Services. A letter will be subsequently issued to you to let you know your assigned CAF number. However, this will not delay posting of that initial authorization. You should use your assigned CAF number on all future authorizations.

You should notify the CAF Function if you have a change of address as the CAF is not updated when an address is changed on other IRS systems. Simply check the appropriate box on the Form 2848 or Form 8821 to indicate a change to your address, telephone or fax information on Line 2 and the CAF system will be updated accordingly.

For Forms 2848, the CAF number is issued to an individual.
If the CAF unit has incorrectly assigned another POA your CAF number on several occasions, and has

not corrected the situation, please contact your local Stakeholder Liaison Specialist, who will be happy to report this systemic problem, and obtain from you the necessary information to resolve the problem.

Question 37

When we work with an agent by phone, they cannot provide an extension or contact number to reach them again with follow-up. Each time you call, you must start at square one with a new agent, very inefficient (for both parties). Agents all have a unique ID numbers of course, but there is no database to utilize this info. It would be very helpful if agents could provide contact numbers and extensions.

Answer:

See Answer 40. If the contact is an Examination that is with a local office, either with a Taxpayer Compliance Officer or a Revenue Agent, they are always required to provide you with both their telephone number and their supervisor's name and number. If you are working on an audit with an examiner at one of the campuses, they are also required to provide you with contact information. If this is not happening, please contact your local Stakeholder Liaison Specialist, who will be happy to assist you. However, if you are working with an IRS assistor on one of the toll free assistance telephone lines, the system is currently set up for callers to be directed to the first open assistor, not to someone they previously talked to.

Question 38

I recently e-filed a return, which had a 2210 in it, with the box checked for the small business modification to the ES requirement. Checking the box eliminated the penalty. I think for this reason, the form was not included in the e-file (I later found out), and my client was penalized. Although I don't anticipate a problem in getting the penalty reversed, I wish I had more control over what forms and schedules go to the IRS in the e-file. My software provider is ATX, but I assume this inflexibility is found across the board. Do you foresee the possibility of the preparer having more control over the forms that are e-filed, in the same way as for a paper filing?

Answer:

As part of the Return Preparer Review, a future recommendation is that there will be more regulation of software companies and the programs/systems they provide. Presently, you may wish to contact your software provider as to the reason the Form 2210 was eliminated from your e-filed return. Form 2210 is definitely one of the forms that is able to be e-filed. We will let our headquarters office know of your situation.

Question 39

In my pro bono work I have sometimes found it very difficult dealing with the IRS' requests for verification of eligibility for the EIC. I've had 2 cases where the IRS has asked for us to prove that dependents claimed were eligible, including proof of specific dates of residence. These are people that I know to be HONEST and dealing in GOOD FAITH, representing only the truth. I sent the same papers 3 times--birth certificates, proof of paternity, school records, forms 886A, Forms 4852 (to P-3 Stop 4100 Kansas City, MO 64999), and the IRS keeps telling me they need something else. One of these taxpayers cannot find her former landlord to attest that her daughter was living with her in 2007 for more than 6 months. In this country is it a crime to be born poor? When the IRS doesn't get the info it seeks, for example because the schools are closed, they close the case, and then you have to re-open it. I've had the same difficulties with the Taxpayers Advocate as well. I have been fighting this for years. In some cases for very poor families, the children do not attend school, and so we cannot provide the requested school papers. Can't the taxpayer be given the benefit of the doubt, or at least the process made easier?

Taxpayer Advocate Service Answer

EITC, exemptions and related items are complex issues. IRS is very cautious in pursuing these items. On one hand, they are challenged for being too harsh in the requirements of proof. On the other, they are criticized for giving away money when persons not acting in good faith perpetrate a fraud on the government. They err on the side of caution. Since coming to TAS, I have observed that persons at IRS dealing with these issues have a "laundry list" of items that can be used to verify the residency and dependency issues. There are some who try to insist that all the documents are needed, when in fact they are not. Dates of residence are needed for issues in which the amount of time at an address is a factor in whether one can claim a benefit or not.

In TAS, I have held repeated sessions with my employees in which I have cautioned them that all the items on the list are not needed. TAS should assist the taxpayer to secure adequate documentation, accept oral testimony that is corroborated with some docs, find ways to assist the taxpayer, look for alternative docs that will provide the same info and make the case to the IRS on taxpayer's behalf. That is our role. On specific cases, I have written memos, presenting the facts with oral statements, reminding IRS employees that oral testimony is allowable. More often than not, my position has been accepted by

the IRS. If you encounter issues in the working of a TAS case, please ask to speak to the employee's manager. If the issue is not resolved after the manager becomes involved and you still don't agree, ask for me. I will look at it to determine whether there is room for further action.

Question 40

We have been encountering difficulty with the ACS branch issuing Notices of Deficiency while we are still in the process of corresponding with them to resolve an issue. Often, the notice of deficiency is issued prior to our latest correspondence being reviewed. This process results in the costly and unnecessary filing of a Tax Court Petition by our clients. Does ACS have the authority to rescind a Notice of Deficiency that is prematurely issued? Is there any abbreviated method of dealing with this short of a Tax Court Petition?

Answer:
While Appeals has no control over the process, it is a problem that we see in cases coming into Appeals for consideration. From our experience, the problem here is generally one of a delay in the receipt of correspondence from the taxpayer. The Campuses work such a high volume of cases that the deadlines that they establish are somewhat cast in stone. A 30 day response time means the employee working the case expects to have the information in hand by the 30th day. If the information isn't on hand the employee closes the case and the process of issuing the Notice of Deficiency becomes pretty much an automated function. Delays frequently occur because the responding correspondence does not include the requesting letter or include sufficient information to properly route the information to the individual employee handling the case. Delays can also occur because a case has been transferred from one employee to another and the information does not catch up in time. Finally, the information doesn't arrive when requested because the taxpayer didn't respond in a timely manner (allowing time for mailing) or the taxpayer didn't submit all of the information requested.

Frequently the timing of the receipt of the information by the employee will be close enough that they will review the information during the Notice suspense period. This review and consideration, however, does not extend the time allowed to file a petition with the Tax Court and the taxpayer is should be advised of this in writing. When this happens the Campuses will consider the information and revise the deficiency amount and secure a waiver from the taxpayer or accept the return as filed based on the new information sent. Frequently in a no change situation, the Campuses send a letter accepting the taxpayers return and advise the taxpayer that if they receive a Notice of Deficiency they do not have to respond to it (IRM 4.8.9.19). The Campuses, however, rarely rescind a Notice of Deficiency because this process can usually be completed during the time allowed for filing with the Tax Court and the process to rescind is not a simple matter. (IRM 4.8.9.24).

If the information is considered and is insufficient to change the Notice adjustments, the taxpayer can request an Appeal. Again, however, the time for filing with the Tax Court is not suspended. As a result, from a practical standpoint, filing of a petition with the Tax Court is necessary to protect the taxpayer's interest. If the taxpayer qualifies, the expense can be reduced by filing under the small case procedures. The filing and procedures for small cases are much more simplified.

Most frequently in Appeals when we find that if the information has been looked at, but not acted on, it is because the information is incomplete. The information provided is sufficient to establish settlement hazards for the government but it was not sufficient for examination to establish the "actual tax due." This situation would not qualify for a rescission of the Notice of Deficiency.

Question 41

In dealing with Revenue Officers in negotiating installment agreements, when gathering the necessary collection information such as Form 433-A, and supporting documentation, in the middle of the process the R.O issues a Letter 1058, which gives you by statute 30 days in which to request a Due Process Hearing, leaving the POA with no alternative other than to answer said Letter 1058 within the 30 day period. The R.O. complains because as he or she puts it, we are in the process of working this out and you do not need appeals to get involved.

Questions: (1) If we are in the process of working it out, then why is the R.O. issuing a statutory letter which has to be answered? and (2) Why are the R.O.'s telling taxpayers and POA's that you do not have to answer the Letter 1058, it is just that our managers require the issuance

Answer:
A Letter 1058, Notice of Intent to Levy and Notice of Your Right to a Hearing, is issued when a deadline is set for the taxpayer to take a specific action. The purpose of the letter is to warn the taxpayer that

failure to respond may result in imminent enforcement. If there is a pending installment agreement (IA), then we would not issue the letter. A pending IA includes the criteria to be in compliance with all filing requirements, both individual and business. There may be a perception that the case is in pending IA status, when the letter is issued. The revenue officer has a responsibility to clearly explain the reason for the issuance of the letter and appeal provisions. If the taxpayer and/or representative are working toward an installment agreement, but not yet a pending IA, and the L1058 is issued, then we have some time to reach a resolution prior to going to Appeals. If L1058 was issued when levy action is prohibited, it can be rescinded using Letter 3876, Rescission of Collection Due Process Levy Notice.

Question 42

As a Power of Attorney, we often find ourselves in line at the Internal Revenue Service's Taxpayer Assistance Office, although we are there for a specific purpose, such as getting a release of levy or getting documents filed and stamped. We are in line with 20 or 30 other taxpayers, who are there with no understanding of why they have the problem and spend a great deal of time with Internal Revenue Service employees who are trying to help. We feel that it would be more efficient for both the IRS and the Representatives if there would be a separate window for the Representatives so that the POA's could deal with the problem quicker and efficiently, allowing the IRS to be more time efficient. Also, our clients, who are also taxpayers, would not be penalized by paying their POA's for all of the waiting time. Accordingly, should the IRS consider a separate window for tax professionals?

(W&I are trying to get me an answer)

Question 43

What will be the preparer rules for those who will be required to file electronically?

Answer:
The Worker, Homeownership, and Business Assistance Act of 2009 included an amendment to IRC Section 6011 mandating electronic filing by tax return preparers who file more than 10 individual or trust returns after 12/31/2010. The IRS is going to phase in the mandate in 2011 by requiring tax return preparers who prepare 100 or more individual or trust returns to e-file their client's returns.
The statutory language is very brief and leaves many issues that IRS will need to address through regulations. The statutory language does not specify a penalty for violations of the mandate, but an enforcement mechanism will be part of what IRS addresses through regulations.
The requirement will be phased in over two years. As a result of the new rules, preparers will be required to start using IRS e-file beginning:

- **January 1, 2011**— for those of you who anticipate preparing **100 or more** federal individual or trust tax returns during the year; or
- **January 1, 2012**— for those of you who anticipate preparing **11 or more** federal individual or trust tax returns during the year.