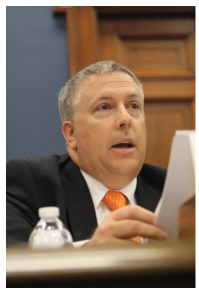
Vol. 10 Issue 2

June 2017

Journal of the CPA Practitioner

INSIDE

President's Letter



Dear Colleagues:

Tax season. That wonderful time of year that CPAs both love and hate. We love it because it is the time of year when many of us collect the revenue that sustains us over the slower parts of the year. We hate it because of the long hours, and delays in getting all the needed papers from our clients and corrected brokerage statements. This year, those in New York, or with clients with NY income, were faced with new reasons to hate this season – entering driver's license information. We were also faced with new and expanded due diligence for Child Tax Credits, Additional Child Tax Credits, and American Opportunity Tax Credits. This was in addition to the expanded EITC questions. This year, while meeting with some long-time clients, we were talking about the changes in the taxes and dealing with many clients.

This reminded me that there is a better reason to love tax season. With many long-term clients, I realized that for many of my clients, I wasn't stressed by preparing returns or new and different tax laws. For me tax season was a time for me to meet with friends that, in many cases, I only see once or twice every year. Embracing this mindset provided me an added boost when things got a little crazy.

Recently, when talking with some NCCPAP colleagues about how tax season went, we had different views. We even had different views on the same topics. What this tells us is that our attitude toward accepting the tax season "curve balls" goes a long way in shaping our perspective.

Next time tax season, peer review, or any other aspect of your practice throws you a curve, remember that if you can keep a positive attitude, you will be able handle the curve, slider, and even the fast ball with greater ease.

Thank you,

Stephen F. Mankowski, CPA

NATIONAL CONFERENCE OF CPA PRACTITIONERS, INC.
22 Jericho Turnpike, Suite 110, Mineola, NY 11501
Website: go.nccpap.org
E-mail: execdir@nccpap.org
Telephone (516) 333-8282 - Fax (516) 333-4099

OFFICERS

President	Stephen F. Mankowski, CPA
Executive Vice President	Neil H. Fishman, CPA
Vice Presidents	Frank Gallo, CPA
	Donald Ingram, CPA
	Mark A. Stewart, Jr., CPA
Secretary	Barry Zalk CPA
Treasurer	Stuart G. Lang, CPA
Immediate Past President	Sandra G. Johnson, CPA

DIRECTORS	Scott Cheslowitz, CPA
	Mary Duff, CPA
	Kenneth Hauptman, CPA
	Joseph Lowe, CPA
	Lynne Marcus, CPA
	Steve Palmerio, CPA
	David J. Rothfeld, CPA
	Sanford E. Zinman, CPA

PRESIDENTS / REPRESENTATIVES TO BOARD

Boston, MA	To Be Announced
Delaware Valley	Joseph Lowe, CPA
Florida	Lynne Marcus, CPA
Long Island East, NY	James Diapoules, CPA
Nassau/Suffolk, LI	Robert Brown, CPA
Ed Fd of N/S NCCPAP	Michael D. Rubinstein, CPA
New Jersey (Northern)	Fred Bachmann, CPA
New York, NY	To Be Announced
Texas/TACPA	Frank Sands, CPA
Westchester/Rockland, NY	Mark A. Stewart, Jr., CPA

COMMITTEE CHAIRS

Audit	Frank A. Gallo, CPA
By-Laws	David J. Rothfeld, CPA
Chap Reps	Joseph Lowe, CPA
Education (w/MAP)	Lynne Marcus, CPA
Ethics	Barry Zalk, CPA
Issues	Mark A. Stewart Jr., CPA
Co-Chair	Sandra Johnson, CPA
Membership	Joseph Lowe, CPA
Nominating	Lynne Marcus, CPA
Office Operations	David J. Rothfeld, CPA
Public Relations	Mary Duff, CPA
Scholarship	Karen Giunta CPA
Strategic Planning	Neil H. Fishman, CPA
Tax	Sanford E. Zinman, CPA
Technology	Ross Kass, CPA

OFFICE STAFF	Kathy Casey
	Etta Gelbien
	Pat Sornberger

NCCPAP Past Presidents

2014-2016: Sandy G. Johnson, CPA
2012-2014: Edward Caine, CPA
2011-2012: Lana Kupferschmid
2009-2011: Andrew L. Hult, CPA
2007-2009: Karen Giunta, CPA
2005-2007: Dennis Scott, CPA
2003-2005: Carol C. Markman, CPA
2001-2003: Alan Feldstein, CPA
1999-2001: Robert Goldfarb, CPA
1998-1999: Carole M. Roble, CPA
1996-1998: Herbert Schoenfeld, CPA
1995-1996: Theodore Feher, CPA
1993-1995: Mitchell Klein, CPA
1991-1993: Peter Ciccone, CPA
1989-1991: Charles W. Newton, CPA
1988-1989: Jerome Fien, CPA*
1987-1988: Edwin Kliegman, CPA*
1986-1987: John Sehrt Jr., CPA *
1985-1986: Eli Mason, CPA*
1984-1985: Irwin Pomerantz, CPA
1983-1984: John MacMullen, CPA
1982-1983: Sam Fisher, CPA
1981-1982: Ralph Rehmet, CPA
1980-1981: Clint Romig, CPA*
(Deceased)*

Like us on:

JOURNAL OF THE CPA PRACTITIONERS is published by the National Conference of CPA Practitioners (NCCPAP) , a not-for-profit New York association. Editorial: Copy due the 10th of the month preceding publication. Advertising: Camera-ready art due the 12th of the month preceding publication. No articles herein may be reproduced without expressed permission of NCCPAP. NCCPAP is not responsible for any error or omissions in advertising matters. Depiction, likenesses, drawings or photographs of any person, whether living or deceased, appearing in any advertising matters, is solely the responsibility of the advertisers. Submitted articles are expressed opinions of the authors and are not necessarily the opinions of the Officers or Board of Directors of NCCPAP.

For Editorial or Advertising information, contact: Office (516) 333-8282.
Price per issue: $2.50 ©2017 NCCPAP -ISSN 2152-4661

LETTER FROM THE EDITOR

June 2017

Tax season is over. This past season brought with it all kinds of new security concerns.

I've received several emails asking if I was able to prepare returns. Something didn't feel right so I replied and asked who recommended them. I never received a response. Then I read, in a newsletter I receive, that this is a common phishing ploy.

NCCPAP was the frontrunner in asking the IRS to give us an identifying number to use on returns besides our social security numbers. This was because one of our members had his ID stolen because he had put his social security number on a return, as then required. Now, the PTINs, we fought for, are being hijacked by identity thieves. The IRS has put in place measures for us to check how many returns are being filed with our PTIN. If the number of returns filed seems out of whack notify the IRS IMMEDIATELY!

My tax software vendor added all kinds of security bells and whistles. They said this is being required by the IRS to prevent theft of information.

If you prepared returns for New York State you know that NYS now requires that we put the drivers' license or identity card number on the returns.

I hope you had a fruitful and easy tax season!

Frimette

The National Conference of CPA Practitioners and the Texas Association of CPAs Announced a Strategic Alliance at TACPA's Spring Meeting on Friday, May 5, 2017

TACPA board secretary M.R. Yousuf, immediate past NCCPAP president Sandra Johnson, current NCCPAP president Stephen Mankowski and TACPA vice president Marc Core

NCCPAP members with Paul Teller, Special Assistant to the President for Legislative Affairs at the White House, and three Navy officers who received commendations. May 11, 2017

UPCOMING ACCOUNTING SHOWS & MEETINGS:

Florida Chapter meeting, Thursday, **July 6, 2017**, Cyber Security Issues, 2CPE/MAP 8AM-10:30AM, at The Egg and I, in Boynton Beach

See you at the **2017 New York & Northeast Accounting Show & CPE Conference, July 12—13**, 2017, Pennsylvania Hotel, NYC

Texas Chapter/TACPA next quarterly meeting will be **August 3—4**, 2017, Embassy Suites Houston – Energy Corridor, 11730 Katy Freeway, Houston, TX 77079

See you at the **2017 Midwest Accounting & Finance Showcase, August 29-30**,2017, Stephens Convention Center, Rosemont, IL

NEW PARTNERSHIP AUDIT RULES – SOME OF THE BASICS

In November of 2015 the Bipartisan Budget Act of 2015 replaced the TFRA partnership audit rules enacted in 1982. Several new procedural rules for federal income tax audits will soon be in place. These rules are not slated to be in effect until 2018. A partnership may elect early adoption of these new rules for years beginning after November 2, 2015.

Before we go into the details let's look at the reasoning behind the changes. Congress realized that although the numbers of large partnerships have skyrocketed over the years, the percentage of audits had dropped significantly. In fact the audit rate for large partnerships paled in comparison to the audit rate for large corporations. The cost of auditing multitier structures and passing through audit changes became very costly and inefficient. The need for changes and the potential revenue as a result of these changes were a significant driving force.

Partnerships still remain as flow through entities and audited the same as they were under TEFRA, however, taxes due under audit or judicial proceedings may now be collected at the partnership level. This also includes all penalties and interest. Any adjustment to the year(s) under audit, are taken into account in the year in which the audit is concluded. All of the adjustments are netted together and taxed at either the highest individual rate in effect or the highest corporate tax rate in effect for the audit year, or "review year". The IRS, however, is charged with taking into account several factors when imputing the underpayment. Factors include, but are not limited to, the character of income, or loss deduction adjustment; the type of entity owning the partnership interest; partners paying their allocable share of the taxes owed at their level; etc.

We should note that certain partnerships may elect out of the new regime. The criterion for electing out is:

1) The Partnership has no more than 100 partners. Clarification is required if one partner has multiple partnership interests in the partnership; Do multiple interests count as one partner or more than one partner in the count total?
2) The partners need to be either individuals, C corporations, S Corporations, a Foreign Corporation that would be treated as a C Corporation if it was a domestic corporation, or an Estate of a decedent.
3) The partnership must notify each partner that it has made an opt-out election.

You must be aware that these elections must be made annually with also specific rules for making the election if there is a partner that is a Sub-chapter S Corporation. Watch that count as every shareholder of the S Corporation counts toward the 100 partner limit. Partnership, Trust and Certain Exempt organizations are prohibited partners under these elect-out rules.

A partnership that does not elect out will need to appoint a partnership representative who will receive all notices and be the sole decision maker on behalf of the partnership regarding IRS audits and court proceedings.

There is much guidance expected over the next few years, but in the interim many issues need to be considered. Partnership agreements need to take in all of the potential repercussions of the Bipartisan Budget Act of 2015. Partnerships need to explore certain standards such as when to opt-out, new partner indemnification for a review year prior to their ownership, procedures for selecting a partnership representative, alternative payment elections, escrow provisions for when a partner disposes of an interest, allocation of tax payments, etc. Don't also forget about basis issues affecting prior and new partners regarding audit adjustments. How does the partnership tax plan for the best possible outcome concerning the imputed tax?

The purpose of this short article is to touch on some of the issues and demonstrate that there is a lot to think about and the best time collectively is in the present.

This article was submitted by Scott Cheslowitz, CPA, of Rothenberg & Peters PLLC, and NCCPAP Tax Committee member. He can be reached at scott.cheslowitz@rothenbergpeters.com at 516-773-3200.

MULTI-STATE IMPACT OF CHANGES TO NEW JERSEY ESTATE AND INCOME TAX LAW

The election of President Donald Trump, who refers to the federal estate tax as a “disaster,” together with a Republican-controlled Senate and House, will probably result in the repeal of the federal estate tax. Even if the estate tax is not repealed, the current inflation-indexed estate tax exemption of $5.45 million per individual and $10.9 million per married couple exempts most Americans from the federal estate tax. However, taxpayers should consider whether the state in which they reside and die will impose taxes upon their estate. Until October of this year, nineteen states and the District of Columbia imposed either an estate tax on the assets of decedents or an inheritance tax on specified heirs who received assets. (Maryland and New Jersey had both.) Residents of some states went “domicile shopping” to avoid the imposition of an estate or inheritance tax, keeping accountants and other advisors busy helping their clients legally change their residence while still living in their original home state as much as legally permissible. Florida in particular, which has no estate or inheritance tax, was extremely attractive to Northern state residents who already were “snowbirding” in Florida during the cold winter months. The recently enacted repeal of New Jersey’s estate tax, coupled with its changes to the taxation of retirement income, may significantly reverse this trend.

Until recently, New Jersey imposed an estate tax on decedents’ estates that exceeded $675,000 - the amount of the federal estate tax exemption fifteen years ago in 2001. This limited exemption effectively imposed an estate tax on any New Jersey resident whose heirs (other than a spouse) inherited assets - including term life insurance policies and the family residence - worth more than $675,000. As the home values in New Jersey are high and the exemption amount was low, many moderately sized estates faced an estate tax bill. To avoid the estate tax, many New Jersey residents put their assets - especially their life insurance policies - in trusts, or established domicile in other states such as Florida which does not impose any estate or inheritance tax. On October 14, 2016, New Jersey Governor Chris Christie signed into law P.L. 2016, c. 57, which increases the estate exemption amount from $675,000 to $2 million for the estates of residents dying during 2017 and eliminates any estate tax for residents dying after 12/31/17. Once the repeal is in effect, New Jersey will no longer hold the dubious distinction of being one of the worst states in which to die. This may give pause to many New Jersey residents seeking to establish their domicile elsewhere.

New Jersey residents whose wills devise their estate based on the exemption amount will need to change their wills to be sure the wills still reflect their wishes and do not inadvertently limit their spouse’s inheritance. For example, a typical will would bequeath the exemption amount among the children of the decedent and the remainder to the spouse. If someone with a $3 million estate dies during 2017 without revising such a will, the spouse will only inherit $1 million, rather than the $2.325 million that the decedent intended for the spouse to inherit.

As New Jersey joins the ranks of the states that do not impose estate taxes, residents of neighboring states that do have such a tax may consider moving to New Jersey. For example, Connecticut imposes an estate tax (at rates ranging from 7% to 12%) on individual estates exceeding $2 million. Likewise, New York imposes an estate tax on individual estates exceeding $5.25 million (until 2019, at which time it will be increased to match the federal exemption amount). Similarly, Pennsylvania imposes an inheritance tax on all inheritors other than the spouse of the decedent and the parents of a child aged 21 or younger. Pennsylvania offers no exemption amount and the tax is imposed at rates ranging from 4.5% to 15% (depending on the relationship of the beneficiary to the decedent.) Considering the estate and inheritance tax of these neighboring states, New Jersey may become an appealing option for Northeastern clients with very large estates.

Before anticipating a vast influx of residents from other states, accountants and others should consider that New Jersey is still one of only six states that impose an inheritance tax on certain beneficiaries. The New Jersey inheritance tax, which exempts the transfer of specified retirement benefits and life insurance proceeds, is imposed upon certain inheritors of assets bequeathed by a New Jersey decedent—even if the beneficiary is not a New Jersey resident. Unlike Pennsylvania’s inheritance tax, New Jersey's inheritance tax is not imposed upon the decedent's lineal ancestors, descendants, and stepchildren, as well as exempting the decedent's spouse (or civil union or domestic partner) and qualifying charities. Therefore, if an accountant's client is bequeathing an estate to a spouse, ancestor, child (as opposed to child-in-law), and/or grandchild, then the inheritance tax is of no concern. However, if said accountant's clients are naming others as their beneficiaries, then an inheritance tax might be imposed. This is due to New Jersey imposing an inheritance tax at a graduated rate of 11 to 16% on bequests exceeding $25,000 to the decedent's siblings and children-in-law (*i.e.,* spouses or civil union partners of the decedent's children whether the children are still alive or not.) For all other beneficiaries (such as cousins, friends, and employees), the exemption is merely $500 and the beneficiaries effectively will pay 15% on the first $700,000 they receive and 16% on anything above that amount.

When advising clients about the benefits and disadvantages of dying in New Jersey, accountants should also consider that, at the same time that New Jersey repealed its estate tax, it also liberalized its taxation of retirement income. Until the law was changed, a New Jersey couple filing jointly with total income of $100,000 or less could exclude only $20,000 of retirement income ($15,000 for single filers.) Over the next four years, the exclusion from income tax on retirement income will quintuple for residents who are at least 62 years old. For those taxpayers whose income is $100,000 or less, the exemption will be increased to $100,000 for joint filers, $75,000 for individuals, and $50,000 for married couples filing separately. Although the exemption amount is very generous, the income limitation is very exacting and is not indexed for inflation. In other words, if your client's income is $100,000, he qualifies; whereas if his income is $100,001, he is not entitled to any exemption of retirement income. Provided that clients are careful not to increase their income over the $100,000 threshold, this exclusion is substantial and attractive. Accordingly, people aged 62 years or older who previously shunned New Jersey might now want to move there during their "golden years".

On first glance, the changes to New Jersey law appear to only affect New Jersey residents. Obviously, only New Jersey residents will benefit from the repeal of the New Jersey estate tax and the reduction of the taxation of retirement income. However, the impact of the changes described above will be widely felt in other states. Until now, many New Jersey retirees with substantial estates moved to other states to avoid being subject to New Jersey's estate tax. Furthermore, New Jersey residents were subject to income tax on retirement income that was exempt from income tax in other states. As a result, even retirees with limited estates frequently moved out of New Jersey, and were certainly dissuaded from moving into New Jersey, due to New Jersey's stringent income taxation. The repeal of New Jersey's estate tax and the liberalization of its taxation of retirement income are expected to reverse this trend. Therefore, accountants in states that formerly attracted New Jersey retirees might find fewer New Jersey residents moving into these states. It is even possible that clients from other states will consider moving to New Jersey. In order to better service these clients in all states, it is vital to understand the details of the New Jersey changes as outlined above.

This article was submitted by Devorah Baruch, deputy chair and tenured associate professor of accounting at Touro College. Ms. Baruch is a CPA and lawyer with a JD degree from New York University Law School and a BS from Queens College.

Upcoming National Meetings:

NCCPAP 2017 Summer Conference Tarrytown, NY August 9, 10, &11, 2017

NCCPAP 2017 Fall Conference Dallas, Texas October 18, 19, & 20, 2017

NCCPAP 2018 Winter Conference Palm Beach Gardens, FL, January 3, 4 & 5, 2018

NCCPAP 2018 Spring Conference Bethesda, MD, May 9, 10 & 11, 2018

Florida Chapter All Day CPE event on June 8. Our speakers: Seymour Goldberg, CPA, JD; Jose Cuervo, IRS ; Brian Gordon, CPA; and Neil Fishman, CPA, Executive VP, NCCPAP

2017 PAYROLL-WISE

Here is a roundup of some of the changes in payroll and payroll taxes for 2017.

The biggest news is effective 12/31/2016. NYC's minimum wage goes to $11.00 an hour if the employer has eleven, or more, employees. If there are less than eleven employees the minimum wage is $10.50. On Long Island and in Westchester the minimum wage is $10. an hour, and $9.70 for the rest of New York State. There will be annual increases until $15.00 per hour is reached.

In New Jersey the minimum wage goes to $8.44 per hour and in Connecticut it goes to $10.10 an hour, both effective 1/1/2017.

New FLSA laws were to have become effective on 12/1/2016. However these laws are the object of court challenges and are therefore on hold. Under the law (as enacted) there is a new minimum for FLSA exemption from overtime kick in. Any employee earning less than $47,476. ($913 weekly) must be paid for overtime. This will result in many employees being reclassified as hourly workers. To avoid paying overtime some employers may raise wages above the threshold. Any hours worked over 40 must paid to be at overtime rate. Four million people are expected to be effected by this change in law.

While the nation waits for the court challenges to be resolved New York State has enacted its own new thresholds for overtime. For a manager to be exempt from overtime s/he needs to be paid at least $727.50 per week. On Long Island and in Westchester the threshold is $750. per week. In New York City the threshold is $787.50 per week if there are less than eleven employees. If the entity employees eleven or more employees, in NYC, the threshold increases to $825 per week. These changes are effective beginning mid-January.

FICA (OASDI) limit is increased to $127,200. Social security and Medicare rates remain at 6.2% and 1.45%. respectively. The limits for 401k/403b remain at $18,000. plus an additional $6,000. for taxpayers over 50 years old.

The new due date for filing W-2's is now January 31st, 2017. Most 1099-MISC are also due by that date. The law was enacted to enable IRS to detect and prevent fraudulent tax returns being filed. If need be a 30-day extension will be given after filing form 8809. The extension is not automatic and only one extension will be given. This new date is for electronic or paper returns. Also, the IRS will not issue some refunds to taxpayers prior to February 15th in hopes of preventing fraud.

NYC employers must continue to offer commuter benefits to all employees if the employer has more than 20 employees. The benefit is under IRC §132 and it allows workers to use pretax money to pay for commuting and parking expenses. For more information see IRS Pub 5137.

The NYC mandated five sick days per year continues for all employers with five or more employees. Other jurisdictions, including California, Massachusetts and Connecticut, have similar rules under consideration.

There is also a new I-9 form to document employment eligibility. The new form is available at https://www.uscis.gov/system/files_force/files/form/i-9-paper-version.pdf. Older forms may not be used.

This article was submitted by Hadley Margolis, president of Best Payroll. He can be reached at 347-729-2355 or hadley@thebestpayroll.com

NCCPAP President Steve Mankowski at the White House with Paul Teller, Special Assistant to the President for Legislative Affairs at the White House. May 11, 2017

Melvin Hardy, Director, National Public Liaison, spoke at our Spring Conference in DC. Pictured Scott Cheslowitz, Neil Fishman, Melvin Hardy, Stephen Mankowski, & Sandy Zinman. May 10, 2017

THE TALE OF THE ART PROFESSOR, THE EASEL, AND THE IRS: AN APPLICATION OF THE HOBBY LOSS RULES

Last fall the U.S. Tax Court ruled on an interesting case involving a working artist that was also employed as a tenured art professor. The IRS and the taxpayer battled over the expenses related to taxpayer's art business. The taxpayer considered the expenses business related and deducted them on Form 1040 Schedule C. The art business related expenses in most years exceeded the revenue from the art business and losses resulted. The IRS argued that the creating and selling of art was not a real business but a hobby, evidenced by the absence of profit nearly every year since the inception of the business. As such, the IRS reasoned that the expenses related to the production and sale of the art were not deductible as ordinary and necessary business expenses under IRC §162(a). Instead, the hobby loss rules of IRC §183 were applied by the IRS resulting in tax deficiencies and penalties. Many artists, musicians, and performers have some type of other employment besides the creation of their art, for taxpayers like these this case is a useful illustration of the hobby loss rules and what a taxpayer must do steer clear of IRC §183 treatment.

An individual engaged in a trade or business may be entitled to deductions incurred in that trade or business under IRC 162(a) if that trade or business is in the pursuit of a profit. IRC §162(a) permits a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business. Such expenses are deducted *for* AGI. In order for expenses to be deductible, they must be:

- Ordinary: the expenses must be normal, usual, or customary for others in the same or similar business, and not capital expenditure.
- Necessary: a prudent businessperson in the same or similar business would incur the same expense
- Reasonable: which is a question of fact and applied on a case by case basis; and
- Incurred in the pursuit of a for profit business activity

If the activity is entered into for profit, a taxpayer can deduct expenses for AGI even in excess of the income derived from the activity. The resulting loss will be deductible subject to the loss limitation rules in the code, should they apply in the given situation. The IRS may also disallow the deduction of certain types of expenses claimed under IRC §162(a), if the expenses are in reality personal expenses rather than ordinary and necessary business expenses. Therefore, ordinary and necessary business expenses are generally deductible provide the activity is an activity engaged in for profit. If an activity is not engaged in for profit, then the hobby loss rules in IRC §183 apply and the treatment of the hobby related expenses are treated radically different from the IRC §162(a) treatment briefly described above.

IRC §183 Activities Not Engaged in for Profit

The hobby loss rules in IRC §183 apply when activities are carried on primarily as a sport, or for recreation. Deductions are not allowable under IRC §162 for activities which are primarily a hobby. Except as provided in IRC §183 and Reg. §1.183-1, no deductions are allowable for expenses incurred in connection with activities which are not engaged in for profit. If an activity is deemed a hobby, then a taxpayer can only deduct expenses to the extent of the income derived from the activity. If losses from the hobby result, those losses are disallowed. If an activity is a hobby, the related expenses are only deductible *from* AGI and treated as miscellaneous itemized deductions subject to the 2% of AGI limitation on Form 1040 Schedule A rather than an ordinary and necessary business expense on Form 1040 Schedule C.

There are however many situations when it is difficult to determine if an activity is a for profit business or a hobby. When faced with this situation the IRS makes a presumption that an activity is a hobby based on the factors in IRC §183(d). Basically, if an activity shows a profit 3 out of 5 years (2 out of 7 years for horses), the activity is presumed to be a trade or business rather than a personal hobby. Therefore, the ordinary and necessary business related expenses incurred maybe deducted even if losses result. If the business incurs consistent losses, then the presumption is that the activity is a hobby and the expenses incurred are limited to the revenue generated, and no losses may result.

What if there is no profit but a profit motive actually exists? What if a taxpayer truly desires a profit, and puts best efforts to earning a profit but for a myriad reasons no profit results from the activity? A taxpayer in this situation must overcome the IRS presumption that the activity is a hobby solely because the lack of profit. The Treasury Regulations to Section 183 provide the answer to the situation. An activity may still qualify as a trade or business and the expenses incurred be within IRC §162 if the taxpayer can show that the intent is to engage in a profit-seeking activity without having to show a profit. Reg. §1.183-2 provides nine factors considered in making this determination.

THE ISSUE

Did the taxpayer conduct her art business with a predominant, primary, or principal objective of earning a profit?

RELEVANT INTERNAL REVENUE CODE SECTIONS AND TREASURY REGULATIONS

IRC §162. Trade or Business Expenses.

IRC §183. Activities not engaged in for Profit.

Reg. §1.183-1., Internal Revenue Service, Activity not engaged in for profit

Reg. §1.183-2., Internal Revenue Service, Activity not engaged in for profit defined

OVERVIEW OF RELEVANT CODE SECTIONS AND REGULATIONS

APPILCATION TO THE CASE

Intent to Earn a Profit

Reg. 1.183-2 lists nine factors relevant in ascertaining whether the taxpayer conducted an activity with the intent to earn a profit. They are: (1) the manner in which the taxpayer conducts the activity; (2) the expertise of the taxpayer or her advisers; (3) the time and effort spent by the taxpayer in carrying on the activity; (4) the expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar or dissimilar activities; (6) the taxpayer's history of income or losses with respect to the activity; (7) the amount of occasional profits, if any; (8) the financial status of the taxpayer; and (9) elements of personal pleasure or recreation.

No factor is more controlling than another factor. It is not necessary that a majority of factors point to one outcome. Depending on the particular case, certain factors may carry more weight than others may.

1. *Manner in Which Activity Is Conducted*

Reg. §1.183-2(b)(1) states that conducting an activity in a businesslike manner may show that the taxpayer intends to earn a profit. Tasks such as recordkeeping, maintaining inventory, and marketing are some of the factors that show that the taxpayer conducted the art activity in a businesslike manner. The taxpayer kept all original receipts and invoices related to her art business. She kept detailed records, going back to 1971. The taxpayer also hired a bookkeeper and put her expenses into Quicken. The taxpayer had a regular marketing effort for the promotion and sale of the art. The taxpayer compiled a mailing list of 3,000 collectors and sent exhibition announcements. The taxpayer also had a Web site to promote her art. The taxpayer had the paintings mounted on stretchers, stored in climate-controlled conditions, and professionally packaged for shipment. The taxpayer also demonstrated good inventory control. The Court concluded that the taxpayer conducted the art activity in a businesslike manner.

2. *Expertise of the Taxpayer and Her Advisors*

As per Reg. §1.183-2(b)(2) the taxpayer has a profit motive when they carry out the activity in accordance with best practices and procedures accepted in the industry. When artists are examined, the courts consider the taxpayer's education, teaching activities, public recognition, and skills. In this case, the taxpayer is considered by the court to be an expert artist who understands the economics of her business.

3. *Taxpayer's Time and Effort*

The court found that the taxpayer devoted considerable time and effort to the art activity. The taxpayer devoted roughly 30 hours per week to her art business during the academic year and worked on her art full time during the summer. The taxpayer also engaged in marketing activity and networking. This much time spent on these activities would not have been necessary if this was a hobby rather than a serious business venture.

4. *Expectation of Appreciation in Value*

Reg. §1.183-2(b)(4) states that the indication of a profit motive is intended when the taxpayer has an expectation that assets used in the activity will appreciate in value. The taxpayer in this case has an expectation that the inventory of at least 1,500 pieces of art available for sale will appreciate significantly. The taxpayer has an extensive exhibition record, numerous positive critical reviews, representation by five galleries, and multiple awards and accolades evidencing her public recognition. All of this adds value to the art produced by the taxpayer. Therefore, the expectation of future profit explains the willingness to continue the production and sale of art regardless of present losses.

5. *Taxpayer's Success in Other Activities*

IRC §183 cases usually have a taxpayer that achieves a high degree of success in a business activity and then later starts a new activity and claims deducts for the new activity that the IRS regards as a hobby or sport. This case is the opposite situation. From the early 1970's to the present day, the taxpayer has practiced as an artist. The taxpayer became a full professor in 1996. To achieve success in a competitive academic environment required great skill, determination, and other strong personal attributes that would also benefit the art career.

6. *History of Income or Losses*

Reg. §1.183-2(b)(6) states that a taxpayer that incurs a series of losses beyond an activity's startup years implies the absence of a profit objective. The Court understands that making and selling art is a unique type of business venture. It may take many years to achieve economic success in the creative arts. As in *Churchman*, 68 T.C. at 701-702, the Court in this case found that "a history of losses is less persuasive in the art field than it might be in other fields."

In *Waitzkin* , 63 T.C.M. (CCH) at 2745, the taxpayer was a "nationally recognized artist whose work had] been shown and exhibited in many well-known galleries and famous museums." We held that she was engaged in the trade or business of art even though she had never made a profit. Discounting her "history of losses," we explained:

> It is well recognized that profits may not be immediately forthcoming in the creative art field. Examples are legion of the increase in value of a painter's works or a sculptor's works after he or she receives public acclaim. Many artists have to struggle throughout their careers. This does not mean that serious artists do not intend to profit from their activities. It only means that their lot is a difficult one.

Additionally, the taxpayer in this case reported substantial losses because some of the Schedule C deductions were actually personal in nature. Had the taxpayer not been as aggressive in claiming deductions, she would have reported significantly smaller losses for all years and quite possibly additional profits for some.

The court found in this case that the eighteen-year history of losses did not negate the taxpayer's actual and honest intent to profit from sale of art.

7. *Amount of Occasional Profits*

The taxpayer only had two profitable years in the past twenty years. This factor weighs in the IRS's favor. Although this favors the IRS, the Court does not put a great deal of weight on this factor in this case. The fact that a taxpayer derives some profits from a regularly unprofitable venture may support the existence of a profit motive. Reg. §1.183- 2(b)(7). The Regulations cite the highly speculative venture of wildcat oil drilling as an example of an activity in which a profit motive may be found despite many losses Reg. §1.183-2(c), *example* (*5)*. A highly speculative venture is sufficient to indicate that the activity is engaged in for profit even though losses or only occasional small profits are actually generated. The Court reasons that producing art like drilling wildcat wells is a speculative venture in which the taxpayer can hope to realize a large return.

8. *Taxpayer's Financial Status*

A trade or business that produces losses will normally generate tax benefits for a taxpayer with other income. The art business losses offset the taxpayer's salary from her teaching position. The tax benefit generated by the business losses does not establish that the taxpayer lacks a profit motive for the activity. *Engdahl*, 72 T.C. at 670; *McKeever v. Commissioner*, T.C.

Memo. 2000-288. The taxpayer did not become an artist in order to shield her other income from taxes. The taxpayer was a practicing artist for over a decade before she began teaching. The court found that despite the losses and tax benefit, the taxpayer's art business was a profit seeking activity and not a tax dodge.

9. *Elements of Personal Pleasure*

The court found that enjoyment of the taxpayer's art activity was not sufficient to cause it to be classified as a hobby rather than a business. The derivation of personal pleasure, however, "is not sufficient to cause the activity to be classified as not engaged in for profit if the activity is in fact engaged in for profit as evidenced by other factors. "A business will not be turned into a hobby merely because the owner finds it pleasurable; suffering has never been made a prerequisite to deductibility." *Jackson v. Commissioner*, 59 T.C. 312, 317 (1972); *Giles v. Commissioner*, T.C. Memo. 2006-15.

The taxpayer devoted many hours to the mundane aspects of marketing her art and running her business. She maintained a mailing list of 3,000 collectors; mailed out slides and marketing packets; managed relationships with galleries; maintained sales records and moved them to a digital format; kept invoices, receipts, and other business records; and attended networking events with museum curators and potential collectors. The devotion to the art business activity at a level of seriousness that takes it well beyond the scope of "recreation." With respect to the mundane business related activities, the court in this case as in *Churchman*, found "the recreational element * * * [was] minimal." *Churchman*, 68 T.C. at 702.

CONCLUSION

Upon review of all the evidence presented, the Tax Court concluded that the artist/taxpayer in this case engaged in the production and sale of her art with an actual and honest expectation of earning a profit. The artist/taxpayer met the burden of proof, that her activity as an artist, was an actual and honest profit pursuing business and not a hobby. Therefore, the artist/taxpayer was engaged during the years in question in this case in the "trade or business" of being an artist and within the meaning of IRC § 162(a).

REFERENCES

Crile v. Commissioner, T.C. Memo. 2014-202, 108 T.C.M. 372, (Oct. 2, 2014)

Internal Revenue Code §§162(a) and 183

Treas. Reg. §1.183-1

Treas. Reg. §1.183-1

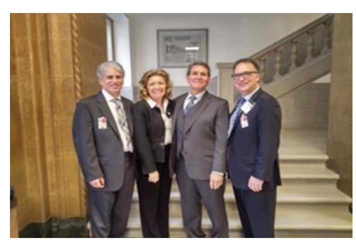
This article was submitted by Biagio Pilato, CPA JD, assistant professor of accounting at the Tobin School of Business at St. John's University. He is also an adjunct professor of taxation at the St. John's University School of Law.

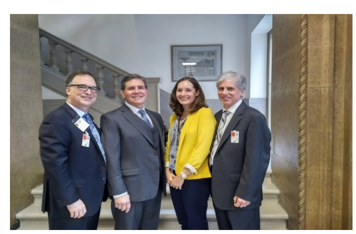
Left: NCCPAP's Neil Sullivan and Frank Gallo, IRS Commissioner John Koskinen, and NCCPAP's Tax Committee Chair Sanford Zinman.

Right, top: NCCPAP's Tax Committee with National Public Liaison Martha Tobias

Right, bottom: NCCPAP's Tax Committee with National Public Liaison Brianne Wilner

May 11, 2017





MEETING SCHEDULE 2017

NASSAU/SUFFOLK CHAPTER of NCCPAP
EDUCATIONAL FOUNDATION OF N/S NCCPAP
22 Jericho Turnpike, Suite 110, Mineola, NY 11501
Phone (516) 997-9500 Fax (516) 997-5155
Email: egelbien@ns-nccpap.org
Website: go.nccpap.org

Meeting Locations:

Chapter Meetings	MAP Meetings	LITPS	A&A –Ethics
The Mansion at Oyster Bay	**On Parade Diner**	**Crest Hollow Country Club**	**The Nautilus Restaurant**
1 South Woods Road, Woodbury, NY 11797	7980 Jericho Turnpike	8325 Jericho Turnpike	5523 Merrick Road
(In the Town of Oyster Bay Golf Course)	Woodbury, NY 11797	Woodbury NY 11797	Massapequa, NY 11758

*Chapter Meetings: Registration/Dinner/Networking is at 5:30 PM
4 CPE/A&A and 4 CPE/ETHICS Registration/Breakfast/Networking is at 7:45 AM
MAP Registration/Breakfast/Networking is at 7:45 AM

Day	Date	Time	Topic	CPE	Location
W	June 28	7:45 AM-10:00 AM	How to Network at Networking Events	2 CPE/MAP	On Parade
Th	July 6*	5:30-9:00 PM	Tax Issues on Liquidating Corps or Partnerships	2 CPE/TAX	The Mansion
W	July 12	7:45 AM-12:00 Noon	A&A Part 3	4 CPE/A&A	Nautilus
W	July 19	7:45 AM-12:00 Noon	ETHICS	4 CPE/ETHICS	Nautilus
W	July 26	7:45 AM-10:00 AM	How trusted Financial Advisors can save the day using Meditation & Arbitration	2 CPE/MAP	On Parade
Th	Aug 3*	5:30-9:00 PM	NYS Family Leave Act & Fiduciary Rules and How it Impacts CPAs	2 CPE/TAX	The Mansion
W	Aug 23	7:45 AM-10:00 AM	How to prepare for tax audit? (Sales Tax/Corp) Correspondences and worksheets Part 1	2 CPE/MAP	On Parade
Th	Sept 7*	5:30-9:00 PM	What to do when you lose the tax audit? Discussion Panel Part 2	2 CPE/TAX	The Mansion
W	Sept 27	7:45 AM-10:00 AM	Alternative Revenue for CPAs Working with Financial Professionals	2 CPE/MAP	On Parade
Th	Sept 28*	5:30-9:00 PM	W-2 vs 1099	2 CPE/TAX	The Mansion
W	Oct 25	7:45 AM-10:00 AM	Identifying Year-end Tax Planning issues for clients (corp & ind) Roundtable - checklists, new laws, bonus reasonable compensation)	2 CPE/MAP	On Parade
Th	Dec 7*	5:30-9:00 PM	Employment Credits, I9 issues, records to have and keep. PEO, over-time, NYC minimum wage	2 CPE/TAX	The Mansion
W	Dec 13	7:45 AM-10:00 AM	Tricks and Tips QuickBooks - Desktop and Qb Online Discussion Group (bring your laptop)	2 CPE/MAP	On Parade

Calendar is subject to change

https://go.nccpap.org/events/calendar

National Conference of CPA Practitioners

NCCPAP National Headquarters
22 Jericho Turnpike, Suite 110 Mineola, NY 11501
(516) 333-8282 Fax: (516) 333-4099
go.nccpap.org

MEMBERSHIP APPLICATION

Firm Information

Name:

Contact Person:

Is firm required to have a peer review? YES / NO

Referred by:

Mailing Address:

Physical Address (if different):

Email Address:

Phone:

Fax:

Website:

CPA Owner/Partner/Shareholder-Entitled to Vote

Name:

Email Address:

CPA License#: State

PTIN:

First Individual-Non CPA firm-No Voting Rights

Name:

Email Address:

PTIN#:

Other Owner/Staff Member-No Voting Rights

Name:

Email Address:

CPA License#: State

PTIN#:

Please list other owner(s)/staff members on a separate page

Each member firm shall subscribe to and agree to be bound by the NCCPAP by-laws and all amendments thereto which can be found on our website

Dues Schedule (includes $195 base charge)

- CPA owner – designated as the individual entitle to vote $270
- Non CPA firm – first individual – no voting rights $270
- Each additional owner(s) or staff (member(s) – no voting rights $ 75
- Maximum dues for any firm $870
- Retired CPA – no voting rights $135

Join and remit on line: go.nccpap.org
or Check made out to: NCCPAP ☐ enclosed
or Charge: ☐Visa ☐MasterCard ☐AMEX $
Card # Exp
Name as appears on card:
Signature:
Phone:
Email:

CHOOSE A CHAPTER

☐Boston, MA
☐Delaware Valley, PA
☐Florida
☐Long Island East, NY
☐Nassau/Suffolk, NY
☐New York, NY
☐Northern New Jersey
☐Texas/TACPA
☐Westchester/Rockland, NY

We understand annual dues are payable in full and in advance. NCCPAP dues are tax deductible as a business expense but not as a charitable contribution.

NCCPAP – PRACTITIONERS HELPING PRACTITIONERS

go.nccpap.org

National Conference of CPA Practitioners, Inc.

22 Jericho Turnpike, Suite 110, Mineola, New York 11501

website go.nccpap.org

e-mail execdir@nccpap.org

Phone (516) 333-8282 *Fax* (516) 333-4099

NCCPAP provides you and your firm with valuable discounts, informational tools and the enhanced services you need to succeed in today's business environment. NCCPAP wants to be your business partner with a whole line of affinity programs.

MEMBER BENEFITS

ADP - Free Standard Payroll Processing for your Accounting Firm and discounts available in Payroll Processing Services for your Firm's Small Business Client with RUN Powered by ADP®.

AccountantsWorld - Members receive a 20% discount off first year license of select products. Call 888-999-1366 for more details.

JOBTARGET/NCCPAP Career Center - Online job board, resume bank, career advice, resume services, etc.

First Benefit Health Savings Card - *This is not insurance nor is it intended to replace insurance. This discount card program provides discounts at certain healthcare providers for medical services.

Practitioners Publishing - Discount 20%. Certain products do not qualify for discount; call the NCCPAP National Office (discount does not apply to yearly updates).

CCH - 25% discount on CCH products shipped and billed directly to you.

1-800-FLOWERS® 15% discount.

OfficeQuarters.com. Office supplies, etc. Minimum of 5% discount.

Alamo Car Rental/National Car Rental - Save up to 10%.

FTD 1-800-SEND-FTD - 15% savings.

UPS - Make the most of your NCCPAP membership and save up to 30%* on UPS® shipping services. Put the power of logistics to work for you. To enroll and start saving today, visit: savewithups.com/nccpap.

Liberty Mutual - NCCPAP Members (client #1984) are eligible to receive preferred rates with discounts of up to 10% Auto & 5% Home. Contact Marisa Gore at 800-599-0647 x52683 or email her at marisa.gore@libertymutual.com for more information.

Cashback - Credit Card Processing Company Contact Colleen Keating P. 516 332-6166 mention NCCPAP

Call or email the National office for further details.

Download the free Go.NCCPAP App from the App Store or Google Play Store

National Conference of CPA Practitioners, Inc.

22 Jericho Turnpike, Suite 110

Mineola, NY 11501

CHANGE OF SERVICE REQUESTED

PENALTIES? ASSESSMENTS?

Workers' Compensation?
Independent Contractor Status?
Department of Labor Penalties?
Wages - Hours - Overtime Issues?
Unemployment Insurance Taxes?

Do You Have Any of These Issues?

ARNOLD STANDARD COS. COST CONTROL SERVICES **Can Help!**

NYS DOL UI DIVISION – Manufacturer assessed $212K for UI taxes after exiting PEO. Arnold Standard results: UI refund of $135K; UI Reserve Account Balance positive $204K. UI Tax Rate lowered from 9.5% to 2.1% on $2MM of annual taxable payroll. **Savings in excess of $600,000.**

US DOL WAGE & HOUR DIVISION– Distributor assessed in excess of $575K for alleged wage and hour violations. Arnold Standard results: Assessment lowered significantly. **Savings in excess of $300,000.**

NYS WCB – Homeowner with Domestic Worker assessed penalty of $50,000. Arnold Standard results: Settled for $2,500. **Savings of $47,500.**

NYS WCB – Construction firm assessed penalty of $83,000. Arnold Standard results: Settled for $3,500. **Savings of $79,500.**

Call Bob Arnold or Bob Arnold, Jr.
55 Front Street, RVC, NY 11570 | P: 516.678.3300 • F: 516.678.1515
www.arnoldstandard.com

http://arnoldstandard.com/