



# The National Conference of CPA Practitioners

Nassau/Suffolk Chapter

Volume 7, Issue 4

JUNE/JULY 2010

Date	<b>Thursday, JUNE 24, 2010 - FULL DAY A&amp;A</b>
Topic	<b>ACCOUNTING &amp; AUDITING REVIEW AND UPDATE</b>
Credits	<b>8 CPE/A&amp;A</b>
Location	Holiday Inn @ Plainview
Time	Registration: 7:30 AM, Program: 8:00 AM - 5:00 PM
Cost: Members	On or before Friday, June 11* - \$245.00, After Friday, June 11* - \$270.00
Non-Members	On or before Friday, June 11* - \$300.00, After Friday, June 11* - \$325.00
<i>*Must know registration count two weeks before program</i>	

Date	<b>Wednesday, JUNE 30, 2010 - MAP Meeting</b>
Topic	<b>HOW TO MARKET AND MANAGE RELATIONSHIPS USING THE INTERNET</b>
Credits	<b>2 CPE/MAP</b>
Location	On Parade Diner, Woodbury
Time	Registration: 7:30 AM, Program: 8:00 - 10:00 AM
Cost	On or before Friday, June 24 - \$20.00, After Friday, June 24 - \$30.00

Date	<b>Thursday, JULY 1, 2010 - Chapter Meeting</b>
Topic	<b>ASSET PROTECTION</b>
Credits	<b>2 CPE/TAX</b>
Location	Holiday Inn @ Plainview
Time	Dinner/Networking: 5:30 - 7:00 PM, Program: 7:00 PM - 9:00 PM
Cost: Members	On or before Friday, June 25 - \$50.00, After Friday, June 25 - \$60.00
Non-Members	On or before Friday, June 25 - \$75.00, After Friday, June 25 - \$85.00

Date	<b>Wednesday, JULY 28, 2010 - MAP Meeting</b>
Topic	<b>WORK FLOW MANAGEMENT FOR THE CPA</b>
Credits	<b>2 CPE/MAP</b>
Location	On Parade Diner, Woodbury
Time	Registration: 7:30 AM, Program: 8:00 - 10:00 AM
Cost	On or before Friday, July 23 - \$20.00, After Friday, July 23 - \$30.00

Date	<b>Thursday, JULY 29, 2010 - Chapter Meeting (A&amp;A)</b>
Topic	<b>FIN 48-ACCOUNTING FOR UNCERTAINTY IN INCOME TAXES</b>
Credits	<b>2 CPE/A&amp;A</b>
Location	Holiday Inn @ Plainview
Time	Dinner/Networking: 5:30 - 7:00 PM, Program: 7:00 PM - 9:00 PM
Cost: Members	On or before Friday, July 23 - \$50.00, After Friday, July 23 - \$60.00
Non-Members	On or before Friday, July 23 - \$75.00, After Friday, July 23 - \$85.00

To register for any of our  
meetings, please visit

<http://www.ns-nccpap.org/index.php/Register-Online.html>



## **PRESIDENT'S MESSAGE**

In past years, as we headed into the summer, I would look forward to the next few months as a chance to get my office back together after making a mess of it during the first 5 months of the year. However, this summer, as I reach the half way point of my term as President of this chapter, I think back on what has taken place during the first half of the year.

I'm glad to see that our breakfast MAP meetings and our monthly chapter meetings have been so heavily attended. I wish I can say that these meetings have been so popular because we all have some free time and we enjoy networking with our fellow CPAs. Unfortunately, our popularity has been due to the ever-changing world that we call the practice of Certified Public Accountancy. I enjoyed the dialogue at the May chapter meeting between the audience and the speakers. The topic was NYS CPA Competency Regulations and Preparing for Peer Review. So many questions were asked regarding the required CPE credits and the required hours in attestation engagements. I don't believe these questions were asked because our members didn't understand the regulations. I feel that they were asked because we want to be absolutely sure that we don't make a mistake. Unfortunately, in our profession, especially when one is a small firm, there is very little room for error. At our May breakfast MAP meeting, the topic was the Health Care Reform Bill. We had to close registration for the meeting a week in advance due to the popularity of the topic. I had friends calling me to see if I can get them into the meeting after it was filled. I guess I can thank Congress for issuing the 1300 page Bill in the middle of tax season. Turns out I wasn't the only one who didn't have time to read the Bill.

Speaking of the Health Care Reform Bill, Congress snuck in somewhere around page 1100 that all businesses will be required to issue a 1099 to any other business with which they do \$ 600 or more of business with, for either services or merchandise. Congress had to pay for the Bill somehow. This would begin with payments made after December 31, 2011. A bill has already been introduced, HR5141 which would repeal this specific provision in the Health Care Bill.

I have spoken to several members regarding this topic. Some see it as a revenue opportunity and others feel that it will be a tremendous burden on us. NCCPAP's tax committee is meeting in June to determine what our position will be. You can be assured that NCCPAP will not sit on the sidelines regarding the Bill.

As always, your comments on this are welcome. I did get a few responses last month regarding extending the original due date of 1040s. It's nice to know that our members are reading the newsletter.

Please be aware that starting August 2010 there will be a slight increase of price to our MAP meetings.

Have a great summer.

*Bruce Berkowitz, CPA*

### **Disclaimer**

IRS Circular 230 Legend: Any advice contained herein was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. federal, state, or local tax penalties. Unless otherwise specifically indicated above, you should assume that any statement in this newsletter relating to any U. S. federal, state, or local tax matter was written in connection with the promotion or marketing by other parties of the transaction(s) or matter(s) addressed in this newsletter. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. Any opinion is solely that of the author and is not necessarily the opinion of NCCPAP.

### **POLICY**

THE FEES FOR REGISTRATIONS ARE:

CHAPTER MEETING: \$50.00 WITH \*PRE-REGISTRATION AND \$60.00 REGULAR REGISTRATION, OR AT THE DOOR REGISTRATION.

MAP MEETING: \$20.00 WITH \*PRE-REGISTRATION AND \$30.00 REGULAR REGISTRATION, OR AT THE DOOR REGISTRATION.

SEMINARS: TBD

\*PRE-REGISTRATION MEANS: A COMPLETED REGISTRATION FORM WITH PAYMENT AND POSTMARKED, FAXED OR E-MAILED TO THE N/S CHAPTER OFFICE THE FRIDAY PROCEEDING (Unless otherwise noted) THE CHAPTER MEETING, MAP MEETING AND/OR SEMINAR WHICH YOU ARE PLANNING TO ATTEND.

### **CANCELLATION AND REFUND POLICY**

A PRE-PAID REGISTRANT WHO CANNOT ATTEND THE CHAPTER MEETING, MAP MEETING AND/OR SEMINAR WILL BE ISSUED A CREDIT TO BE USED BY THE REGISTRANT ONLY FOR A FUTURE MEETING (OF EQUAL VALUE) HELD WITHIN ONE YEAR OF THE MISSED MEETING. CANCELLATION NOTICE MUST BE GIVEN TO N/S NCCPAP CHAPTER OFFICE BY THE END OF THE CHAPTER MEETING, MAP MEETING AND/OR SEMINAR DAY.

## N/S NCCPAP is Going Green

**Materials will be emailed to paid registrants the week of the meetings**

### **MEETING SCHEDULE FOR 2010**

Holiday Inn @ Plainview  
215 Sunnyside Blvd  
Plainview, NY 11803

On Parade Diner  
7980 Jericho Turnpike  
Woodbury, NY 11797

June 24, 2010	Accounting & Auditing Updates (ALL DAY)	<b>8 CPE/A&amp;A</b>	Holiday Inn
June 30, 2010	How To Market and Manage Relationships Using The Internet	2 CPE/MAP	On Parade Diner
July 1, 2010*	Asset Protection	2 CPE/Tax	Holiday Inn
July 28, 2010	Work Flow Management for the CPA	2 CPE/MAP	On Parade Diner
July 29, 2010*	FIN 48 - Accounting for Uncertainty in Income Taxes	<b>2 CPE/A&amp;A</b>	Holiday Inn
August 19, 2010	<b>Ethics</b>	<b>4 CPE/ETHICS</b>	Holiday Inn
August 25, 2010	How To Improve Profit Margins In Your Practice	2 CPE/MAP	On Parade Diner
September 2, 2010*	NYS Tax Update	2 CPE/Tax	Holiday Inn
September 29, 2010	Michael and Gary's Farewell Salute to MAP	2 CPE/MAP	On Parade Diner
October 7, 2010*	Compilation and Review	<b>2 CPE/A&amp;A</b>	Holiday Inn
October 27, 2010	MAP - TBD	2 CPE/MAP	On Parade Diner
November 17, 18 & 19, 2010	Long Island Tax Professionals Symposium		Crest Hollow Country Club
December 2, 2010*	TBD	2 CPE/Tax	Holiday Inn
December 29, 2010	MAP - TBD	2 CPE/MAP	On Parade Diner

\* Chapter Meeting

All Meeting Subject to Change

**The Long Island Tax Professionals Symposium & our meetings together will be offering a total of 28 Accounting and Auditing credits out of the 40 credits needed**



## **EXPLORE THE NEW WORLD WITH MAP!!!**



Outsiders may believe that the world of the CPA is based around financial statements and tax returns.

We know that we are the consultants, the outside director, psychological advisor, and so much more to our clients. In addition, we serve in our own firms as human resource directors, marketing supervisors, and productivity experts to list just a few of our roles.

Our goal at MAP has always been to explore different perspectives to assist us in our overall practice and of course to aid each member in enhancing the professional skills so vital in keeping pace with the rapidly changing world.

Our May meeting was one of our best attended and featured guest speakers Glenn Franklin and Martin Gringer of Franklin Gringer & Cohen PC. The partners of this law firm gave us an eyeful of the new Health Insurance Laws and tax ramifications. They have been frequent speakers at NCCPAP as partners of a law firm specializing in Labor and Employment, as well as other areas of commercial law, and we are grateful for their time and efforts. We are planning a special additional meeting to explore this subject in greater detail, perhaps with several case studies, so please be alert for announcements.

In keeping with our goal to explore different perspectives, we will be changing gears for our next two meetings. Sandra Johnson and a committee will be presenting both how we can market ourselves in the new world of social networking, and ideas of how to present ourselves and our firms in this rapidly changing world....

We will continue with new ideas to help in our practice administration at our July meeting. We will have a roundtable discussion with case examples led by Gary Sanders, on how improving work-flow management can significantly add profitability to your practice and reduce stress at the same time....

Speaking of new ideas and perspectives ...we are proud to announce that **Sandra Johnson** and **Doug Sinetar** will be our new MAP Chairs starting this Fall. We have had some preliminary transition meetings, and they have many new ideas and will bring a new level of creativity to our organization.

As always, the best and most creative MAP meetings are only successful with the interaction and attendance by our members... We hope that you will share your ideas with Sandra and Doug, and together we can all forge ahead.

So if you want to learn methods of obtaining new clients and service them more efficiently and profitably ...then join us at our next two MAP meetings ...On Parade Diner on Jericho Turnpike in Woodbury at 8AM on Wednesday June 30th and Wed. July 28th...

HAPPY JULY 4th HOLIDAY TO ALL!!!

*Michael Rubinstein, CPA + Gary Sanders, CPA*

### **GOOD & WELFARE**

#### **Our get well wishes to**

Ellen Rothfeld, wife of David Rothfeld.  
Myrna Ingram, wife of Donald Ingram.

#### **Congratulations to**

Gary & Karen Sanders on the College Graduation of their son, Adam.  
Scott Sanders on the birth of his daughter, Jillian Piage Sanders, born May 20th.

**Our Good & Welfare Chairman is Stephen Sternlieb [ssternliebcpa@attg.net](mailto:ssternliebcpa@attg.net)**



## **MESSAGE FROM THE EDUCATION CHAIR**

Our May meeting was a great success. It highlighted the importance of NCCPAP to its members. Despite the fact that we had planned to offer a different topic that evening, it was determined that it would be more important for our members to understand the new reporting requirements mandated by New York State for continuing education. The evening included an update and history of these requirements which was delivered by Robert Goldfarb and was followed by a detailed discussion led by Frank Gallo on how to prepare for peer review. The audience continued to swamp the presenters long after the 9 o'clock hour had passed. I was proud that we were able to be flexible in our approach and in our ability to fashion the Chapter meeting in the most beneficial manner. I do intend to reschedule my S Corporation update at some point in the future.

We have some great topics on our upcoming schedule and I am very excited about the second half of the year.

I look forward to seeing you at our future meetings as we strive to provide the latest, pertinent topics for our members.

*Robert Barnett, CPA, Esq.*

## **GOT AN OPINION?**

Do you have an opinion, criticism, gripe or praise that you'd like to share about NCCPAP or the accounting profession? Think something's not being covered in the newsletter, MAP or chapter meetings and you think we all would benefit? Let us know! Think our focus is misguided or on track? Let us know! Have a great idea for what we need to do, but figure we'll think of it on our own? LET US KNOW! We can't fix it if no one tells us it's broken. We can't address it if we don't know you need it. We'd like to know.

We want to be the organization that you WANT to belong to and participate in and we need to hear it!

We're starting a "Members' Feedback" column and it obviously needs you and your ideas.

Please submit by email to [egelbein@ns-nccpap.org](mailto:egelbein@ns-nccpap.org).

Keep it short, keep it professional.

Every attempt will be made to keep all submissions intact, subject to space limitations.

Please state if you wish to remain anonymous.

## **Bring a Fellow CPA to any Chapter Meeting and you receive a \$25 gas card FREE**

The only requirements are that he/she be a Partner or an Owner of a CPA practice,  
and not be a current NCCPAP Member!!!

It is a win-win all round. "You will enable your friend to learn, first hand,  
about the tremendous benefits that NCCPAP membership can bring to his/her practice."

In addition, he/she gets a Free Dinner and Free CPE Credits!!!

You get a \$25.00 gas card and the satisfaction of knowing that  
you may have helped improve his/her practice.

The Chapter may gain a new member!!!!

Call in advance so that we can welcome your guest.  
Help us to grow our Chapter.

## **CPA RESPONSIBILITIES REGARDING THE FBAR**

We have been asking clients for years if they have foreign bank accounts. It is part of the 1040 checklist we developed in the office. And for several years I have developed the assurance from the clients that we are reporting properly.

Then the new regulations for the **Report of Foreign Bank and Financial Accounts**, the FBAR report, came to light. The regulations included changes on who must complete form TD F 90-22.1, so I started to investigate what the CPA liability is. In 2003, the responsibility for assessing penalties for failure to file this report was delegated to the IRS. In 2004, Congress substantially increased penalties for failure to file the FBAR and created a non-willfulness penalty of up to \$10,000 for individuals as well as other entities.

For us, it's much easier to pick out all clients with accents as people with potential foreign bank accounts, but what about the others? Can a CPA be sued for not telling a client about the FBAR? Is it really a tax return form? No, but...

### Can a CPA be sued for failure to file the FBAR?

I suspect the courts will answer this question for us in the future. Our questions should be about our own due diligence and accuracy.

Let's remember:

A practitioner (Attorneys, CPAs, Enrolled Agents and Enrolled Actuaries) must exercise due diligence [IRS Circular 230, section 10.22]:

- (a) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits and other papers relating to Internal Revenue Service matters;
- (b) In determining the correctness of oral and written representations made by the practitioner to the Department of the Treasury; and
- (c) In determining the correctness of oral or written representations made by the practitioner to the client with reference to any matter administered by the IRS.

Due diligence does NOT require "audit" but requires reasonableness. Any information that suggests possible participation in overseas transactions/accounts seems like a need to document a mention in the file. You can rely on your client responses in good faith, but don't ignore implications learned from information you already know or is newly provided. It's always a good idea to mention potential penalties from certain 'positions.' We also mention foreign transactions in our yearly tax letter to clients as part of their list of things to bring in us.

The FBAR is NOT a tax return form. It is a Treasury report. Recent reading has suggested that indicating a YES in Part III of Schedule B with foreign interest can trigger a request for an FBAR from the Department of the Treasury. An anonymous source said the Treasury Department has had so many requests for relief from prior year's tax and penalties related to FBAR filings that they have much work ahead of them just processing what is already in house.

Article Submitted by Harlan Kahn , CPA. He can be reached at (516) 482-2150.

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## **TAX PRACTICE AID**

When preparing amended New York State Personal Income Tax returns (Form IT 201X), you **must** include back up schedules for tax credits taken on the **original return**. This is so even though this information was **originally** furnished to the State. **Amended returns will be rejected** if this duplicate data is not furnished with the amended filing. Typical back-up schedules which must be included are IT-2 Wage and Tax Summary, IT 249 Long Term Care Credit, IT-272 Claim for College Tuition Credit, and IT-112R Resident Tax Credit. These schedules are vital even if they have no bearing on the reason for the amended return.

Article Submitted by Stanley Tepper, CPA. He can be reached at (516) 378-0560.

## **ESTATE TAX UPDATE**

The legal community remains surprised that there has been no amendment of the one year federal estate and generation skipping transfer tax (estate tax) repeal brought about in 2001, which is in effect this year. In 2009, the estate tax applicable credit amount (exemption) was \$3,500,000 and the maximum tax rate was 45%. For estates of individuals dying in 2010, the estate tax is repealed.

However, on January 1, 2011, the estate tax is scheduled to return with a reduced exemption of only \$1,000,000 and higher tax rates of up to 55%. Although many do expect Congress and the President to retroactively change the estate tax laws prior to the end of this year, we wish to tell you, so that you may advise your clients, that it is now, more important than ever to review Wills or Revocable Trusts to confirm that such documents still meet with your clients wishes. For example, if a client's Will contains a trust to be funded with the maximum amount that can pass free of estate tax (often referred to as a Credit Shelter Trust) or if there is an outright bequest in a client's Will of the maximum amount that can pass free of estate tax, those bequests might be overfunded. In addition, state estate tax may be accelerated and unnecessarily increased.

Due to ever changing tax laws and client need for greater flexibility in estate planning documents, your clients may consider limiting the amount of the funding of the Credit Shelter Trust along with the use of appropriate renunciation/disclaimer provisions in Wills or Revocable Trusts to accomplish similar tax benefits. The renunciation provisions provide increased protection to the surviving spouse and allow the surviving spouse discretion in funding. The Internal Revenue Code and New York State law provide specific guidance on renunciations to accomplish the tax purposes discussed above. It is important to note that, under New York State law, the written renunciation must be completed and filed within nine months after the date of death of the testator or grantor of the Revocable Trust.

There are also various trust withdrawal rights which may be safely utilized by the spousal beneficiary, as sole Trustee. However, the trustee appointment provisions in many older Wills required the surviving spouse to act, as a Co-Trustee with one of his/her children. Many independent clients prefer not to act with a Co-Trustee. The IRS has recently recognized that a surviving spouse can be the sole trustee of the Credit Shelter Trust or the renunciation trust without causing estate inclusion in the second-to-die spouse's estate provided ascertainable standards for the withdrawal of principal are included in the planning document. Ascertainable standards include: health, education, maintenance and support. You may often hear the acronym "HEMS".

The optional nature of the renunciation, the ability for the surviving spouse to act alone and the tax benefits accorded the renounced assets are often new and attractive concepts to clients who have typical mandatory Credit Shelter Trust Wills. This is an important time to advise our clients of these concepts and to review with them their estate plans.

## **ARE YOU COMPETENT TO BE A PRACTICING CPA IN NEW YORK?**

### **ARE YOU SURE?**

Please understand that I am NOT questioning whether you are knowledgeable enough to serve the public properly in the State of New York. I AM concerned that you may not be aware of the NEW regulations that you MUST adhere to in order to continue to legally perform the attest function in New York State. As of **July 26, 2009** the rules have changed as to whether or not you are now considered **COMPETENT** to perform the attest function in New York.

The New York State Regents and Board of Public Accountancy have significantly modified the definition as to which CPAs are considered competent to perform the attest function in New York State. In addition, they have also redefined the definition of the "attest" function.

On January 26, 2009, Governor Patterson enacted a law defining who would be allowed to perform the attest function in the New York State. The law became effective on July 26, 2009 – six months from the date of enactment. Subsequent to the enactment of the law and under the provisions of the law, the New York State Board of Public Accountancy released regulations which determined who was going to be considered competent to perform the attest function after July 26, 2009. The definition required a CPA to meet TWO new standards in order to be able to meet the new, more stringent, requirements in order to perform the attest function in the State. These regulations were unprecedented and were effective for ALL financial statements issued on or after July 26, 2009. For many of us, it actually **TERMINATED OUR ABILITY TO PERFORM THE ATTEST FUNCTION**. This, in effect, removed our ability to sign financial statements for our clients. Although the State considered us competent on July 25, 2009 we were no longer competent the very next day. The new regulations contained the following two provisions and were required to be met **EACH TIME** a CPA performed the attest function:

1. The Board requires CPAs to meet an experience requirement in order to perform the attest function. The new experience standard requires that at the time the CPA performs the attest function he or she **MUST** have at least 1,000 HOURS of experience performing the attest function during the previous FIVE YEARS of performing the attest function **AND**
2. At the time the CPA performs the attest function he or she **MUST ALSO** be able to demonstrate that they have 40 hours of **TARGETED** continuing professional education credits during the previous THREE YEARS in the field of **ACCOUNTING AND AUDITING**.

Through NCCPAP's close relationship with the NYS Board of Accountancy and the Executive Secretary of the Board we were able to have both the effective date of the regulations changed as well as the provisions themselves. The following provisions were subsequently approved by the NYS Board of Public Accountancy and the NYS Regents:

1. The new regulations were enacted **RETROACTIVELY** to July 26, 2009.
2. The regulations modified the definition of the attest function by re-defining the Attest Function to include **ONLY** Reviews and Audits.
3. The CPA must still have taken at least 40 hours of **TARGETED** CPE. However, the measurement date was changed to require that the 40 hours be met during the **THREE YEAR** period ending **DECEMBER 31, 2010**. The targeted CPE must be in the fields of Accounting and Auditing.
4. In order for a CPA to be considered competent and therefore able to perform the attest function the CPA must have at least 1,000 hours of experience in Auditing, Review and/or Compilations during the **FIVE YEAR** period ending **DECEMBER 31, 2010**. Again the number of hours did not change but the measurement date was change to be December 31, 2010 **AND**
5. In lieu of the 1,000 hour provision noted above a CPA (or his/her firm) can undergo **PEER REVIEW**.
6. If you **ONLY** perform Compilations and don't expect to perform the Attest Function (i.e. issue review reports or audit reports), then you do **NOT** have to meet either the 1,000 hour provision **OR** the Peer Review provision **BUT YOU MUST** still meet the 40 hour CPE requirement.

If you or your firm have never been peer reviewed, you should note that if you elect to substitute the Peer Review provision for the 1,000 provision then you **MUST** consider this **NOW**. The process is long and you must be scheduled for the peer review. Additionally, you should note that there is currently a severe shortage of individuals authorized in the State to perform the peer review. **DO NOT HESITATE IF YOU ARE ELECTING TO TAKE ADVANTAGE OF THE PEER REVIEW PROVISION. DO YOUR DUE DILIGENCE NOW TO FIND OUT WHAT IS ENTAILED AND START THE PROCESS. DO NOT DELAY.**

If you perform the attest function without meeting the above provisions by December 31, 2010 **YOU WILL BE IN VIOLATION OF THE REGULATIONS AND YOU WILL BE SUBJECT TO DISCIPLINARY ACTION BY THE NYS BOARD OF ACCOUNTANCY**. Do not put yourself in this position.

*Continued on next page*

Please note that the information contained in this article is based upon research personally performed by the author and contains his interpretations of the regulations when necessary. If you have any questions regarding the new law and regulations you should visit the web site for the NYS Board of Public Accountancy and/or call the Board and discuss your personal situation with them. This article is written only to enlighten you as to the new regulations. How they apply to you personally is an issue that you must address and you should perform your own due diligence.

Article Submitted by Robert Goldfarb, CPA. He can be reached at Schoenfeld Mendelsohn Goldfarb LLP (516) 364-0100.

## **NASSAU/SUFFOLK CHAPTER CONTACT INFORMATION**

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### **COMMITTEES**

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## **QUALIFIED JOINT VENTURES – THE OPTION SHOULD BE EXPANDED**

Qualified Joint Ventures (QJV) are a product of recent tax legislation to allow a married couple to report jointly owned business operations as sole proprietorships rather than partnerships. This avoids the necessity of filing a partnership Form 1065, but requires attaching two Schedule C forms to the individual tax return.

In Audit Report No. 2010-40-034, the Treasury Inspector General for Tax Administration (TIGTA) found that this option was underutilized, and called for better education and outreach. The report advised increasing publication and communication with tax software vendors. IRS management agreed with the TIGTA recommendations and will work to implement these ideas.

The IRS recognizes that the filing of Form 1065 is more complex and burdensome. The form requires more disclosures, the inclusion of a balance sheet, Form K-1 and the completion of both Schedules E and SE. The filing of two Schedule C forms insures that taxpayers will receive proper Social Security credit. The recent Audit Report found that many taxpayers and return preparers are unaware of this option.

The Report encompasses twenty-six pages of history, analysis, recommendations and response. However, perhaps the election would become more popular if its scope were expanded to include more husband and wife owned ventures.

For example, a husband and wife who establish a Limited Liability Company to jointly own and manage rental real estate would be precluded from utilizing the QJV. Moreover, the couple will also be precluded from electing out of Subchapter K. IRC §761(e) provides that if all members of an unincorporated organization so elect as provided under the Treasury Regulations, the organization may be exempt from the application of filing a partnership return and would be treated as co-ownership. Such election is made in a statement included in the initial partnership return Form 1065. The Regulations provide that an unincorporated organization which is formed for investment purposes and not for the active conduct of business would so qualify. However, under the Regulations, members of a limited partnership are not co-owners of the property and may not utilize the benefits of such election. In FSA200216005, partners in a limited partnership were not considered co-owners of partnership property and therefore, could not make the election to be excluded from application of the Subchapter K requirements including the filing of a partnership return. This was found even though the partners intended that the organization would be an investing entity as provided under the regulations.

In order for an unincorporated organization to elect exclusion from the Subchapter K burdens as an investment partnership, the statute and the cases require that the participants own the property as co-owners. This provision appears to be the biggest stumbling block to more widespread use of the election. The other requirements that the activity not be an actively conducted business and that the participants must be able to freely delegate, sell, and exchange their interest in the investment property could easily be expanded and interpreted to include non-business interests owned in limited partnership or LLC form. The technical distinction, that partners of a limited partnership or members in an LLC own an interest in that entity as opposed to owning an interest in the underlying property, should not, in the author's opinion, preclude use of this beneficial election. The intent of the provision is to allow investment partnerships to avoid filing and reporting burdens that would apply to actively conducted businesses. In this author's opinion, if the IRS desires more widespread use of the QJV election, the utilization should be expanded to include family investment entities which are structured either as limited partnerships or LLCs. In today's litigious society, most families are instructed to hold such investment properties in a form which helps shield their assets from liability; this technical distinction should not preclude their ability to utilize the election. The author recommends that consideration be made to expand the entities eligible to make such election and that the statute and the regulations should be amended to encompass a broader section of investment partnerships. This would better achieve the desired goals envisioned by the recent Audit Report.

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