



# 2020 Estate & Tax Planning Professional Seminar

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# Introduction

Today's presentation will focus on developments that impact the way we, as professionals, approach tax planning and tax compliance. Let's look at -

1. How the IRS has responded to Covid-19;
2. What has the IRS announced as it's focus in 2021;
3. Legislative updates;
4. Judicial decisions that merit our attention

# Covid-19 and the IRS

The Covid-19 Pandemic had a crippling effect on Tax Administration and highlighted weaknesses in the IRS.

March 13 – President Trump declares a national emergency;

March 16 – Treasury employees instructed to telework if eligible

March 20 – IRS shuts down Taxpayer Assistance (both in-person and via telephone)

March 21 – filing due dates for forms due thru June moved to a due date of July 15;

March 26 – People First Initiative announced suspending collection activities until July 15;

# Covid-19 and the IRS

March 27 – Cares Act passed. IRS tasked with distribution economic stimulus payments;

March 30 – Mandatory shut down of the IRS for ALL employees to adapt, if possible, to teleworking.

**In less than three weeks; the IRS went from a fully functioning federal agency to a inept agency unable to carry out it's Mission. What caused the IRS to be so unprepared?**

# Covid-19 and the IRS

The deficiencies of the IRS that became obvious during this time:

1. Arcane computer system (estimated to be 20 years behind in technological updates)
2. Insufficient infrastructure to support those working from home with no or limited access to data bases
3. Inability for Taxpayer Service to be viable with a remote workforce. The “live” assistance calls could not be handled remotely due to no secure connections and no ability to route calls to personnel

**Taxpayer Service did not come back on line until 7/15**

# IRS Upgrades

Prior to the pandemic, IRS had embarked on adding technology platforms that Taxpayers can access; review and monitor their respective accounts:

**On line accounts-** launched in 2016 but thru 9/30/2020 only 4 million accounts have been established. The set up and access of an individual account has been problematic. Only about 41% of those who attempt to establish an on-line account are successful.

**The IRS will be adding:**

- refund status
- delivering of notices digitally
- T/P can make "simple" amendments to the filings

# IRS Upgrades

In addition to encouraging taxpayers to set up the on-line accounts Nina Collins; National Taxpayer Advocate is pushing for:

- IRS to use email to communicate with Taxpayers
- Expand digital acceptance and transmission of documents
- Allow for digital signatures on returns (rather than returning the filing to the Taxpayer)
- Allow for digital signatures on installment agreements
- Add video conferencing with Taxpayers (currently IRS systems are unable to facilitate internal video conferencing)
- Taxpayer can select "preferred method of communication"

# IRS Upgrades

The 2018 Strategic Plan of Treasury and The Taxpayer First Act sets out goals as follows:

- Taxpayers can access their respective IRS account from their smart phone, laptop or self service kiosk;
- All communications with the IRS are secure;
- IRS will offer sophisticated on-line services at the level of the retailing public

Two hurdles to overcome:

- the age of the computer systems of the IRS don't support this type/level of access; and
- thus far, less than 50% of the public can pass the e-authorization process



# IRS wants more from us

With the technology advances made and the efficiencies gained within the IRS; Treasure is now forcing practitioners to also “upgrade” their respective practices-

## Expanded use of e-file for 1040's

Thru 2020 returns, Practitioners can file paper returns ONLY if they prepare < 250 returns;

In filing 2021 returns, Practitioners can file paper returns ONLY if they prepare < 100 returns;

And after 2021, Practitioners can file paper returns ONLY if they prepare < 10 returns

## Expanded use of e-file for 1065's

Thru 2020 returns, Practitioners can file paper returns ONLY if they prepare <100 returns

And after 2020, Practitioners can file paper returns ONLY if they prepare <50 returns



# IRS vs the Practitioner

IRS is targeting Tax Return Preparers

It is the feeling of Treasury that practitioners who are not compliant on their own respective filings pose a large threat to the integrity to our voluntary compliance system.

30,000+ paid preparers self identified as not being current either in filing or paying their federal tax requirements.

(from the PTIN registration and renewal process)

A cross check of paid preparers to personal returns filed revealed 10,495 individuals who signed returns as paid preparers but did not file a personal tax return.

The top 100 prepared more than 2 million returns with estimated fees ranging from \$189,000 to > \$1 million



# IRS vs the Practitioner

The 2021 White House Budget calls for increased oversight of paid preparers.

Additionally, the White House Budget is suggesting that the IRS can make automatic adjustments to returns when forms are missing or incomplete (rather than writing to the Taxpayer to cure)

## Examples:

- disallow credits (such as the foreign tax credit) where the computations are not included in the returns;
- disallow deductions (such on non-cash contributions) where the 8283 form is not provided.

# IRS vs the Practitioner

To facilitate more accurate filings the White House Budget calls for:

- 1099-K filings will be due 1/31 (versus 3/31)
- Withholding in the amount of 5% will be required on 1099-K transactions > \$20,000
- The threshold for issuing a 1099 will be increased from \$600 to \$1,000
- A Taxpayer can request only one 30 day extension for filing 1099 forms and the Taxpayer must have a bona fide reason

This is reminiscent of the time when you had to state a reason when requesting an extension of time (the 2<sup>nd</sup> extension) for 1040 filing.

# IRS vs the Practitioner

Additional changes to be aware of:

- New 1099-NEC (taking self employment income off the 1099 Misc. (due date 1/31 and extension required if late issuance)

Reasons to have accepted extension of time to file:

- Taxpayer (or filing practitioner) suffered a catastrophic event in a federally declared disaster;
- Fire, casualty or natural disaster affected the operations of the Taxpayer (or filing practitioner);
- Death, serious illness or unavoidable absence of the Taxpayer affecting operations;
- first year of operations of the Taxpayer;
- Information needed to prepare was not received timely from an unrelated 3<sup>rd</sup> party

# Hot Topics -IRS Scrutiny

1. Virtual Currency
2. Returns filed in the Marijuana Industry  
( Sample audit of 237 returns showed 140 had errors which resulted in additional tax assessments of \$48,500,000)
3. Proper handling of distributions in excess of basis – forms 1065 and 1120S
4. Micro Captive Settlement Program
5. Worker classification
6. DOL/EBSA –delinquent filer Voluntary Compliance Program (5500 forms with penalties of up to \$2,233/day)



# 2020 Legislation

On March 18<sup>th</sup> President Trump signed into law H.R.6201; the Families First Coronavirus Response Act

This was the first legislative response to the Covid-19 pandemic. The major focus of the bill:

- expanding unemployment benefits
- enacted paid sick leave for employees of medium and large entities
- increased Medicaid funding
- provided payroll tax credits to employers for small and medium size employers to assist in the providing of paid sick leave.

The goal: allow individuals to quarantine to mitigate the spread of the virus.

# 2020 Legislation

Three days later- March 21, 2020

Cares Act

(The Coronavirus Aid, Relief and Economic Security Act)

- Created access to funds for small businesses  
(small defined as < 500 employees)
- Payroll Protection Program (PPP)  
administered thru the SBA/facilitated thru banks  
and financial institutions  
forgivable if used as intended



# 2020 Legislation

## Cares Act – con't

### -Economic Injury Disaster Loans (EIDL)

Administered thru the SBA

SBA determined amount available (regionally capped at \$150,000) to be paid at 3.75% interest over 30 years

### -SBA Express Loan

This is a 36 hour turn around on SBA loan approval and funding. Max loan increased from \$350,000 to \$1 million

# 2020 Legislation

## Cares Act-con't

### Unemployment Insurance – temporary provisions

- Changed the definition of who is eligible for unemployment benefits
- Created an “enhanced” unemployment benefit funded by the federal government
- Created a “reduced hours” benefit for those whose hours were reduced due to Covis-19

Most of these provisions run thru 12/31/2020

# 2020 Legislation

## Cares Act-con't

### Miscellaneous Individual Provisions

#### -Economic Impact Payments (Stimulus checks)

(side benefit-if you hadn't filed a return in 2018 or 2019 you were forced to register; giving IRS you current location)

#### -Student Loan Relief

#### -Waiver of 2020 RMD requirements

- ability to repay RMD if already taken in 2020

#### -Retirement Plan Loans up to \$100,000 allowed (or 100% of vested balance)

# 2020 Legislation

## Cares Act-con't

- Charitable Contribution Deduction
  - allows non itemizers to deduct up to \$300
  - allows for 2020 charitable deductions up to 100% of AGI
- Mortgage forbearance and foreclosure moratorium

# 2020 Legislation

## Cares Act-con't

### Business Provisions

- Employee Retention Tax Credit

- Payroll Tax Deferral

- Modification of NOL Carrybacks

(this one takes some modeling to know how to best maximize the use of the losses)

- Modification of excess business losses

(this amounted to technical corrections to the TC&J Act)

# 2020 Legislation

Cares Act-con't

Business provisions-con't

- modification of AMT

- modification of 163 (j) business interest expense deduction (increasing the limit from 30% to 50%)

- Qualified Improvement Property depreciable life modified (this is a technical correction to the TC&J Act) Finally!

# 2020 Legislation

## Cares Act-con't

### Health Related

- Amendments to tax credits for employers providing paid sick leave for Covid-19 issues
- Deferral of contributions for Single Employer Retirement (defers quarterly contributions required in 2020 to 12/31)
- Changes to use of HSA qualified expenses
  - feminine hygiene products
  - over the counter medications

# 2020 Legislation

April 9, 2020 the Federal Reserve announced changes to the Main Street Lending

This program provides loans of at least \$1 million (max \$150 million)

- Up to 10,000 employees
- US Company (organized/formed under US Law) with a majority of its employees based in the US



# 2020 Legislation

## Expanding and Preserving Retirement Savings-Secure Act

- new safe harbor on auto enrollment
- expanded definition of earnings for funding of an IRA
- removal of age limit for funding of an IRA
- allows borrowing of \$100,000 or vested balance for 180 days
- ability to defer RMDs if “still working”

# 2020 Legislation

Secure Act-con't

Education Provision

- Use of 529 accounts now include apprenticeships and trade schools
- Up to \$10,000 (lifetime exclusion) may be withdrawn from a 529 account and used to pay student loan debt

# 2020 Legislation

Secure Act-con't

Miscellaneous Provisions

- Elimination of the "Stretch IRA"
- who does this affect?
- planning opportunities

# 2020 Legislation

## H.R. 1865-Repeal of ACA provisions

- Repeal of the medical device tax for transactions after 12/31/2019
- Repeal of the Health Insurance Provider's Fee for tax years beginning after 12/31/2020
- Repeal of the Cadillac Plan Tax

# Court Decisions

Shahram Kohan, et ux. V. Commissioner TC Memo2019-85

- Schedule C
- No separate bank account
- No testing by preparer of accuracy of information provided

## Reminds us:

- All business audits require the Agent to perform an indirect method to “test” income;
- No Statute of limitations on fraudulent returns

# Court Decisions

Shahram Kohan –con't

Do you know the badges of Fraud? (what you need to do to prevent the assertion of preparer penalties)

- Understating income
- Keeping inadequate records
- Giving implausible or inconsistent explanations of behavior
- Concealing income or assets
- Failing to cooperate with tax authorities
- Engaging in illegal activities

# Court Decisions

Shahram Kohan-con't

Badges of Fraud-con't

- Supplying incomplete or misleading information to the tax preparer
- Providing testimony that lacks credibility
- Filing false documents
- Failing to file tax returns
- Dealing in cash

# Court Decisions

Finnegan v Comm. 123AFTR 2d 2019-219

Query- does preparer fraud, even if unknown to the Taxpayer extend the statute of limitations

This audit began as a Preparer focused examination. The IRS audited 750 to 800 returns prepared by a single preparer when the IRS received a tip on the accuracy of the Preparer.



# Court Decisions

ALT & Sons Holdings, Inc v. Comm. 152 T.C.

Filing a late 1120S results in penalties regardless of the fact that the filing did not impact the shareholders' tax liability.

- RR 84-35 will work on 1065's not 1120S filings
- Don't attach your letter of reasonable cause to the return
- Only reasonable cause or excellent prior filing history will result in the IRS abating the penalty for late filing

# Court Decisions

Curtiss T. Williams v Comm. TC Memo 2019-16

How do you prove timeliness of filing?

The Taxpayer's representative; thru oral testimony, state he mailed the Tax Court Petition one day before the 90 day period for filing. He contends that he put the envelope in a US Post Office mailbox.

The petition arrived at the Tax Court AFTER the 90<sup>th</sup> day and the envelope did not reflect a postmark. NOW WHAT?

# Court Decisions

Another case where the Taxpayer argued (lost) on reasonable cause for failing to timely file.

Plato v Comm, USTC

This is a new twist on filing habits; creative but a “no go”

# Court Decisions

Van Camp & Bennion, P.S. v United States

Fran Corp v United States, 164 F 3d 814

E Winds Industries, Inc v United States 196 F 3d 499

Three separate cases that demonstrate how the IRS applies “reasonable cause” in determining the application of the Civil Penalty to the “responsible party” for failing to pay over withheld payroll taxes.

# Court Decisions

The failure to pay over payroll taxes makes up a large segment of Collection Division cases. TIGTA has recommended actions by the Employment Tax Division and the Criminal Investigation Division to address the most flagrant cases.

- Target repeat offenders with swift action to shut down the business based on long term viability;

- Refer cases of repeat offenders or other "bad behavior" for criminal prosecution

When a client misses the first payroll tax deposit review with them the Responsible Party criteria and possible "results"

# Court Decisions

- One more issue with Civil Penalties-
- What is the result if the Taxpayer retains a PEO or a Payroll Provider who impounds the taxes but fails to remit?
- This has happened twice in a “big way” in this area. The IRS did work with the employers but the employers had to pay a second time the payroll taxes AND pay over the withholdings.
- What steps should an Employer take to monitor the PEO or Payroll provider for compliance?

# Court Decisions

U.S. v Commander 121 AFTR 2d

Danduran v US 123 AFTR 2d

Two cases that the IRS doesn't care who pays the Trust Fund Recovery Penalty and has the ability to collect 100% from one owner regardless of the number of owners (assuming multiple individuals meet the Responsible Party criteria)

# Court Decisions

Daniel Alan Nearnand Denise Frances Mayhugh v Comm.  
TC Memo 2020-10

Reminds us that a Taxpayer is denied a deduction when he has reimbursement rights from his employer. Similarly; if on a casualty loss; the Taxpayer has full coverage; settling with the Insurance Company negates a deductible casualty loss.



# Court Decisions

Richard Essner v Comm

Reminds us that matching notices issued by the IRS do not constitute an audit.

Note- in the last month the CP2000 notices have begun for the 2018 tax year.

Note- the argument of repetitive audits where a no change is issued is still valid.

# Court Decisions

United States v Patricia Lynette Harold

We all have had clients that have an elaborate plan to minimize their tax obligation. This is a case where the Taxpayers kept getting deeper and deeper.

Reminds us that as Practitioners we have an obligation to not assist in a plan to evade.

# Court Decisions

The college admissions scandal the “rocked the world” of the rich and famous contends that the participants; in addition to other crimes committed Tax Fraud

What obligation does the tax preparer have in deducting the “bribes” as charitable contributions?

Are we able to rely on the information furnished by the client without verification?

When the Criminal Investigation Division calls; do you need counsel?

# Ethical Obligation

Those of us who prepare tax returns or represent clients before the IRS have a duty under Circular 230 and under the ethical codes or our respective professions.

What is our duty with respect to these three cases?



Thank You!

Have a healthy and  
successful 2021

