

AICPA National Tax Conference
November 14-15, 2016
Washington, DC

Keynote Presentation and Panel Discussion

Tax Geometry: Insights From the Hill, Wall Street and Main Street // Moderator – David Lifson; Panelists – Thomas Barthold, Helen Hecht, Maya MacGuineas

Joseph Crowley, Vice Chair of the Democratic Caucus and a member of the House Committee on Ways and Means

- Joint Committee on Taxation typically meets one time per year and is made up of about 45 individuals
- Discussed the infrastructure plan and concerns regarding how it will be funded
- Republican Blueprint is a territorial system
- Concerns: Economic security and wage growth...cannot increase debt while expanding infrastructure
- Fastest growing part of budget is the country's interest payments. Very vulnerable to interest rate increases
- Donald Trump wants to balance the budget, in order to do that there would need to be 10% growth, which is impossible
- Concerns about immigration and social security. Good: pays more into the systems...but more benefits will need to be paid out eventually
- More than one step is needed to change the social security system
 - Raising retirement age
 - Lowering benefits
 - Change the way we calculate inflation
 - Increase benefits in a targeted way
- Economic growth cannot fix debt problem because the debt is too large. Labor market needs to increase, but debt is growing so much faster than the economy.

Concurrent Sessions

Partnership Primer // Beverly Katz, KPMG LLP

- Disregarded entity should not be issued a K-1, but instead the K-1 should be issued directly to the owner of the disregarded entity
- Investment company and IRC Section 721(b) – this is an exception to the nonrecognition rule under IRC Section 721(a)
- Disguised sales IRC Section 707(a)(2)(B) – watch out for debt financed distribution rule, an exception to the disguised sale treatment.
- Partnership needs to have “substantial economic effect”
- Capital account maintenance rules - remember, IRC Section 704(b) = Fair Market Value
 - Deficit Restoration Obligation
 - Qualified Income Offset
- IRC Section 704(c) - Partnership must allocate income, gain, loss and deduction with respect to property contributed by a partner to the partnership so as to take into account any variation between the adjusted basis of the property and its FMV at contribution.
 - Prevent shifting of pre-contribution gain/loss in property to other partners and away from the contributing partner
 - Watch for depreciable property contributions and who is ultimately allocated the tax depreciation

- Partner's share of partnership liabilities – 3 tier allocation methodology
- Distributions to partners – watch for IRC Section 734(b) basis adjustments and exceptions
- Sale of a partnership interest, impact on the selling or buying partner and the partnership – IRC Section 743(b) basis adjustments
- Partnership termination – see IRC Section 708(b)(1)(A) and (B)

Partnership Tax Update for 2016 // Chris Hesse, CliftonLarsonAllen LLP

- TEFRA Audit Procedures (pre-2018 tax law)
 - For small partnerships, IRS opens examination at partner level. No more than 10 partners.
 - Electing large partnerships (ELP) – at least 100 partners and at least \$100M in assets.
 - Exam changes reflected in partners' current K-1, or
 - ELP can pay tax attributable to adjustment at highest rate
 - Qualifying partnership elect out
- Bipartisan Budget Act repeals TEFRA and implements new audit regime. Effective for partnership tax years beginning after December 31, 2017, the Bipartisan Budget Act of 2015 (BBA) provides for a new partnership audit regime.
 - These rules generally require a partnership adjustment to be taxed to the partnership in the year the adjustment is made. The partnership can elect to push out the adjustment to the partners, having them pay the tax instead.
 - **Practice Tip:** An election to apply the rules for pre-2018 will allow partnerships subject to the TEFRA rules more control of the audit process through the appointment of the Partnership Representative
 - A qualifying partnership may elect to be excluded (elect out) from the new partnership audit regime. This is an annual election.
 - The partnership will designate a partnership representative (PR) who will have the sole authority to act on behalf of the partnership in its audit proceedings [IRC Section 6223(a)]. The PR is different from a Tax Matters Partner. The PR does not have to be a partner in the partnership.
 - The new partnership audit rules contain two time periods for consideration in an audit
 - The reviewed year
 - The adjustment year
 - Future guidance will need to be issued by the IRS enabling us to determine how these rules will be implemented. The IRS has requested comments on over thirty different issues that will need to be addressed in implementing these
 - Need to consider amendments to partnership/LLC agreements.
- For taxable years beginning after December 31, 2015, the following rules apply:
 - The partnership tax return will be due by the 15th day of the third month following the close of its taxable year [IRC Section 6072(b), as amended by Act Sec. 2006(a)].
 - Preparation Tip: 2016 calendar year partnerships are the first entities affected by this law change. Those returns are due March 15, 2017. However, with a lengthened 6-month extension period, the extended due date remains September 15, 2017.
 - Watch for short-year caused by technical terminations. Use Rev. Proc. 84-35 – excuse available for small partnerships
- Remember – some short year returns will still have only a 5 month extension because the Regulations hadn't changed yet.

Advanced Partnership Issues // Bob Crnkovich, EY and Cliff Warren, Special Counsel to Associate Chief Counsel, IRS

- Regulation 1.751-2(k) – disregarded entity. This is going away in the proposed regulations.
- "Partnership Representative" has to be a person with substantial presence in the US
- Now is a good time to update the partnership operating agreement – adjustment year and review year issues may need to be taken into account

- If you don't amend the agreement, the partnership falls under the default rules
- Expect final regulations in the first part of the year
- Rev. Proc. 93-27 - Receipt of a profits interest for provision of services to or for benefit of a partnership in a partner capacity or in anticipation of being a partner is not a currently taxable event.
 - Additional exception to be added to revised Rev. Proc.
 - Treasury Department and IRS will revise Rev. Proc. 93-27 in conjunction with final regulations on disguised payments for services to add an exception
 - Rev. Proc. 93-27 will not be applicable to a profits interest issued in conjunction with a partner forgoing payment of an amount that is substantially fixed (including if determined by formula, such as a fee based on a percentage of partner capital commitments)
- TEFRA/Audit Update
 - Election out? How will this be addressed in your client engagement letters...who is responsible for notifying the partners of the partnership?
 - If there is a positive adjustment, it is owed by the partnership.
 - IRC Section 6225 adjustment- This can be an issue if the partner group changes.
 - 270 days – to file all amended tax returns – See IRC Section 6225(c)(2)
 - Tax attribute adjustments required for all years – e.g. IRC Section 469 passive losses
 - IRC Section 6225 is silent on partnership tax attributes
 - Amended return – if subject to these rules, can no longer file amended returns. Instead, all adjustments are made through one year, to the adjustment year partners.
 - Small partnerships can opt out.

IRS Office of Chief Council Priorities // William Wilkens, Chief Counsel and Assistant General Counsel, IRS/US Department of Treasury

- Future state: “Real Time Tax Administration” – meaning that the IRS is getting tax information on their computers BEFORE tax returns arrive. This is the goal.
- Prior year review:
 - 2011 – slash in IRS appropriation cuts (happened before Lois Lerner story)
 - 2012 – 1st Greenbook proposal on large partnership audits
 - FACTA published final regulations (issue: privacy laws)
 - 2013 – Budget crisis, fiscal cliff, government shut-down, \$600M in budget cuts. Healthcare.gov opened...and closed – bumpy start with technical problems.
 - Defense of Marriage Act, Windsor Case
 - Year-end tax legislation – IRS final made AMT permanent
 - 2014 - \$300M+ budget cuts and sequestering.
 - Introduced Priority Guidance Plan
 - Exempt organization issues, data loss, Lois Lerner issue (equipment and disaster recovery tapes had been destroyed)
 - Future State initiative starting moving more:
 - Online informational tools became better
 - More virtual service delivery
 - Compliance and issue resolution to happen earlier
 - Loving Case- proposed return preparer case closed
 - 2015 – 2nd gay marriage case
 - Bipartisan budget act
 - IRS Budget was not cut
 - TIGTA- report on data loss, no criminal charges, no bad intent
 - 2016 – Budget – continuing resolution
 - Debt/Equity
 - Inversions
 - Spin-offs
 - Challenges:

- Tax court litigation – very smallest and very largest cases - they want more verdicts especially with respect to transfer pricing cases
- Electronic discovery
- Getting fast guidance out when the law changes
- Healthcare laws
- Council – their job is to say what the IRS's view of the law is, answer technical questions, advise appeals regarding IRS position either from existing law or first opinion

Major Challenges Facing the IRS Today // Nina Olson, National Taxpayer Advocate

- 1/3 of taxpayers do not have broadband and are going to places that have free wifi to work on their tax returns (e.g. coffee shop). This is a data risk issue.
- Taxpayers using IRS online service to file their tax return...issues because the IRS is not asking appropriate questions to aid in the completion of the tax return
- Impact of audits on future compliance (e.g.- Self-employed taxpayers)
 - Taxpayer who had an assessment- compliance increases (reporting more revenue)
 - Taxpayer with no change – compliance decreased (reporting less revenue)
 - Tax administration demonstrates that their viewpoint is that taxpayers are cheating and the IRS is just not finding it.
 - Nina "...need to change our attitude about the taxpayers of the United States. That's the challenge of the IRS of the future."
- Social Security Agency is going to start sending W-2 data beginning mid-January. IRS database will be much more robust.
- Identity Theft victims – there will be a code on the W-2 that will help minimize impact to victims
- IRS Notices/Response Times- the IRS looks at the documentation that has been sent in response to a notice, after they issue the notice of deficiency.

IRS Commissioner's Address: Future State // John Koskinen, IRS Commissioner

- The IRS is an agency that continues to fulfill its mission.
- Credit goes to the dedicated and talented workforce.
- System is working because:
 - Successful filing season
 - They've improved regarding questions that are asked due to extra funding (\$290M), added 1,000 personnel, service level has risen from 37% to 70%."
- Lame duck session – this is a big question as to whether or not funding will be enacted to get through filing season. IRS is hoping to protect the additional \$290M, but there have been talks of budget cuts.
- Additional funding = more people = answer phones more frequently
- Stolen identity and refund fraud- the IRS has seven working groups, one of which is checking IP addresses which has been a "stunning success"
 - Taxpayers filing affidavit has dropped 50%
- "Future State" – goal is to make sure taxpayers have a secure online account just like they do with online banks. The IRS is spending a lot of time hardening their systems.
 - This year there will be 50 million W-2s that have the new "code" on them. The IRS is asking that everyone please enter this code into the software.
 - Last year they stopped 4M returns, many of which were legitimate.
 - "Future State" is not some new invention. Areas where this has come to play in prior years:
 - "Where's my refund"
 - Online payments
 - This is not a fixed plan, and the IRS is getting valuable feedback.
 - Eventually taxpayers will be able to see their payment history immediately.

- Additionally, the IRS wants to be able to let taxpayer's know BEFORE they submit their tax returns that information is missing so the return can be corrected before it is filed. This will reduce the need for amended tax returns.
- How do they make sure they have the best staff? Issue with \$900M less in funding compared to where they were 6 years ago.
 - An issue of aging workers. There are concerns with having the ability to promote younger generations due to lack of workers under 30.
- LB&I – looking through issues rather than on return at a time.
- Issue: antiquated system. Last 2 weeks of the year is spent manually changing 2016 to 2017 for all forms. This is all hard coded into their system.
- Earned Income Tax Credit and Child Tax Credit- if you have a return with either of these credits on it and a corresponding refund, the IRS will not be able to issue the refund until after 2/15. The IRS is requesting that you don't wait until post 2/15 to file these returns, but file in the normal course of business.
- AICPA can collect data through its members, regarding their thoughts on "Future State"
- The IRS is going to a multi-authentication process and they want our thoughts on this.
- The IRS is facing issues with IT staffing
- Quality reports indicate that 90% of taxpayers are satisfied with the IRS.

Reducing IRS Penalties // Robert McKenzie, Arnstein & Lehr LLP

- Failure to deposit penalty has the most likelihood of errors
- Reasonable cause excuse does not apply to estimated tax penalties.
- Reasonable Cause Assistant program
 - This is a decision-support interactive software program developed to reach reasonable cause determination.
 - First Time Abatement (Failure to File, Failure to Pay, Failure to Deposit) – only if no prior penalties have been assessed on the same.
 - Abatement Request- submit separate for each period

Multi-state Income Tax Issues and Planning Opportunities with Taxable Trusts // Paul Lee, The Northern Trust

- State and local tax is the most important tax savings opportunity for wealthy families
- Every grantor dies, which means hundreds of millions of dollars will be stuck in taxable, non-grantor trusts
- Issues of Constitutionality
 - Timing and distribution of accumulated earnings
 - California and New York now have an accumulation/throwback tax
- Modifying an irrevocable trust
 - All income to discretionary to income and principal
 - Ascertainable standard to sole discretion
 - Power to include capital gain in DNI
 - Create or eliminate powers of appointment
 - Create a power to modify the terms
 - Trustee removal and appointment provisions
 - Change place of administration
- Importance of Partnerships in basis management
 - Example: A partnership could distribute high basis assets to a partner with zero outside basis.
- Charitable contributions by partnerships

Wealth Planning – Post Election Landscape and Current Developments // Blanch Lark Christerson,
Deutsche Bank Wealth Management

- Proposed 2704 Regulations
 - 2704: Lapsing rights and “applicable restrictions” on transferred interests of family-controlled entity
 - Proposed regulations basically eliminate most valuation discounts relating to family-controlled entities
 - No distinction between family-owned businesses and entities with cash/marketable securities
- Proposed Basis Reporting and Consistency Regulations
 - Applies to executors who file an estate tax return under IRC Section 6018(a) or IRC Section 6018(b).
 - No reporting required if:
 - Pure portability estate tax return
 - Property exempt:
 - Cash
 - IRD
 - Tangible personal property that doesn’t need an appraisal (generally < \$3k in value)
 - Property disposed of in a transaction that triggers capital gain/loss
 - Report everything that could be used to satisfy inheritance, even if who gets what has not be determined yet.
 - Supplemental reporting required within 30 days of change in value or information reported
 - What if after-discovered or omitted property? Zero basis unless reported while statute of limitations open
 - Basis consistency rule applies to:
 - Property that increases decedent’s estate tax liability
 - Doesn’t apply to: Marital/charitable deduction property

Tricks and Treats- Key Tax Procedural Issues for CPAs // Kip Dellinger, Cooper Moss Resnick Klein & Co
LLP

- Miss a required election date? See Regulations 301.9100-1 through 3 for opportunities to make a late election
 - Also consider a 2nd return before the (extended) due date of the original return is treated as the original return rather than an amended return.
- Differences between assessment statutes and refund statutes
 - Normal 3 year statute for assessment runs from original due date of return (for early returns) or actual date return is filed.
 - Refund statute of 3 years runs from the actual date filed.
- Have a client due a refund for a year beyond the 3-year refund statute? See IRC Sec. 6511(b) for financial distressed taxpayer relief.
- Protective claim for refund – filing this keeps the statute open for the years that might otherwise fall victim to the 3-year refund statute for items where uncertainty exists. Example: pending court case.