



<http://wienrolledagents.org/>

wsea@tm.net

3140 Bellfield Drive

Oshkosh, WI 54904

## Newsletter Contents

President's Message – Trish Evenstad, EA (Page 1)

Mark Your Calendar – (Page 2)

Networking Meetings Announced – Michelle Gross, EA (Page 2)

Congratulations to WSEA Members (Page 3)

Welcome New WSEA Members – Connie Thomas, EA (Page 3)

New Online Membership Directory – David Fayram, EA (Page 4)

IRS Practitioner Liaison Meeting – Michelle Gross, EA (Page 8)

The Challenge of Determining Correct Tuition Credits– Dave Fayram, EA (Page 9)

Acquisition Debt Limit of Unmarried Co-Owners – Dave Fayram, EA (Page 11)

Statutory Notice "Presumption of Correctness" – Dave Fayram, EA (Page 14)

## President's Message

By Trish Evenstad, EA, WSEA President

I hope you are all enjoying the summer! It seems to be flying by. Our next seminar, **Midwest mEAYhem** will be a joint seminar with the Minnesota and Iowa Societies of Enrolled Agents. This first tristate joint seminar will be hosted in Rochester, Minnesota at the Double Tree Inn on September 19<sup>th</sup> and 20<sup>th</sup>. The topics will be Creative Tax Planning (Senior Moments), Household Employees, Back to Basics, Ethics, Trusts, and a state discussion panel. Emails promoting the seminar for all three states will be sent from MNSEA. You will be able to register and pay online. The link is available on our website: <http://wienrolledagents.org/workshops-seminars/>.

I attended the **NAEA Fly-In Day** in May. One issue addressed with our Congressmen was the increase in price for the SEE exam from \$11 to \$99 for the IRS fees. There is also a fee from Prometrics for proctoring the exam.

At the fly-in we asked that our Congressmen sign a letter written by Representative Charles Boustany (R, LA). The letter has now been signed by eight House members. Five of the eight are on the Ways and Means Committee, which is the tax writing committee for the House. We hope this show of support will cause the IRS to explain the drastic hike in fees and what they intend to do with the money.

I attended the NAEA Fly-In Day in May. One issue addressed with our congressmen was the increase in price for the SEE exam from \$11 to \$99 for the IRS fees. There is also a fee from Prometrics for proctoring the exam. At the fly-in we asked that our congressmen sign a letter written by Representative Charles Boustany (R, LA). The letter has now been signed by eight House members. Five of the eight are on the Ways and Means Committee, which is the tax writing committee for the House. We hope this show of support will cause the IRS explain the drastic hike in fees and what they intend to do with the money.

Don't forget about our **Update Seminar** on January 6, 2017 in Fond du Lac with David & Mary Mellem. Dave and Mary are enrolled agents from Green Bay. It will be a great presentation.

We are starting some **Networking Sessions** with informational discussions around the state. Look for emails for one in your area! If you would like to help organize one in your area don't hesitate to give me a call at 608-634-6887.

Hope to see you all soon!

Trish

---

## Network Meetings Announced

By Michelle Gross, EA

I am confident I am not alone in sometimes feeling overwhelmed with all that is required of us in our tax practices. Even if you are an employee, chances are you too are called to wear multiple hats: IT manager, office manager, including the accounting for our own business as well as our clients, human resources, director of education, and of course tax preparation. Although we currently enjoy an abundance of continuing education offerings, what is missing is support for all the other areas of our practice.

WSEA can help! In order to provide support to our members we are launching a small group format to meet and discuss the issues that are common to us. Our first meeting will be organizational. As a group we will determine future topics, meeting dates and locations. Our first two meetings will be held at the **Waukesha Public Library**, 321 Wisconsin Ave, Waukesha on **Thursday August 25 from 9 – 11 am**. There is no cost to members. We will provide coffee and breakfast treats.

We have secured the same location for **Thursday September 29<sup>th</sup>**, also **from 9 – 11 am**. It is our hope that other members will come forward to form groups in other areas of the state, once a model is formulated.

Although formal registration is not required to attend, we would appreciate getting a count so we can plan on food, beverages, and materials. Please contact Connie Thomas at [tipsr@ymail.com](mailto:tipsr@ymail.com) if you are planning to attend either event.

---

## Mark Your Calendar – 2016/2017 WSEA Seminars

**Sept. 19 & 20 – Midwest mEAyhem – Rochester MN** – Joint seminar with the MN & IA SEAs.

**Jan. 6, 2017 – Update Seminar – Fond du Lac** with David & Mary Mellem.

To register, go to: <http://wienrolledagents.org/workshops-seminars/>.

## Congratulations to WSEA Members

Three WSEA members deserve congratulations for awards from NAEA. The first two awards were presented to outstanding individuals in recognition of their significant contributions to NAEA and to the enrolled agent profession. They were announced during the annual awards ceremony at the 2016 NAEA National Conference held August 1 - 3 in Las Vegas. The two were nominated by their peers based on unique standards for each award.

**Laurie Ziegler, EA** - The **Excellence in Public Awareness Award**, a recognition of outstanding contributions to making enrolled agents more recognizable as America's tax experts, was awarded to Laurie for her dedicated work with the news media, state government and social media.

**Trish Evenstad, EA** - The **Emerging Leader Award** was awarded to Trish for her skilled and enthusiastic leadership on the state level and substantial contributions to NAEA's social media and public relations efforts.

**Connie Thomas, EA** - Connie is to be congratulated for completing the three-year course in representation offered by NTPI. Her certificate was presented at the NAEA National Conference. Connie hopes to develop an active practice in representing taxpayers before the IRS.



Laurie Ziegler, EA



Trish Evenstad (right)



Connie Thomas, EA

---

## Welcome New WSEA Members

By Connie Thomas, EA

Welcome to the following new members who have joined WSEA in 2016. We extend our sincere desire to get to know each and every one of you. Networking with other members is one of our strengths so please check out the WSEA and NAEA Facebook pages. <https://www.facebook.com/groups/540690799333168/> (WSEA) and <https://www.facebook.com/groups/350878573491/> (NAEA). Welcome!

### New Members:

George Allam, EA  
Marie Bryner, EA  
Kay Gnat-Schaefer, EA  
Martha Hartung, EA

New Berlin, WI  
Argone, WI  
Milwaukee, WI  
Elmwood, WI  
Mark Miller, CPA

Sandra Mullman, EA  
Marti Myers-Garver, EA  
Martin Wallner, EA  
Crystal Wheeler, EA  
Sheboygan, WI

Menominee Falls, WI  
Bettendorf, IA  
Milwaukee, WI  
Appleton, WI

If you are a new member or an existing member, you have found that continuing education, networking, engagement opportunities and practical support benefits of WSEA membership that help us build our practices. We need members to help members grow and you can help! Contact President, Trish R. Evenstad, EA at 608-634-6887 to offer your participation.

## New Online Membership Directory

By David J. Fayram, EA

NAEA has a new **Membership Directory** which has been online since January 2016. This directory is separate from the NAEA website and located at: <http://taxexperts.naea.org/>. It is also accessible from the NAEA website, by clicking on: **Find a Tax Expert**.

Once on the Directory website, there are search boxes near the top of the page based on **Keywords** (i.e.: names) and **Locations**. There are also four tabs across the top. On the **Home** tab of the Directory, you can search by distance from any zip code or can scroll down to select a **Specialty** or **State**.

The screenshot shows the top of the America's Tax Experts website. At the top left is the logo: "AMERICA'S TAX EXPERTS® NATIONAL ASSOCIATION OF ENROLLED AGENTS". To the right are two search boxes: "Keyword to search..." and "Location to search..." with a "SEARCH" button. Below this is a navigation bar with tabs: "Home", "Find a Tax Expert", "Special Offers", and "What is an Enrolled Agent (EA)?". A user profile icon is on the right. The main content area features a large image of three people in a meeting. Overlaid on the image is the text "Find Tax Experts Near You". Below this text is a dropdown menu set to "Within 15 Miles of", a zip code input field, and a "FIND A TAX EXPERT" button. At the bottom of the image area is a dark red banner with white text: "Enrolled agents (EAs) are America's Tax Experts®. EAs are the only federally licensed tax preparers who also have unlimited rights to represent taxpayers before the IRS." Below the banner is a "BROWSE BY SPECIALTY" section with a "More" link on the right. The specialties are listed in three columns:

BROWSE BY SPECIALTY <span style="float: right;">More</span>		
Audits	Bookkeeping	Business Tax Preparation
Corporations	Divorce	Employment Taxes
Estates, Gifts, Trusts	Exempt Organizations	Expatriates
Farming	Financial Planning	IRS Representation
Individual Tax Preparation	International	Military
Multi-State	Partnerships	Pensions, Annuities & IRAs
Sales Tax		

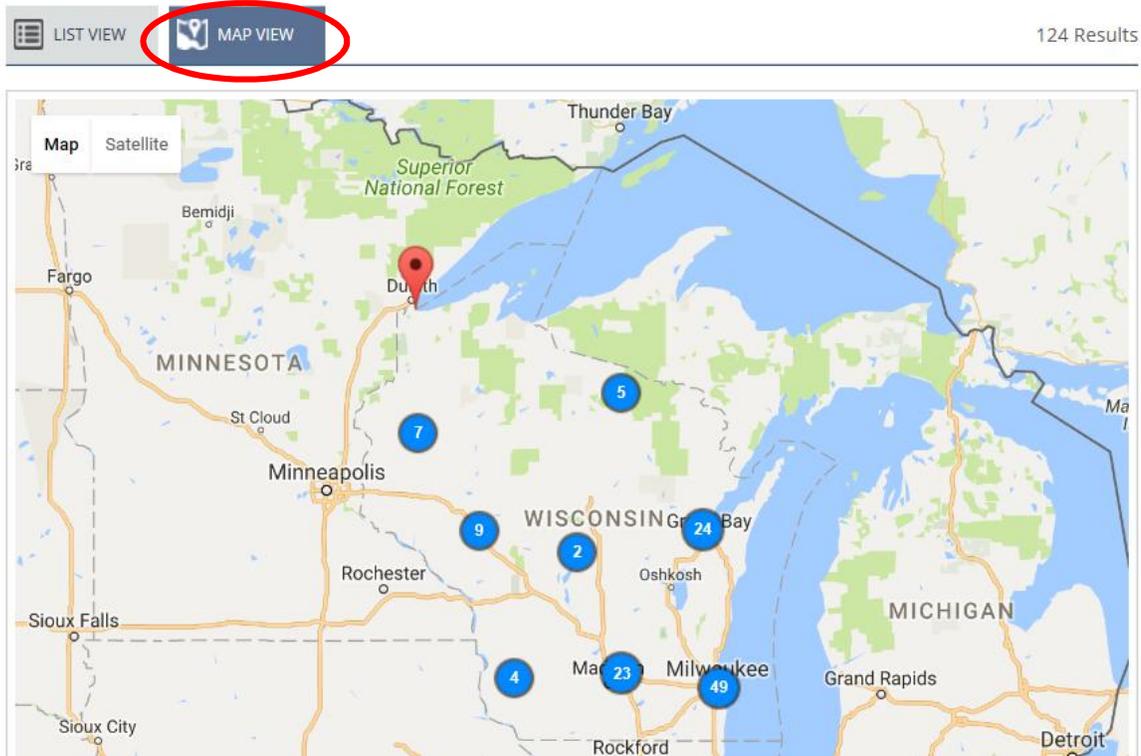
BROWSE BY LOCATION			More
Alabama	Alaska	Arizona	
Arkansas	California	Colorado	
Connecticut	Delaware	District of Columbia	
Florida	Georgia	Hawaii	
Idaho	Illinois	Indiana	
Iowa	Kansas	Kentucky	
Louisiana	Maine	Maryland	
Massachusetts	Michigan	Minnesota	
Mississippi	Missouri	Montana	
Nebraska	Nevada	New Hampshire	
New Jersey	New Mexico	New York	
North Carolina	North Dakota	Ohio	
Oklahoma	Oregon	Pennsylvania	
Rhode Island	South Carolina	South Dakota	
Tennessee	Texas	Utah	
Vermont	Virginia	Washington	
West Virginia	Wisconsin	Wyoming	

Another choice at the top of the web page is to click on the second tab, **Find a Tax Expert**. At that tab, it shows that there are 9,718 tax experts listed. You can refine your search by **Specialty** or **State**. Once you choose a **State**, it will then give you the option selecting a **City** from within that **State**.

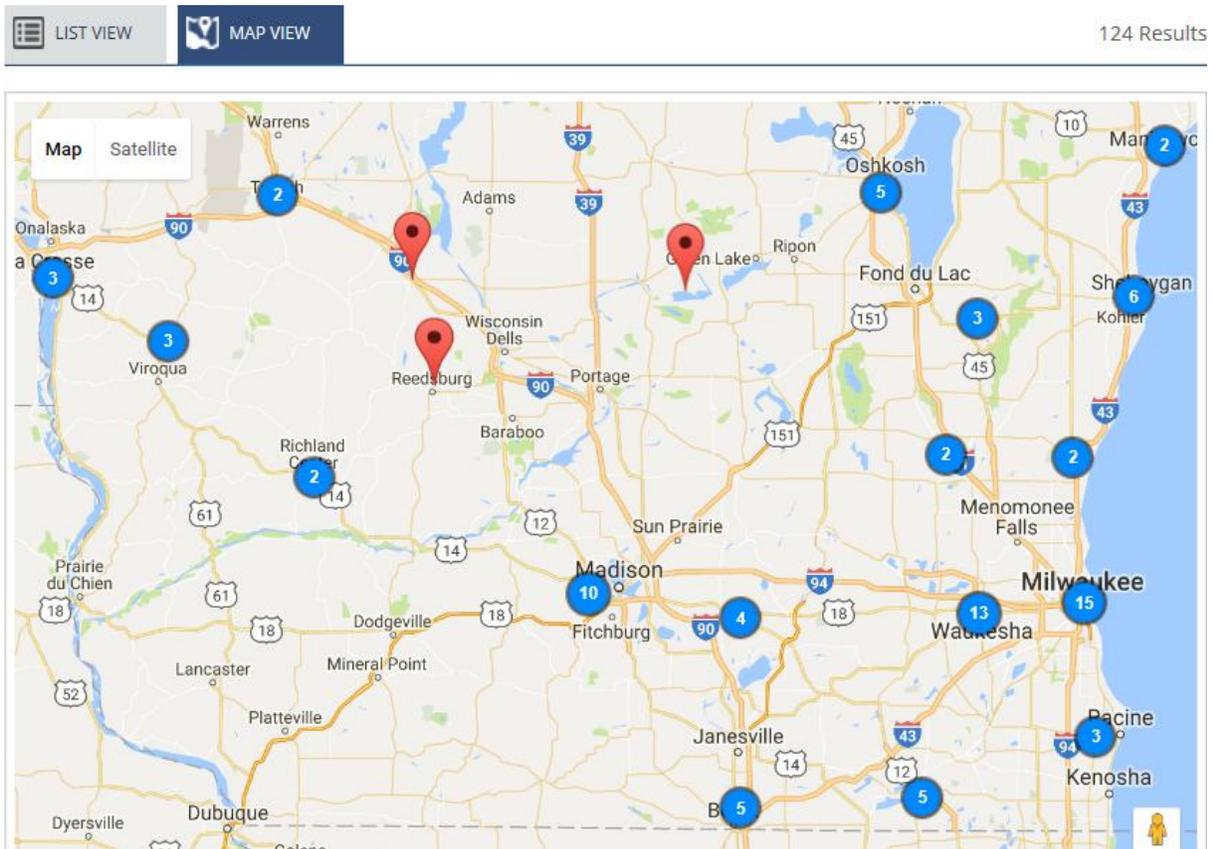
I searched for **Wisconsin** EAs and found 124 of us on the **List View**. The first listing on the first page was for Laurie Ziegler. She had her picture there and was among the very few listings with such pictures. In fact there were only two others. Trish Evenstad was listed on page nine and Jayson Werra was listed on page eleven, both with pictures. If there was an order for this list of 124 names, it was not readily apparent. [**NOTE:** The order changes randomly. Laurie has paid for the Enhanced listing, which puts her on top of the list.]

The screenshot shows the website's navigation bar with 'Home', 'Find a Tax Expert', 'Special Offers', and 'What is an Enrolled Agent (EA)?'. Below the navigation, the breadcrumb 'Home / Listings' is visible. A search filter on the left shows 'YOU REFINED BY...' with 'Wisconsin' selected. Under 'REFINE BY...', the 'Specialty' dropdown is open, listing various services like Audits, Bookkeeping, and Business Tax Preparation. The main content area shows '124 Results' and a red circle highlights the 'LIST VIEW' button. The first result is for Laurie W. Ziegler, EA, at Sass Accounting, LLC. Her profile includes a photo, address (221 E Green Bay Ave, Saukville, WI 53080), and contact options like 'Map & Directions', 'Visit Website', 'view phone', and 'view fax'. Professional affiliations like NAEA Member and NTPF Fellow are also shown.

There is also a Map View:



On the **Map View**, listings from smaller towns are included in a larger metro area map, such that the 23 included in the Madison pin are EAs in that part of the state.

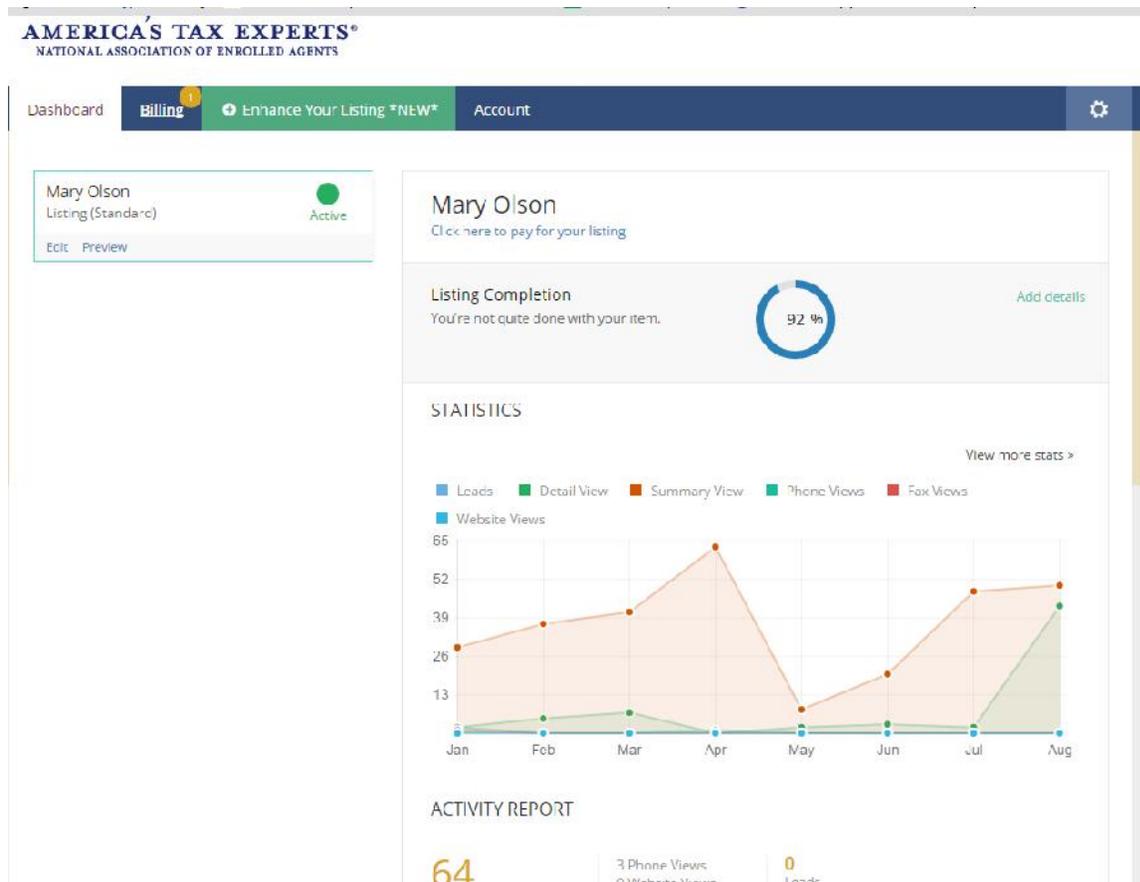


The website keeps track of the number of views for each listing. To get there, first go to the **Home** tab and click the icon called, **Tax Expert Login**, located in the upper right.



This will take you to a **Log In to the NAEA Member Area** screen, which requires your email address and a password. Unfortunately, this is not the same password you used to enter the NAEA web site. You must follow the instructions to set up a new one. When you do this, the website will send you an email with a link which will allow you to enter the new password. In my case, the link in the email was not active so I had to copy and paste it into my web browser.

Once you have the password, you can have greater access to the web site. The page starts with a tab called **Dashboard**. This tab has historical information about your listing and shows a graph of **Views** of your listing by month. There are more detailed graphs which you can see at **View More Stats** in the upper right. I was surprised to find 27 views of my listing since January. I know there have been no calls to my office though. Below is a sample of Mary Olson's Dashboard:



In the upper left of the Dashboard, under her name is a link to **Edit** or **Preview**. If you choose Edit, you can add a **Description**, **Keywords** (up to a maximum of 10), can fine tune the **Google Map**, add **Hours**, **Categories**, Picture, and if so designated, choose the NTPI badge.

To the right of Dashboard, there are three more tabs on this page: **Billing**, **Enhance Your Listing**, and **Account**. We come to the money when we click **Enhance Your Listing**. This costs \$199 per year. The website does not provide any information as to what the enhancements to your listing might be other than to say it is for “increased exposure.” The **Billing** tab is not active unless you have an enhanced listing (as I did not). The **Account** tab allows you to change your password and name. There is also a check box to “Notify me about listing reviews and listing traffic.”

NAEA obviously has an interest in selling the enhanced listings. At the time this article was written in the first part of August, you could allocate \$50 out of the \$199 to WSEA by clicking a box.

---

## IRS Practitioner Liaison Meeting

By Michelle Gross, EA

Trish and I attended the annual IRS Practitioner Liaison Meeting, held at the Milwaukee IRS office in June. It was my first Liaison Meeting and I was impressed with the presenters and information provided.

The meeting was hosted by **Ann Makres, Senior Stakeholder Liaison**. There were representatives from WSEA, NATP, WICPA, major tax prep firms, and several legal aid services. I was surprised by the number of professionals in attendance; I assumed there would have been a full house.

**Zachary Stenga, Criminal Investigator**, focused on identity theft and stolen identity refund fraud (SIRF). The FBI reports that there were 438,800,000 records acquired through computer compromises in the US, while our population was 319,084,000. He indicated the current trend is theft of payroll records.

**Barbara Johnson, Local Taxpayer Advocate**, shared Pub 1546, [\*The Taxpayer Advocate Service of the IRS\*](#), which explains how the Taxpayer Advocate Service works with taxpayers when they need assistance.

**Holly Hoffman, Taxpayer Advocacy Panel (TAP) Member**, is one of the volunteers who works to improve IRS service and customer satisfaction. TAP consists of six committees that review different categories of taxpayer issues. They meet monthly and submit recommendations to the IRS throughout the year. Holly serves as chair on one of the subcommittees that is working on two issues: (1) express services in Taxpayer Assistance Centers and (2) transcript acceptance issues with college financial aid offices. Feedback and suggestions can be submitted on the TAP website at [www.improveirs.org](http://www.improveirs.org). Holly is also available to attend or speak at organizational events where taxpayers or tax practitioners voice their concerns with IRS policies.

**Rena Skeen, Director, IRS Field Collection Midwest Area**, discussed employment tax compliance efforts. As of September 2015, there was \$59 Billion in tax due from unpaid 941 returns. Revenue Officers are dropping in on businesses that have stopped making tax deposits or whose deposits are significantly reduced.

**Vicki Gibbons, Deputy Administrator, Division of Income, Sales, and Excise Tax (WI DOR)**, reported the addition of 99 new positions in the 2015-2017 budget, which led to reorganization of the State Audit Bureau. It is hardly surprising that the State will return to portrait orientation for tax forms.

**Anna Martinez, Taxpayer Advisory Specialist**, announced that the Milwaukee Taxpayer Assistance Center (TAC) has gone to **appointment-only service**. Taxpayers should call 1-844-545-5640 if they need face-to-face

service at the Madison or Milwaukee TAC office or Rothschild/remote assistance available at the Marathon County Job Center. **Please note**, TAC does not accept returns for filing from tax practitioners unless they are accompanied by a payment.

**Ann Makres** discussed the process and improvements the IRS has made in working identity theft cases. She shared the Affordable Care Act page on [www.irs.gov](http://www.irs.gov), including Health Care Tax Tips, Q&As and [www.irsvideos.gov](http://www.irsvideos.gov) webinars on Affordable Care Act topics. She discussed payment options including Direct Pay and the new PayNearMe option on the IRS site.

---

## The Challenge of Determining Correct Tuition Credits

By David J. Fayram, EA

Angela Terrell received Form 1098-T for 2011 from Hampton University in Hampton, Virginia showing the following amounts:

Block 1. Payments received for qualified tuition and related expenses	BLANK
Block 2. Amounts billed for qualified tuition and related expenses	\$1,180
Block 8. Check if at least half-time student.	BLOCK CHECKED

Based on this document, what amount would you use to compute the tuition credit? I can give you a hint that the IRS thought the amount should be zero and issued a statutory notice of deficiency stating that position. Angela thought the amount should have been \$3,640. She went to Tax Court and won. [*Angela A. Terrell v. Commissioner*, TC Memo. 2016-85, May 2, 2016, CCH Dec. ¶ 60,599(M).] At the time this article was written, the appeal period to the DC Circuit was still open. Angela was *pro se*.

There are two dramatic points about this case. The first is the presumptive correctness which the IRS accords to Form 1098. Block 1 shows no qualified payments were received. Therefore, there should be no credit. The IRS has a long history of insisting that taxpayers somehow audit the university and force it to amend the Form 1098. [*Ramon Portillo and Dolores Portillo v. Commissioner*, 5<sup>th</sup> Circuit, 932 F2d 1128 (6/11/1991), CCH Dec. 91-2 ¶ 50,304. See this case from 1991 for an example with Form 1099.]

The second problem for tax return preparers is how to get from zero to \$3,640. Most taxpayers have no idea what number should be in any of the boxes. Even reviewing taxpayer records might not provide enough information to determine the credit. Do return preparers have any responsibility to the government and/or taxpayers if the numbers on the 1098-T turn out to be wrong?

Angela did obtain her records from Hampton University which consisted of "...an account statement from Hampton University, on official letterhead, showing an itemized schedule of ... charges for the spring 2011 semester." The statement listed the transactions below.

November 23, 2010	Invoice for class starting in 2011	2,460
January 10, 2011	Second invoice	1,230
January 20, 2011	Payment made by lender to University	(3,690)
January 25, 2011	Invoice for fees	50
February 9, 2011	Refund	(100)

Now we can see that the Block 2 number is from 2011 invoices (1,230 + 50 – 100). Block 1 was incorrect because payments were actually made (3,690 + 50 - 100).

I think Judge Albert G. Lauber might have liked Angela. He went out of his way to quote her “good-natured” comment from the transcript about this error, “My school kind of dropped the ball a little bit where they’re supposed to verify the amount [of tuition paid during 2011].”

Now let’s look at our situation as tax return preparers. If Angela was a client for preparation of her 2011 return, had the 2011 Form 1098-T and told the preparer that she thought the Form 1098-T was wrong, it would have been necessary to obtain the account statement from the University in order to correctly prepare the return.

Regulations section 1.25A-5(e) covers the timing rules regarding tuition payments. In order to be counted for a given year, the payment must be made in the year for a class that begins in the year with one exception. If a payment is made for a class which starts in January, February or March of the next year, the payment is counted in whichever year it is paid.

If the payment is financed with a loan, the date of payment can be a problem. If the creditor is not related to the University, then the payment is credited when the University receives it from the creditor. If the taxpayer does not know this date, then the regulation requires the date to be the last date for payment prescribed by the University. If the creditor represents the University (as an agent for example), then the payments are counted on the date the taxpayer pays the creditor.

In Angela’s case, the creditor was independent of the University, so the disbursement from the creditor to the University was counted on January 20, 2011. If the payment for the invoice dated November 23, 2010 had been made in 2010, it would have counted for 2010 under the exception described above. If the taxpayer could not establish the date, then a 2010 payment would have been counted on the last date for payment, which would probably have been in 2011.

The rules for refunds of qualified tuition and related expenses are covered in lengthy and complicated paragraph (f) in the regulation. The trouble here is that a refund made in a subsequent year might render the original credit incorrect and require an amended return. This solution is far too simple for the IRS, which does not want to process a bunch of amended returns. Instead, the IRS prefers that the problem be fixed in the year of the refund.

If the payment and the refund are made in the same year, as was the case with Angela, then the net amount is used. [Paragraph (f)(1)].

If the refund had been made in 2012, but before the 2011 return had been filed, then the refund should reduce the payments used to compute the credit for 2011. [Paragraph (f)(2)].

If the 2011 return had already been filed at the time of the refund, then the 2011 return should have been refigured with the reduced tuition expense. The increase in tax, if any, for 2011 should have been added to the tax for 2012 (or the year of the refund). [Paragraph (f)(3)]. The same method is used for changes in scholarships or grants received by the taxpayer. [Paragraph (f)(5)].

The rules for reporting refunds on Form 1098-T are not provided by this regulation, but there are blocks on the form for, “4. Adjustments made for a prior year,” and “6. Adjustments to scholarships or grants for a prior year.” There is no block on the form to indicate the year the adjustment applied to. One can certainly imagine many mistakes in completing these two blocks. Even if the numbers are correct, it would be necessary to review the payment history to determine the correct amount of credit for the current return.

The IRS method does avoid problems with interest on any balance due from a prior year. Also, it might be easier than shepherding an amended return through processing at the IRS.

These rules are complicated. A complete review would require client records at least for the current and a prior year. Records also might be necessary from the school and from the bank if the payments were financed. This is probably not practical in most cases, but taxpayers should be closely questioned about the amounts reported on Form 1098-T. At least the story should hang together well enough to justify the numbers on the tax return. And then there is our own invoice. How much will we be able to charge for this work?

### **Note on Recent Changes**

As a result of the problems described in this article, the reporting requirements for educational institutions have been changed. Here is the paragraph from proposed regulations regarding “amount paid” versus “amount billed.”

ADVANCE RELEASE Documents, Proposed Amendments of Regulations, NPRM REG-131418-14, Internal Revenue Service, (Aug. 1, 2016)

Explanation of Provisions...

*1. Changes to Implement TPEA and PATH...*

*b. Changes to section 6050S reporting to conform with TPEA 1098-T requirement...*

*ii. PATH eliminates option to report amount billed.*

These proposed regulations also implement the amendment to section 6050S(b)(2)(B)(i) under PATH, which eliminates the option for eligible educational institutions to report the aggregate amount billed for qualified tuition and related expenses for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date. Eligible educational institutions have informed the IRS that they cannot implement the necessary changes in technology to enable reporting of aggregate payments of qualified tuition and expenses for the first year in which the statutory amendment applies, calendar year 2016. Therefore, in Announcement 2016-17, I.R.B. 2016-20, the IRS stated that it will not impose penalties under section 6721 or 6722 against an eligible educational institution required to file 2016 Forms 1098-T solely because the institution reports the aggregate amount billed for qualified tuition and expenses rather than the aggregate payments of qualified tuition and related expenses received. Thus, for calendar year 2016, no penalties will be imposed if an educational institution fails to implement the PATH's amendment to section 6050S(b)(2)(B)(i) and continues to report the amount billed.

Apparently educational institutions are off the hook for 2016 penalties, but what about us? What about taxpayers? One would hope that EAs will point to this paragraph as evidence for “reasonable cause” to avoid penalties in cases where the two become confused.

---

## **Acquisition Debt Limit of Unmarried Co-Owners**

By David J. Fayram, EA

IRC §163(h)(3)(B) ACQUISITION INDEBTEDNESS.—

- (i) IN GENERAL.—The term “acquisition indebtedness” means any indebtedness which—
  - (I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and
  - (II) is secured by such residence.
- (ii) \$1,000,000 LIMITATION.—The aggregate amount treated as acquisition indebtedness for any period shall not exceed \$1,000,000 (\$500,000 in the case of a married individual filing a separate return).

OK. Simple enough, but the stumbling block should have been obvious from the start. What if two people who are not married to each other want to use \$1 million each to finance a house they will own and live in together? Since the house should be a “qualified residence of the taxpayer” for each taxpayer, one would think this arrangement would be perfectly OK. Unfortunately, the IRS does not agree with this interpretation. [In what follows, I will ignore home equity debt up to \$100,000, but analogous arguments apply.]

### **CCA 200911007**

Here the taxpayers were unmarried co-owners of the house where they lived together and they were jointly liable for the mortgage. Each of them wanted to use \$1 million of the debt as acquisition debt on their individual returns. The IRS rejected this position arguing that the limit applied to each house and not to each taxpayer and then went on to say, “the plain language of the statute does not support this interpretation.” I guess it is not so easy to determine what the “plain language of the statute” means. The CCA offers the following gobbledygook in further explanation.

Under IRC § 163(h)(3)(B)(i), acquisition indebtedness is defined, in relevant part, as indebtedness incurred in acquiring a qualified residence of the taxpayer—not as indebtedness incurred in acquiring taxpayer’s *portion* of a qualified residence. The entire amount of indebtedness incurred in acquiring the qualified residence constitutes “acquisition indebtedness” under § 163(h)(3)(A)(i).

This CCA did not change the authority much because no court had ruled as to what the plain language of the statute meant. Many tax return preparers might have argued that it should not matter if two separate taxpayers buy houses next door to each other or if the two houses are connected, they should each get the \$1 million limit.

### **Sophy and Voss**

The situation changed on March 5, 2012 when the Tax Court agreed with the IRS. The citations are confusing because Charles J. Sophy and Bruce H. Voss filed separate petitions in Tax Court. They jointly owned and lived in two residences and each wanted to use his own \$1 million limit. The Tax Court consolidated these two cases, *Charles J. Sophy v. Commissioner; Bruce H. Voss v. Commissioner*, CCH Dec. 58,965, 138 TC 204 (March 5, 2012).

The IRS and the taxpayers agreed on all the facts and the case was submitted fully stipulated. The only argument concerned the limit and how it was applied. Judge Cohen stumbled through the statutory language and concluded:

It appears that this phrase refers to the total amount of indebtedness with respect to a qualified residence and which is secured by that residence. The focus is on the entire amount of indebtedness with respect to the residence itself.

Thus, he concluded that there was only one \$1 million to be divided between the two taxpayers.

Starting with 2012 returns (and 2011 returns prepared after March 5, 2012), the situation with regard to authority was changed by this decision. Taking the position that each taxpayer got a \$1 million limit would probably have required disclosure on the return in order to avoid penalties. A better approach might have been to concede the issue on the original returns and then file a protective claim for refund citing the appeal to the Ninth Circuit (see below).

The consolidated cases were appealed to the Ninth Circuit under “Voss” and not Sophy. [Bruce H. Voss, Petitioner-Appellant v. Commissioner, Respondent-Appellee. 2015-2 CCH ¶ 50,427, (August 7, 2015).] The Ninth Circuit had as much trouble with the statute as everyone else, but it did manage a clear statement of the problem:

Is the \$1.1 million debt limit the limit on the qualified residence, irrespective of the number of owners, or is it the limit on the debt that can be claimed by any individual taxpayer?

Then, it gives the citation which appears at the beginning of this article and admits that the statute is silent as to how to apply the limit. Realizing that it must come to a conclusion somehow, it goes on as follows:

The statute is *mostly* silent about how to deal with co-ownership situations, but it is not *entirely* silent. Both debt limit provisions contain a parenthetical that speaks to one common situation of co-ownership: married individuals filing separate returns ... The parentheticals provide half-sized debt limits “in the case of a married individual filing a separate return.”

The **Ninth Circuit** uses this thought to claim that the statute “speaks in per-taxpayer manner” and furthermore “the very inclusion of the parentheticals suggests that the debt limits apply per taxpayer.” It argues that, if the limit applied to the residence, then the parenthetical would be superfluous because the limits for the two taxpayers would total \$1 million. Finally, since the statute expressly provides that married filing separately taxpayers can each deduct interest paid on up to \$500,000 of qualified indebtedness, Congress implied that the \$500,000 debt limit does not apply to unmarried taxpayers who co-own property.

The Ninth Circuit blasted CCA 200911007 finding it not particularly thorough, exhaustive, or helpful. Furthermore, it pointed out that such memoranda lack the weight of law and should not be given “Chevron-style deference.”

If it is true that the limit applies to each person and not to each house, then the possibilities are endless. What about an abandoned spouse filing as head-of-household? Would this spouse get a \$1 million limit while the spouse using married-filing-separately gets an additional \$500,000? What about unmarried family members? Would children each get an additional \$1 million if they were joint owners? What if there were five unmarried joint owners? I hope none of these shows up at my office.

## Wisconsin

The Ninth Circuit Court of Appeals covers the following states: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. For taxpayers in these states, the Tax Court decision in Sophy has been reversed. Mr. Sophy and Mr. Voss **each** get a \$1 million limit. Taxpayers in these states who conceded the issue on their original returns might want to file amended returns if the statute of limitations is still open.

Wisconsin is **not** on this list of states. In fact, Wisconsin, Illinois and Indiana are covered by the **Seventh Circuit**. Since it has not yet had a case similar to these, it has not ruled on the matter. For Wisconsin taxpayers, the Tax Court decision and the CCA define the law. Therefore, claiming the limit of \$1 million for each person on an original return probably requires disclosure.

The possibility exists to file amended returns back to 2011 using the arguments made by the Ninth Circuit if the statute of limitations is still open. Even though these arguments are not binding on the IRS for Wisconsin taxpayers, there is nothing preventing it from approving the amended returns if it wants to. If it rejects the amended return, then the taxpayer would be able to sue in Federal District Court and appeal to the Seventh Circuit. Of course, representation by an expensive lawyer would be necessary for this. Filing amended returns

would also keep the returns alive in case the Tax Court changes its mind when the next case arises in that venue.

[NOTE: The IRS acquiesced in *Voss vs. Comm.* On 8/1/2016, after this article was finished.]

---

## Statutory Notice “Presumption of Correctness”

By David J. Fayram, EA

In my article in the last issue about burden of proof in Tax Court, I mentioned the “presumption of correctness” which applies to statutory notices issued by the IRS. As a procedural matter, taxpayers must establish that they have something to litigate, that there is something wrong with the statutory notice. If this is not done to the satisfaction of the Judge, then the case dies at that point. In a Tax Court case, the showing would normally appear in the petition.

In my reading since I wrote that article, I actually noticed a case where the taxpayer failed to meet the burden of going forward! I will provide a brief description of what happened to Mr. Godman in order to help readers become more informed about the Judicial Branch and to show what happens when a taxpayer remains uninformed and *pro se*.

The case is from the **Tenth Circuit Court of Appeals**<sup>1</sup> which had received it from a District Court in **Colorado**.<sup>2</sup> You will notice a number of things by reading these **endnotes**. First comes the name of the case followed by the Commerce Clearing House US Tax Case number and volume of the book containing the case. CCH publishes two books per year. Then comes another cite listing the numbers used by the Court to identify the case. Thus you have two places to look up the case. A careful reading will also reveal that “Ingebrigsten” is spelled two different ways. Endnotes are a real pain in the neck!

You might also notice that the United States is the plaintiff and Mr. Goodman is the defendant. This is the opposite of the situation I described in the last issue where the taxpayer filed a petition with the Tax Court and became the “petitioner” whereas the United States was the “respondent.” The reason for this is that the United States became the aggressor in District Court by asking the Court to reduce its tax lien to a judgement against Mr. Goodman. This was necessary in order for the government to sell Mr. Goodman’s property. Mr. Goodman was trying to prevent this.

I’d like to start with the most important consideration: the amount of money involved. The decisions use several different amounts, but the Tenth Circuit used \$1,375,062.69. It was up to Mr. Goodman to decide if it might have been worthwhile to hire a lawyer. He chose not to do so – or perhaps he did try to hire a lawyer and could not find one who would take the case.

The words “*pro se*” are usually in italic type because they are Latin words. Despite the spelling, *Black’s Law Dictionary* says they are pronounced, “pròw síy.” I try to remember to pronounce it this way, but the English pronunciation has become common. The definition from the dictionary is, “For himself; in his own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court.”

In addition to the definition, it is important to know that courts do feel a special responsibility to *pro se* parties. Apparently the courts feel that this is necessary to assure a fair hearing to these parties. District Court Judge Jackson realized that forbearance was important to this situation and placed the following paragraph near the beginning of his decision:

### ***Pro Se Plaintiff***

When a case involves a *pro se* party the court will “review his pleadings and other papers liberally and hold them to a less stringent standard than those drafted by attorneys.” However, “it is not the proper function of the district court to assume the role of advocate for the *pro se* litigant.” A broad reading of a *pro se* plaintiff’s pleadings “does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based ... conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based.” *Pro se* parties must “follow the same rules of procedure that govern other litigants.” [Quotations are supported by citations which have been omitted.]

This would be the same situation as a taxpayer who filed his or her own petition in Tax Court.

This statement decided the case because Mr. Goodman was not able to meet his burden of “alleging sufficient facts on which a recognized legal claim could be based.” That is, he could not overcome the presumption of correctness which is accorded to the IRS. Instead he raised a number of frivolous arguments. These arguments were considered by a total of five different judges. The first was United States Magistrate Judge Hegarty, who concluded as follows, “...Goodman has failed to meet his burden to rebut any presumptions in favor of the United States. Moreover, Goodman filed a second motion for summary judgment, asserting the same or similar arguments, out of time and without leave of the Court.” This finding was after viewing Mr. Goodman’s pleadings liberally and under a standard less stringent than that applicable to pleadings filed by lawyers. The second was District Court Judge Jackson, who agreed with Judge Hegarty.

A panel of three judges at the Tenth Circuit also agreed. For example, “In the present context, the IRS was entitled to judgment as a matter of law if (1) the assessment was supported by a minimal evidentiary foundation ... thereby raising a presumption that it was correct, and (2) Mr. Goodman failed to present substantial evidence to overcome the presumption.”

This is really bad. Mr. Goodman had such worthless arguments that, in the opinion of five judges who should have regarded the arguments sympathetically, they could not overcome the low bar accorded to the IRS by the presumption of correctness.

#### **Endnotes:**

<sup>1</sup>*United States of America, Plaintiff-Appellee v. Laurence R. Goodman, Defendant-Appellant, and County of Gilpin, Colorado; Colorado Department of Revenue; Patrick Maxwell; Jan Ingebrigtsen, Defendants*, 2013-1 USTC ¶ 50,364. US Court of Appeals, Tenth Circuit; 12-1481, June 6, 2013.

<sup>2</sup>*United States of America, Plaintiff v. Laurence R. Goodman; County of Gilpin, Colorado; Colorado Department of Revenue; Patrick Maxwell; Jan Ingebrigtsen, [sic] Defendants*, 2012-2 USTC ¶ 50,503. US District Court, D. Colorado; CIV. 11-cv-00274-RBJ-MEH, August 2, 2012.

---

**>> Newsletter content, articles, comments, suggestions, ideas, tidbits, Q & A are always welcome.** as are Getting to Know You articles. Submissions can be in any format, but preferably a Word document. Please submit articles to: Dave Fayram, EA & USTCP at: [dave@madcitytax.com](mailto:dave@madcitytax.com) or Mary Olson EA, at: [tax@theiolataxplace.com](mailto:tax@theiolataxplace.com).

>>This Newsletter is intended to provide accurate and complete information to tax professionals. Although every effort has been made to assure that accuracy, neither the Wisconsin Society of Enrolled Agents nor the individual writers assume any responsibility whatsoever for the accuracy or completeness of the information contained herein. The reader should independently verify all the material before applying it to a particular fact situation, and should independently determine both the tax and nontax consequences of using any particular technique before recommending its implementation.

---