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In This Issue:

IRS Notice IR-2014-73: New FBAR Relief for Residents and Non-Residents

By Hertsel Shadian and David C. Streicher[1]

On June 18, 2014, the IRS issued Notice IR-2014-73, which liberalizes the already generous FBAR relief for US taxpayers not residing in the US, and also provides some relief to US residents.

(References to "FBAR" mean foreign bank account reporting, and references to "FBAR form" mean FinCEN Form 114, which was previously Form TDF 90-22.1. "Nonresident" means a US citizen or green card holder who is not living in the US.)

In general, relief under Notice IR-2014-73 is available only if the failure to file FBAR forms was not willful. For example, failure to file is non-willful if due to negligence, inadvertence, mistake or a good faith misunderstanding of law. Also, relief under Notice IR-2014-73 is not available if the IRS has already initiated a civil examination of the taxpayer's returns for any period.

Relief for Nonresidents (Streamlined Foreign Procedures)

By way of background, FBAR penalties arise if a taxpayer fails to disclose offshore bank accounts (by filing FBAR forms) and also fails to report the related income. (There are no FBAR penalties if the taxpayer reports all of the income in the offshore accounts.) Penalty relief has always been available to US citizens living overseas. Through use of the "old" streamlined procedure of IR-2012-65, these nonresident taxpayers were able to avoid FBAR penalties (and all other penalties) by (1) filing delinquent or amended income tax returns for the prior three years and paying all delinquent tax and interest, (2) filing delinquent FBAR forms for the prior six years, (3) providing a reasonable cause explanation, and (4) satisfying "low compliance risk" criteria, namely less than $1,500 of delinquent tax due for each year and avoiding several risk factors.

Under the "new" streamlined procedure for nonresidents, the IRS has removed Nos. (3) and (4) above, but added the requirement that the taxpayer file a three-page certification. The certification must include specific reasons for failing to report income on offshore accounts and failing to file the related FBARs. Also, if the taxpayer relied on a professional advisor, his or her name, address, telephone number and summary of advice must be included. The delinquent income taxes will not be subject to the 20% accuracy related penalties under Code Section 6662.

The relief described above is more generous than that allowed to US residents, who must complete Nos. (1) and (2) above, file the new three-page certification, *and* pay a 5% penalty. This is covered in more detail below.

Relief for US Residents (Streamlined Domestic Procedures)

Until June 18, 2014, US residents who failed to file FBAR forms and report income from "offshore" accounts on their US tax returns had significant penalty exposure and were not eligible for most relief provisions. IRS Notice IR-2014-73 changes this, and provides additional options.

As described above, penalty relief has always been available to US citizens living overseas. But this avenue was not available to US residents. A common example is a US resident who inherits a foreign account and fails to file FBAR forms and report nominal interest income. Such a person was relegated to either (i) paying a 27.5% penalty under the Offshore Voluntary Disclosure Program (OVDP), or (ii) filing the delinquent FBARs with reasonable cause penalty waiver requests and hoping the $10,000/account/year penalty would be waived.

IRS Notice IR-2014-73 liberalizes relief available to US residents. Under the new domestic streamlined procedure, US residents can become tax compliant without exposure to the regular FBAR penalties by paying the "Title 26 miscellaneous offshore penalty" equal to 5% of the highest aggregate year-end balance in offshore accounts over the last six years.

A US resident must take the following action in order to use the streamlined procedure: (1) file Form 1040X amended income tax returns for the prior three years and pay all delinquent taxes and interest, (2) file FinCEN 114 FBAR forms for the prior six years, (3) file a six-page certification with detailed information about offshore accounts for the prior six years, (4) pay the 5% penalty. The certification at No. (3) above must include specific reasons for failing to report income on offshore accounts and failing to file the related FBAR forms. Also, if the taxpayer relied on professional advice, the advisor's name, address, telephone number and summary of advice must be included.

General Treatment Under Streamlined Procedures

According to Notice IR-2014-73, tax returns submitted under either the foreign or domestic streamlined procedures will be processed like any other return submitted to the IRS. Consequently, receipt of the returns will not be acknowledged by the IRS and the streamlined filing process will not culminate in the signing of a closing agreement with the IRS.

Furthermore, returns submitted under either the foreign or domestic streamlined procedures will not be subject to IRS audit automatically, but may be selected for audit under the existing audit selection processes applicable to any US tax return and may also be subject to verification procedures in that the accuracy and completeness of submissions may be checked against information received from banks, financial advisors, and other sources. Thus, returns submitted under the streamlined procedures may be subject to IRS examination, additional civil penalties, and even criminal liability, if appropriate. The IRS advises that taxpayers who are concerned that their failure to report income, pay tax, and submit required information returns was due to willful conduct and who therefore seek assurances that they will not be subject to criminal liability and/or substantial monetary penalties should consider participating in the OVDP (i.e., 27.5% penalty) and should consult with their tax professional or legal advisers.

After a taxpayer has completed the streamlined filing compliance procedures, he or she will be expected to comply with U.S. law for all future years and file returns according to regular filing procedures.

Coordination Between Streamlined Procedures and OVDP

Once a taxpayer makes a submission under either the streamlined foreign or domestic procedures, the taxpayer may not participate in OVDP. Similarly, a taxpayer who submits an OVDP voluntary disclosure letter pursuant to OVDP FAQ 24 on or after July 1, 2014, is not eligible to participate in the streamlined procedures.

Notice IR-2014-73 advises that a taxpayer eligible for treatment under the streamlined procedures who submits, or who has submitted, a voluntary disclosure letter under the OVDP (or any predecessor offshore voluntary disclosure program) prior to July 1, 2014, but who does not yet have a fully executed OVDP closing agreement, may request treatment under the applicable penalty terms available under the streamlined procedures.

NOTE: A taxpayer seeking such treatment does not need to opt out of the OVDP but will be required to certify, in accordance with the instructions set forth in the streamlined procedures, that the failure to report all income, pay all tax, and submit all information returns, including FBARs, was due to non-willful conduct. As part of the OVDP process, the IRS will consider this request in light of all the facts and circumstances of the taxpayer's case and will determine whether or not to incorporate the streamlined penalty terms in the OVDP closing agreement.

Conclusion

The new streamlined procedure for US residents is an improvement, albeit painful. For example, if a US taxpayer failed to file FBAR forms and report nominal interest income on an offshore account of only $100,000, the cost of compliance is $5,000 plus professional fees for amended returns, delinquent FBARs and the certification. Some taxpayers may try to avoid all penalties by relying solely on a reasonable cause penalty waiver request. Under this route, the taxpayer must still file amended income tax returns and delinquent FBARs. The risk is that the taxpayer might be tagged with a $10,000/year/account penalty in lieu of the 5% penalty. On balance, most taxpayers will probably gulp and accept a 5% penalty in lieu of the uncertainty and risk of the alternatives.

Footnote:

1. Hertsel Shadian is an attorney in Tualatin, Oregon, whose practice focuses on taxation, business, estate planning and nonprofit law. David C. Streicher is an attorney at Black Helterline LLP, where he specializes in taxation, business and estate planning.

Avoiding Penalties Under the Affordable Care Act

By Kara Backus[1]

Readers who follow the headlines related to "Obamacare" or the Patient Protection and Affordable Care Act (the "ACA") are likely familiar with the phrases "Individual Mandate" and "Employer Mandate." This article provides a brief overview of how your clients may be affected by the mandates and other ACA rules, with a particular focus on the financial and tax consequences that can result from a failure to understand and adhere to the many new requirements.

The Individual Mandate

As of January 2014, under the ACA's "Individual Mandate," individuals who do not have healthcare coverage through their employers, their spouses, Medicare, Medicaid, or another source must independently obtain "minimum essential coverage" through a state healthcare exchange or face a penalty. Taxpayers can be penalized for any members of their household who do not have sufficient coverage, including their spouses (if filing jointly) and dependents. The annual penalty under Internal Revenue Code (the "Code") section 5000A is equal to the greater of two amounts: (i) the sum of the "flat dollar amounts" charged for each member of the taxpayer's household; and (ii) a percentage of the taxpayer's "applicable income," determined after exemptions and the standard deduction. The penalties are phased in as follows:

- **Flat Dollar Amount**: For each member of the taxpayer's household, the flat dollar amount equals $95 in 2014; $325 in 2015; and $695 in 2016 and later years.
- **Percentage of Applicable Income**: The percentage of applicable income equals 1% in 2014; 2% in 2015; and 2.5% in 2016 and later years.

Taxpayers are only charged half of the flat dollar amount for dependents under age 18. The total of all flat dollar amounts a taxpayer can be charged is capped at 300% of the flat dollar amount chargeable for the year. For example, if a married couple filing jointly for the 2014 tax year has three minor children and earns $85,000 per year (after exemptions and standard deductions), and no member of the family has minimum essential coverage, the family would be subject to a penalty equal to $850, which is the greater of: (i) $285 (two adult taxpayers at $95 each plus three dependent children at $47.50 each, capped at 300% of the $95 flat amount); and (ii) $850 (1% of $85,000).

The maximum penalty for noncompliance with the Individual Mandate is the cost of the national average premium for the minimal "bronze-level" healthcare plan offered through a state exchange for the relevant family size. For 2014, this amount is $204 per month for an individual, or $2,448 annually. For a family, the maximum amount that can be charged for the year is $12,240.

The Employer Mandate

Employers with 50 or more full-time or "full-time equivalent" employees are subject to what is referred to as the ACA's "Employer Mandate": they are required to provide coverage to their full-time employees, defined as those employees working 30 or more hours per week, or face penalties.

To initially determine if an employer qualifies as an "applicable large employer" subject to the mandate, the hours worked by part-time employees are combined to total a certain number of full-time equivalent employees. If the total number of actual full-time employees and full-time equivalent employees is 50 or more, the employer is an applicable large employer. Two primary penalties apply for plan years beginning on or after January 1, 2015:

1. Under Code section 4980H(a), if an employer fails to *offer* healthcare coverage to at least 95% of its full-time employees (and their dependent children), and at least one full-time employee obtains a premium credit or cost sharing reduction from the employee's state healthcare exchange, the employer will become subject to a penalty equal to $2,000 times the number of the employer's full-time employees in excess of 30 (i.e., the law allows a margin of error of 30 employees), including those full-time employees to whom the employer has already offered and/or provided coverage. For 2015 only, applicable employers are only required to offer coverage to 70% of full-time employees, and the penalty applies to the number of full-time employees in excess of 80.
2. Under Code section 4980H(b), if an employer offers coverage to its full-time employees, but the coverage is not "affordable" or fails to provide "minimum value," the employer will become subject to a penalty equal to $3,000 for each full-time employee who receives a premium credit or cost sharing reduction from the employee's state healthcare exchange, capped at the maximum penalty under item 1, above.

Coverage is considered affordable if the cost of premiums for the employee is less than 9.5% of the employee's household income, typically measured by the individual's IRS Form W-2 income. A plan is considered to provide minimum value if at least 60% of the total allowed cost of benefits, based on actuarial value, is paid by the employer.

For 2015 only, employers with between 50 and 99 full-time and full-time equivalent employees are exempt from the Employer Mandate. The above-described rules apply to these employers for plan years beginning on or after January 1, 2016. In other words, starting in 2015, the mandate applies to employers with 100 or more full-time and full-time equivalent employees. Given the significant penalties under the Employer Mandate, however, any employer with more than 50 employees should seek benefits or tax counsel to assess the applicability of the Employer Mandate and identify any benefit changes that may be necessary.

Reporting and Enforcement of the Individual and Employer Mandates

The ACA includes significant new reporting requirements for employers and other entities that will allow the Internal Revenue Service ("IRS") to impose penalties on individuals who have not obtained adequate coverage and on employers who have failed to provide adequate coverage to full-time employees.

Since January 2013, employers have been required to include on each employee's IRS Form W-2 the aggregate cost of healthcare coverage provided by the employer. With certain exceptions, employers must report the cost of any employer-sponsored group health plan, whether insured or self-insured, that is excludable from the employee's gross income under Code section 106, whether paid by the employer or by the employee. Although it is not clear from available guidance, it is likely that existing information reporting penalties apply to an employer for failure to report this information on the employee's Form W-2.

Starting in 2016, as required under Code sections 6055 and 6056, insurers, self-insured plans, and applicable large employers will be required to provide detailed reports to the IRS regarding the cost and type of coverage provided to employees or insureds in the prior year, the names of individuals who are covered, and for how many months of the year the individuals were covered. The IRS recently released draft instructions for IRS Forms 1094-C and 1095-C, which will facilitate such reporting by employers subject the Employer Mandate, and IRS Forms 1094-B and 1095-B, which are intended for reporting by insurers and certain sponsors of self-insured plans.

Other Significant Tax Penalties and Fees under the ACA

In addition to the Individual and Employer Mandates, the ACA also imposes other significant tax penalties and fees on individuals and employer plans. Some of the primary taxes and penalties are listed below.

- **Noncompliance with PHSA.** An excise tax equal to $100 per day with respect to each individual to whom such failure relates may apply to the sponsor of a health benefit plan for failure to adequately amend the plan to comply with ACA requirements codified under the Public Health Services Act ("PHSA").

- **Cadillac Tax.** Effective in 2018, the ACA imposes a "Cadillac tax" on certain high-cost group health plans. An excise tax of 40% is levied on health insurance benefits exceeding $10,200 for individual coverage or $27,500 for family coverage, indexed to inflation. The excise tax is generally imposed on the employer sponsoring the plan or the insurance issuer.
- **Net Investment Income Tax.** Since 2013, the Net Investment Income Tax imposes a 3.8% tax on individuals, estates and trusts with certain investment income above a threshold amount.
- **Supplemental Medicare Tax.** Since 2013, the supplemental Medicare tax imposes a 0.9% tax on wages and self-employment income exceeding $250,000 for married couples filing jointly or $200,000 for individual filers. Employers are required to withhold the supplemental tax on wages exceeding $200,000.
- **Reinsurance Fee.** A temporary fee will be imposed on health insurance issuers and self-insured plans to fund a Transitional Reinsurance Program in years 2014 to 2016, which is intended to shift risk in the initial years of the health exchanges from the individual market to the group health plan market. For 2014, the fee is equal to $63 per covered life per year, with gradual decreases in 2015 and 2016.
- **PCORI.** The Patient-Centered Outcomes Research Institute ("PCORI") fee funds a research institute that studies health outcomes, clinical effectiveness, and the risks and benefits of certain medical treatments and services. The PCORI fee is imposed through 2019 on health insurance issuers and plan sponsors. For plan years ending on or after October 1, 2013 and before October 1, 2014, the fee is $2 per covered life.

Footnote:

1. Kara Backus is an attorney in the Employee Benefits Practice Group at Lane Powell PC.

Taxation in Popular Culture: *National Treasure Franchise*[1]

By Dan Eller[2]

In the first installment of the *National Treasure* franchise, we meet Benjamin Franklin Gates, portrayed by Nicholas Cage; and his trusty sidekick Riley Poole, portrayed by Justin Bartha. Gates has found what he believes to be clues to the existence of a massive, hidden cache of – you guessed it – a nation's treasure purportedly accumulated and passed down over many centuries. Gates and Poole ultimately employ the assistance of Dr. Abigail Chase (Diane Kruger), an expert in historical documents, to search for the treasure.

As the movie winds down – spoiler alert! – the trio locates and secures the national treasure. Showing his incredible knowledge and valuation expertise, Gates surveys a room piled high with treasure and immediately ascertains its value to be exactly one billion dollars. We learn that Gates and Poole were offered a 10% finders' fee, but settled on and split a 1% fee. The movie ends in grand style with Gates and Dr. Chase now living in a historically significant mansion and Poole driving a fresh new Ferrari.

In the second installment, we see Poole witness the repossession of his fresh new Ferrari. Gates asks what happened, and Poole reports that an accountant had set up a corporation on an island that did not exist and assured him that is how rich people handle these types of things. Ultimately, the Internal Revenue Service ("IRS") audited Poole and slapped him with a huge fine and penalties, leading him to state, "Do you want to know what the taxes are on five million dollars?[3] Six million dollars."

Looking back on these movies, I had always remembered these as presenting the classic scenario of *Cesarini v. United States*,[4] in which taxpayers found a treasure trove in a piano purchased at auction. In that case, the taxpayers initially reported the value of the treasure trove on their income tax return, but later requested a refund. In the end, the court held the value of the treasure trove was taxable to the taxpayers. Thus, my recollection went, Gates and Poole probably sold the National Treasure and that somehow led to Poole's tax problems.

Where I went astray was forgetting over the years that Gates and Poole[5] did not sell the National Treasure but, rather, received a finders' fee. Receipt of such a finders' fee is good old-fashioned Section 61 income, absent some exception (see below). Although this significantly simplified the analysis, it was kind of a bummer because a nod to *Cesarini* would have been cool.

In any event, we are left to ponder Poole's assertion that his receipt of $5M led to his being taxed in the amount of $6M. How can that be? Is it just more

Hollywood hyperbole, or could this be an accurate statement? To get to the bottom of this, we need to make a few factual assumptions. For example, we need to assume that whatever governmental agency or charity paid the finders' fee to Poole, it did not withhold any amount. That is plausible, given this type of payment is usually reported on a Form 1099. One might quibble about whether the government would make such a payment without withholding something, but let's just chalk that up to the magic of the movies.

We also need to assume that, although Poole believed his accountant to have set up a corporation on an island that did not exist, the accountant had set up something – a corporation and/or bank account – in a foreign "tax haven." Given how clueless Poole is generally (other than when the chips are really on the line, in which cases he is money), it is plausible Poole glossed over these details. Similarly, we understand him to mean "tax, penalties, and interest" when he reports the "tax" on $5M is in fact $6M. We will also assume that Poole's federal tax rate is 35%.[6] Finally, we need to assume that, despite the gravity of the civil tax consequences associated with his tax noncompliance, he was not criminally prosecuted.[7]

If Poole's accountant went so far as to improperly offshore Poole's entire $5M finders' fee (minus the value of the Ferrari[8]) and then claimed Poole had no other sources of income, it is possible the accountant would have advised Poole not to file a return. In the case of a filed return that fraudulently omits substantial amounts of taxable income, Section 6651 may be used to impose a penalty in the amount of 75% of the amount of tax that should have been shown on the return. It is unlikely that this is what occurred, however, because any capable accountant advising a highly-skilled treasure hunter would probably have at least caused a return to be filed.

That leads me to conclude that Poole's properly and timely-filed return may have omitted the entire $5M from his taxable income. Under Section 6662, that could subject Poole to a penalty in the amount of at least 20% of the tax understatement, meaning he would owe 35% of the $5M for the income tax due, plus an additional 7% (20% of the 35% tax). Here, however, we assume that, in addition to understating the tax liability, Poole's noncompliance also includes his failure to report foreign financial assets as required by Section 6662(j). Thus, the 20% penalty is increased to 40%, thereby bringing the total through this penalty alone (and the failure to pay in the first place) to approximately 50% of the $5M he received as a finder's fee.

I know what you are thinking – Poole was a mere sidekick. By definition that means he is hapless (except when he is money in the clutch, *supra*); moreover, he relied on an accountant. Surely his circumstances evidence reasonable cause and no wilful neglect. That should mean all of these penalties (but not the tax) should be waived, correct? Well, this is Hollywood, so no.

Although the date of the sequel – 2007 – suggests that Poole's actions occurred before the IRS began actively and publicly pursuing offshore activity,[9] the laws were on the books nonetheless. Assuming Poole's understanding of the corporation on the non-existent island has some factual foundation, at a minimum Poole would have had at least one foreign bank account that he directly or indirectly controlled. As such, he would have been subject to the foreign bank accounting reporting ("FBAR") rules.

Under the IRS's view of the FBAR rules, willful noncompliance can result in penalties in the amount of 50% of the value of each undisclosed account. Assuming Poole's Ferrari and other "fun money" expenditures totaled $500,000, Poole would have offshored approximately $4.5M. If the IRS discovered Poole's noncompliance within one year, Poole could have been subject to a 50% penalty on that $4.5M amount, if the IRS concluded his actions were willful. That would have added another 45%[10] to the 49%, above, bringing his total penalties to 94% of the $5M he received for the finders' fee. Given that the IRS has stated that each return is a separate "violation" for purposes of the FBAR penalties, additional penalties could be asserted for each subsequent year of noncompliance, up to six years. We will assume only one such penalty was imposed.[11]

Although other penalties could have been imposed, we need not dwell too much on those when we consider the issue of interest. *National Treasure* came out in 2004. If the events depicted in the movie occurred in or about 2004, the underpayment rate would have been approximately 5%, compounded daily. That increased to 8% by 2007, the year in which the sequel debuted. Unfortunately, we cannot tell how much time passed between Poole's receipt of the finder's fee and the IRS's collection activity. If we assume approximately three years have transpired, it is likely an additional 25% had accumulated, due to compounding of interest. That would bring the total to in excess of 120% of the original finders' fee. That is right in line with Poole's statement that the "tax" on the $5M he received was $6M.

In conclusion, I give the *National Treasure* franchise a Section 5000B (taxation of indoor tanning services) rating – although we did not give it much thought after we first saw it, we thought it was cool nonetheless. Additionally, the numerical calculations add up from movie to movie, and Poole's infamous tax statement could actually pencil out – even though it is likely he could have substantially reduced the amount with a little effort. Heck, (spoiler alert!) kidnapping the President of the United States in the second movie resulted in the President returning the Ferrari to Poole "tax-free.[12]" On balance, the diversion offered by each movie coupled with a rich tax compliance subplot makes these two movies "must-sees."

Footnote:

1. NATIONAL TREASURE (Walt Disney Pictures 2004) and NATIONAL TREASURE: BOOK OF SECRETS (Walt Disney Pictures 2007).
2. Dan Eller is an attorney in the Portland, OR office of Schwabe, Williamson & Wyatt, who focuses his practice in the areas of tax and business law, advising clients with both transactional and controversy matters. Dan is currently Chair-Elect of the Oregon State Bar Taxation Section. Many thanks to Marc Sellers for providing excellent observations on an early draft of this article.
3. This just shows how incredible Gates is at valuation. Gates and Poole ultimately received $5M each – the combined $10M is exactly 1% of $1B. Again, this illustrates how incredibly talented Gates is in issues of valuation of treasure.
4. 296 F. Supp. 3 (N.D. Ohio 1969).
5. Lost in the plot's twists is the fact that Gates and Poole had employed the assistance of Dr. Chase. She apparently netted nothing from this arrangement other than a short-term relationship with Gates and a role in the sequel, neither of which created even so much as a tax deduction for Poole.
6. For purposes of this review, we will set aside any potential state tax ramifications of Poole's situation. For example, if Poole resided in Oregon, the tax, penalties, and interest could be substantially higher than discussed herein. We will also disregard rate brackets and consider the entire amount subject to the marginal rate; it makes the math easier.
7. This could almost be a given. In these two movies, the characters commit many felonies, yet they suffer no real consequences of any kind. It is almost like they are famous people or politicians, or something.
8. It is unclear whether Poole purchased the Ferrari outright or purchased it on terms. We are led to believe the IRS repossessed the vehicle, so it is probable Poole had purchased it outright or at least had substantial equity in it; otherwise, the secured lender might have already repossessed it.
9. The current escalation of foreign tax noncompliance enforcement began early in 2009 when the IRS announced its Offshore Voluntary Disclosure Program. Additional laws, such as Section 6038B, which create penalty consequences, are disregarded purposes of this review.
10. ($4.5M multiplied by 50%) divided by $5M.
11. We will also assume Poole was unable to show his actions were nonwillful, largely because he is a hapless sidekick.
12. Plus, it should be underscored that an actor who has an entire Facebook page devoted to putting his face on things (https://www.facebook.com/OfficialNicolasCagesFaceOnThings) played a highly respected history scholar – and nobody questioned that!

IRS Application for Smaller 501(C)(3) Nonprofits Made Easier

Cindy Cumfer[1]

On July 1, 2014, the IRS announced in IR-2014-77 that it was changing its application for exemption under section 501(c)(3) of the Internal Revenue Code. Certain smaller nonprofits are eligible to file for exemption using a new Form 1023-EZ. The longer form, Form 1023, is 12 pages plus numerous schedules that some nonprofits have to fill out, while the new Form 1023-EZ is slightly more than two pages. Form 1023-EZ can only be filed electronically.

There is some uncertainty regarding the use of Form 1023-EZ. At this point, here is what we know.

An organization is eligible to file Form 1023-EZ if it anticipates gross receipts of $50,000 or less in any of the next three years and, if it is already in operation, must not have gross receipts $50,000 or less in each of the last three years. The organization must also have assets of $250,000 or less. Churches, schools and hospitals cannot use Form 1023-EZ. Additional criteria for eligibility are listed in the eligibility worksheet attached to the instructions.

Advantages to filing Form 1023-EZ include:

1. Form 1023-EZ is much easier to fill out. The IRS does not require a description of what the organization does, but simply requires the filer to check a box such as "charitable," "educational," "scientific," etc. that reflects the organization's exempt purpose and activities. The IRS does not provide any information about what those terms mean, so filers are likely to decide for themselves. This appears to allow virtually guaranteed §501(c)(3) exemptions for small organizations that file!
2. The IRS does not require that Form 1023-EZ be accompanied by copies of the articles of incorporation, articles of amendment, bylaws, etc. All that can be filed (electronically) is the Form 1023-EZ.
3. The filing fee for Form 1023-EZ is $400. The Form 1023 filing fee is $400 if gross receipts are under $10,000, but $850 if gross receipts are above that amount. Thus, most filers will save $450 by filing Form 1023-EZ.
4. The processing for Form 1023-EZ can be much faster than that for Form 1023. I just had a client report that it got the exemption two weeks after sending in the Form 1023-EZ.

Disadvantages include:

1. Form 1023-EZ is not set up so that an attorney can easily file, as the signer must be an officer. The attorney could list his or her name on the contact line, but cannot file a Form 2848 (Power of Attorney) with Form

1023-EZ because there is no mechanism (at least now) for filing attachments. If an attorney wants to file the form, I suggest getting an authorization from the client to electronically sign on behalf of the client upon the client's approval. Keep a signed Form 2848 in your records for your protection and in case the IRS asks later. Attorneys may want to file the Form 2848 so that questions from the IRS are directed to counsel, and not the organization.

2. Because the IRS does not accept attachments with Form 1023-EZ, there is no opportunity to explain "Yes" answers in the application, which indicate that the organization may not be eligible for tax-exempt status under section 501(c)(3). The IRS is silent on how to provide explanations. Does this mean it will deny the exemption? Put it in the "slow pile" for further questions? Make a quick call to obtain an explanation? The IRS agent I contacted did not know how the Service will handle this although some earlier filers report that a "Yes" does not always mean the slow pile. On the other hand, Form 1023 provides an opportunity to explain answers in the application, which may keep the filer in the "fast pile." Any organization that answers "Yes" to a question in Part III of Form 1023-EZwill need to weigh which way to go.
3. Because there is no way to provide explanations about activities, the organization does not learn whether the IRS really believes its activities are exempt. IRS rules on what activities are exempt are complex. The average person and the average attorney will often not guess correctly. For example, are programs for veterans "charitable"? Most people probably assume they are, but this is not so. Groups providing services to veterans get an exemption if their services otherwise qualify—for example, they work with low income or injured veterans—but not on the grounds that serving veterans is in itself an exempt activity.

If the IRS grants an exemption in response to a filed Form 1023-EZ, and later decides that the activities are not exempt, it is not clear what action it will take. The organization's exempt status may become an issue if an organization begins to receive gross income of more than $50,000 a year and files Form 990-EZ with detailed disclosures about what it does. Normally, when the IRS grants an exemption for the activities described in the application, the IRS is precluded from reconsidering (provided the activities do not change). However, since the filer of Form 1023-EZ only checks a box to indicate that its activities are charitable, educational, etc., the IRS can probably look back and claim that the filer was not truthful. Who knows?

To access Form 1023-EZ and more information, go to the IRS website at http://www.irs.gov/uac/About-Form-1023EZ.

Footnote:

1. Cindy Cumfer is a Portland attorney specializing in the formation, taxation and governance of nonprofit organizations. Her website is www.cumfer.net.

New Tax Lawyer Committee

The New Tax Lawyer Committee (NTLC) provides professional development, leadership, and educational opportunities to lawyers new to the tax law practices. The NTLC has several work groups that organize speaker presentations, social gatherings, and other programs and events.

The NTLC meets at noon on the first Monday of each month to discuss the NTLC's upcoming and ongoing programs. Typically, there is also time for an open discussion of issues that members are currently considering in their practice. The conference number for these calls is 888-891-0496, pass code 787403. Meetings are open to all members of the Section and provide a chance for new tax lawyers to get more involved in the Section.

The NTLC also hosts a happy hour on the second Tuesday of each month that is open to all members of the Section. The date and location of each happy hour is available on the website and is announced by email on the Tax Section's listserv. No rsvp is required.

In addition to the monthly meeting and happy hour the NTLC also operates a mentor program that pairs experienced tax lawyers with newer members of the Section. The NTLC also hosts a series of brown bag CLEs where lawyers can learn about entry-level tax topics. Watch the website and listserv for more details about these programs.

Participating in the NTLC can be a great opportunity to network with other practitioners, develop leadership skills, and gain exposure to substantive tax issues. Getting involved is as simple as attending monthly meetings or events or signing up for the mentor program. Visit the website (www.osbartax.com) or contact 2014 NTLC Chair Jeremy Babener (babenerj@lanepowell.com) or 2015 NTLC Chair Caitlin Wong (cmw@bhlaw.com) for more information.

Mark A. Golding Wins Award of Merit

By Columbine Quillen[1]

Mark A. Golding is the recipient of the 2014 OSB Taxation Section Award of Merit. The award is granted to a tax lawyer who personifies the OSB's Statement of Professionalism and serves as a role model for other lawyers. Key considerations include the candidate's reputation, conduct, leadership, pro-bono service, and service within the bar and the community. In addition, the recipient must be accomplished within the tax field. This year we recognize and honor Mark A. Golding for exemplifying professionalism in the practice of tax law in the State of Oregon.

Mark received his B.S. in Mathematics from Lafayette College, his J.D. cum laude from Brooklyn Law School, his L.L.M. in Taxation from New York University School of Law Graduate Tax Program, and his M.B.A. from the University of Southern California. Mark is a member of both the Oregon and Washington State Bars.

Mark is currently Of Counsel at Parsons Farnell & Grein, LLP. He has practiced law for over thirty years, focusing on limited liability companies, partnership and corporate tax law, owner and executive compensation, mergers and acquisitions, real estate tax law, like-kind (tax free) exchanges, complex LLC and partnership arrangements, business and investment succession planning, insurance tax law, and charitable tax planning and organizations.

Mark is a former board member and chair of the OSB Tax Section; he was a driving force behind forming the Portland Tax Forum in 1988, and continues to work tirelessly to ensure its excellence. Mark has also been an active member of the Oregon Tax Institute planning committee and the Estate Planning Council of Portland. In addition, he has taught business tax law at Willamette University College of Law.

Mark is well known for his work as a member of the joint task force of the OSB Business and Tax Sections, which were responsible for drafting and amending Oregon's Limited Liability Company Act. He is the author of numerous articles and conference materials covering various aspects of federal taxation and Oregon and Washington limited liability companies. Mark speaks about federal taxation and Oregon and Washington LLCs across the Pacific Northwest and the nation.

Mark's wife and family are the center of his life. In his free time Mark is a sports enthusiast who makes ritual pilgrimages to SAFECO field. When not enjoying sports, Mark enjoys the Oregon coast, rain or shine! Mark thanks the Section for selecting him. "I'm honored and humbled and I'm sure that there are others who deserve it as much or more. In many ways the Award of Merit is a lifetime achievement award, one handed out when at the end of the road. I hope that isn't the case here."

Fotetnote:

1. Columbine Quillen is a clerk at The Larson Law Firm and is taking the February 2015 Oregon bar exam.

The Executive Committee of the OSB Taxation Section would like to recognize and honor those among us who exemplify professionalism in the practice of tax law in the State of Oregon. In 2009, we presented the Taxation Section's first Award of Merit to David Culpepper. Subsequently, the award has been presented to Robert Manicke (2010), John Draneas (2012), the Honorable Henry C. Breithraupt (2013), and Mark Golding (2014).

We are now accepting nominations for the Taxation Section's fifth Award of Merit. Nominations must be received by March 15, 2014. There is no guarantee that an Award will be presented during 2015; the Executive Committee is striving to ensure that the Award is only given to candidates who truly deserve it. The Award will be granted to the candidate the Committee believes to best personify the Oregon State Bar's Statement of Professionalism, and best serves as a role model for other lawyers. Factors considered include competence, ethics, conduct with others and the courts, and pro bono contributions to the Bar and the tax system. The candidate's accomplishments must fall within the tax field. If a recipient is selected, the Award will be presented at the 15th Annual Oregon Tax Institute.

The nomination form, and the criteria for the Award is available online at www.osbartax.com/Award-of-Merit.

Future Events

Nov 19, 2014
Tax Section: End of the
Year Party
5:30 – 7:30 p.m.
The University Club

Nov 20, 2014
Portland Luncheon Series:
Department of Revenue Update
12:00 - 1:30 p.m.
Presenter: James Bucholz, Oregon
Department of Revenue

Dec 01, 2014
NTLC Monthly Meeting
12:00-1:00 p.m.
Hosted by Jeremy Babener
Lane Powell PC

December 4, 2014
Portland Tax Forum:
State & Local Tax
Presenter: Darien Shanske
Multnomah Athletic Club

Dec 30, 2014
Portland Luncheon Series:
Federal Tax Update
12:00 - 1:30 p.m.
Presenter: Mark Prater, U.S.
Senate Committee on Finance

Jan 05, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

January 15, 2014
Forty-Fourth Annual Estate Planning Seminar
9:00 a.m. – 5:00 p.m.
Oregon Convention Center

Jan 21, 2015
NTLC Happy Hour or Pubtalk

Jan 22, 2015
Portland Tax Forum:
Corporate Taxation
Presenter: Mark J. Silverman
Multnomah Athletic Club

Feb 02, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Feb 18, 2015
NTLC Happy Hour or Pubtalk

Mar 02, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Mar 18, 2015
NTLC Happy Hour or Pubtalk

Apr 06, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Apr 15, 2015
NTLC Happy Hour or Pubtalk

May 4, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

May 14, 2015
Portland Tax Forum:
Estate Planning
Presenter: Louis Nostro
Multnomah Athletic Club

May 20, 2015
NTLC Happy Hour or Pubtalk

Jun 01, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Jun 17, 2015
NTLC Happy Hour or Pubtalk

Jun 18, 2015
Portland Tax Forum:
Business Succession Tax Planning
Presenter: David Herzig
Multnomah Athletic Club

Jul 06, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Jul 15, 2015
NTLC Happy Hour or Pubtalk

Aug 03, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Aug 19, 2015
NTLC Happy Hour or Pubtalk

Sep 07, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Sep 16, 2015
NTLC Happy Hour or Pubtalk

Oct 05, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Oct 21, 2015
NTLC Happy Hour or Pubtalk

Nov 02, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Nov 18, 2015
NTLC Happy Hour or Pubtalk

Dec 07, 2015
NTLC Monthly Meeting
12:00-1:00 p.m.

Dec 16, 2015
NTLC Happy Hour or Pubtalk