



# National Conference of CPA Practitioners

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## CONGRESS MUST INCREASE FUNDING TO THE IRS

### ISSUE:

Current and budgeted future funding to the IRS is inadequate for the Service to perform its duties properly.

### BACKGROUND:

Nina E. Olson, the National Taxpayer Advocate wrote, in her 2017 Annual Report to Congress: *“The IRS absolutely needs more funding. It cannot answer the phone calls it currently receives, much less the phone calls it can expect to receive in light of tax reform, without adequate funding.”* The IRS has lost about 20,000 full-time staffers since 2010. That’s a big slice out of workforce that is now about 80,000. About one-third of the compliance staff, those who get taxpayers to pay, was lost. There were twice as many revenue officers in 1954, and there are fewer criminal investigation special agents than at any time since 1971. The number of audited individual tax returns is at its lowest point in 14 years. Criminal investigations are down 11 percent from last year and more than a third below 2010. The number of recommended prosecutions dropped by more than a third from four years ago.

The IRS budget has steadily declined since 2010 (except for a small increase in 2016). This decline has occurred despite the increase in number of returns filed annually. Additionally, the Service is tasked with assisting an ever-increasing number of citizens with guidance and procedures due to new laws and court rulings.

### RECOMMENDATION:

We agree that the IRS should be held accountable for all spending (as every other governmental agency) to insure taxpayer funds are not wasted. However, we believe that the IRS needs additional funding to improve its technical infrastructure and to properly service the taxpayers and their representatives.

## ISSUES CONCERNING REGULATION REFORM

### ISSUE:

'Two-for-One' directive could hinder tax reform implementation.

### BACKGROUND:

President Donald Trump signed the "two-for-one" executive order Jan. 30, 2017. Since then, only a handful of regulations have actually been taken off the books, according to a recent review conducted by Bloomberg News. The White House says it has cut nearly 1,000 regulations, but the vast majority of those have been proposed rules that haven't made their way through the machinery of government, the review found. With the implementation of the new Tax Cuts and Jobs Act and probable technical corrections bills the Service will be strained to issue authoritative guidance without issuing regulations. Acting Assistant Secretary for Tax Policy Gregory F. Jenner stated: "If that has to be honored, it's going to become far more difficult" for the IRS and Treasury Department to act quickly. The executive order directing federal agencies to eliminate two regulations for every new one they issue could complicate the IRS's task of implementing tax reform legislation.

### RECOMMENDATION:

"Two for One" directive should not apply to the regulations required because of the new Tax Cuts and Jobs Act and any subsequent technical corrections legislation.

## NEW PARTNERSHIP AUDIT REGIME

### ISSUE:

Tax preparers need additional time and guidance to assist partnerships and partners with the new partnership audit program. Although there is much guidance expected, many issues need to be considered. Partnership agreements need to take in all of the potential repercussions of the Bipartisan Budget Act of 2015.

### BACKGROUND:

In November of 2015 the Bipartisan Budget Act of 2015 replaced the TEFRA partnership audit rules enacted in 1982.

Several new procedural rules for federal income tax audits will soon be in place. These rules are slated to be in effect beginning in 2018.

Partnerships still remain as flow through entities and audited the same as they were under TEFRA, however, taxes due under audit or judicial proceedings may now be collected at the partnership level. This also includes all penalties and interest. Any adjustment to the year(s) under audit, are taken into account in the year in which the audit is concluded. All of the adjustments are netted together and taxed at either the highest individual rate in effect or the highest corporate tax rate in effect for the audit year, or “review year”. The IRS, however, is charged with taking into account several factors when imputing the underpayment. Factors include, but are not limited to, the character of income, or loss deduction adjustment; the type of entity owning the partnership interest; partners paying their allocable share of the taxes owed at their level; etc.

We should note that certain partnerships may elect out of the new regime. The criterion for electing out is:

- 1) The Partnership has no more than 100 partners. Clarification is required if one partner has multiple partnership interests in the partnership; do multiple interests count as one partner or more than one partner in the count total?
- 2) The partners need to be either individuals, C corporations, S Corporations, a Foreign Corporation that would be treated as a C Corporation if it was a domestic corporation, or an Estate of a decedent.
- 3) The partnership must notify each partner that it has made an opt-out election.

These elections must be made annually and also have specific rules for making the election if there is a partner that is a Sub-chapter S Corporation.

NEW PARTNERSHIP AUDIT REGIME  
(continued)

A partnership will need to appoint a partnership representative who will receive all notices and be the sole decision maker on behalf of the partnership regarding IRS audits and court proceedings. The registered representative will be able to act autonomously without regard to the other partners.

Partnerships need to explore certain standards such as when to opt-out, new partner indemnification for a review year prior to their ownership, procedures for selecting a partnership representative, alternative payment elections, escrow provisions for when a partner disposes of an interest, allocation of tax payments, basis issues affecting old and new partners regarding audit adjustments, inside and outside basis tracking (elections are made annually), how does the partnership tax plan for the best possible outcome concerning the imputed tax in a way that doesn't put the representative at risk of being sued?

Additionally, the count of every shareholder of the S Corporation that counts toward the 100 partner limit is a concern. What are the responsibilities of an S Corp to its shareholders and in terms of reporting shareholder changes to the partnership which it owns? What are the concerns of trusts owning S Corps and the effect on the shareholder count?

How will the individual states deal with the new federal audit procedures and what gets reported to the states if the partnership pays the tax at the partnership level?

Additional taxes will be assessed at the highest personal rate. This rate needs clarification in light of the Tax Cuts and Jobs Act.

Potentially much more than what has been presented here?

RECOMMENDATION:

Delays in implementation of the law is absolutely necessary until much needed guidance comes forward and practitioners can help their clients to properly plan for this new audit regime. Additionally, the "Two for One" directive should not apply to the regulations required under this provision.

## REQUIRED MINIMUM DISTRIBUTIONS (RMDs)

### ISSUE:

NCCPAP has consistently advocated for tax law simplification. One area of tax law that is ripe for simplification is the rule requiring a taxpayer to withdraw a RMD from each type of retirement account. Once the Individual Retirement Account (IRA) owner calculates the RMD for each IRA that he or she owns, the IRA owner can withdraw the total amount from one or more of the IRAs. Similarly, a 403(b) contract owner must separately calculate the RMD for each 403(b) contract that he or she owns, but can take the total amount from one or more of the 403(b) contracts. However, RMDs from other types of retirement plans, such as 401(k) and 457(b) plans, have to be taken separately from each of those types of plan accounts.

### BACKGROUND:

There are many different types of retirement plans; 15 are listed on the IRS website. Many taxpayers have more than one type of plan when they reach age 70½. This age is important because at 70½ taxpayers must begin taking an annual required minimum distribution (RMD) from all of their retirement plans except if they are currently employed by the organization that is the sponsor of the plan or their account is a ROTH Individual Retirement Account (ROTH IRA). The amount that must be withdrawn is based on the account balance at the end of the immediately preceding calendar year, the plan owner's age during the current year and a factor from one of two IRS approved tables depending on the age of the beneficiary.

### RECOMMENDATION:

A taxpayer should be permitted to take his/her entire amount from any of the retirement accounts from which the taxpayer must take an RMD. This change creates simplification with no reduction in tax revenue.

## TAX PREPARATION AND REPRESENTATION FEES

### ISSUE:

The Internal Revenue Service had implemented the PTIN program effective January 1, 2011. While legitimate paid tax return preparers have registered and received a new or refreshed an existing PTIN, there is still the problem of the underground economy where people provide services for cash, and then do not report the income. There are many tax return preparers who do not sign tax returns as is required, nor do they report the income generated by the provided service.

### BACKGROUND:

The Internal Revenue Code and associated regulations, rulings, etc. have become extremely complex in recent years. More than 140 million individual tax returns were filed last year, and more than half of them were prepared with the help of a paid return preparer. Additionally, the National Taxpayer Advocate has reported that IRS studies have shown that a significant number of unlicensed preparers do not report all of their earnings and prepare less compliant returns.

### RECOMMENDATION:

The deduction for tax preparation and representation fees should be deductible on Page 1 of Form 1040 as an adjustment to AGI, with the requirement that the preparers' ID number (PTIN) be listed in order to allow the deduction. This will generate a direct reduction to AGI and taxpayers will not lose the tax benefit. NCCPAP believes that more taxpayers would insist on deducting the fees if they were certain that there would be a tax benefit. Furthermore, unlicensed tax preparers would be more likely to sign returns and report the fee income. As alimony payments are currently a Page 1 adjustment with the requirement of the recipient's Social Security Number for cross-referencing purposes, such a mechanism is already in place. It is our belief that the IRS should collect enough currently unreported revenue from non-reporting preparers to mitigate the potential loss of tax revenue lost by allowing these fees on Page 1 of Form 1040.

By implementing the NCCPAP proposal, the IRS will have a mechanism to track paid preparers as to signing and reporting the income from tax preparation work. By requiring the ID number of the preparer and placing the deductibility of the preparation fees on Page 1 of Form 1040, the taxpayer will be more aware of the deduction and demand that the required information be provided. Additionally, the preparers will now be more aware of the requirement to sign the return and will be subject to the Tax Preparation Regulation Proposal for registration, competency, and continuing education, thereby improving tax compliance.

## TAX SIMPLIFICATION

### ISSUE:

There are many items in the tax code that can be changed to simplify the tax law. Congress and the President constantly talk about making the tax law simpler and fairer for the taxpayer. A simpler tax law will make tax compliance easier for the taxpayer to comply and for the government to administer.

### BACKGROUND:

Several items have become unnecessarily complex and do not impact revenue. Often this is the result of additional regulations which have become law. These complications must be simplified by corrections in the law. Some of these issues are:

1. Definitions of Dependent – There are a number of different definitions of what qualifies as dependent. It would be simpler if the definition was in one place. We need to have a definition of what a dependent is and then the tax code should reference that definition as needed.
2. Pension Distributions – Right now there are age requirements in relation to pension distributions. The age requirements are 59 ½ for allowing to start taking distributions without penalty and 70 ½ for the required minimum distribution. This is confusing for the taxpayer to determine the half year requirement. The age requirements should be changed to the actual birthday such as 60 and 70 rather than the way it is currently done.
3. Pension Distributions – When a taxpayer is required to take the required mandatory distributions (“RMD”) they need to do the calculation based on value of each different type of pension or IRA account and then take the amount from each type of account. The distribution should be based on the value of all pension and IRA accounts and the distributions should be allowed to take the RMD from any pension or IRA account that the taxpayer want to use as long as the taxpayer take the required RMD.
4. Adjusted Gross Income – There are different sections of the tax code that define Adjusted Gross Income (“AGI”). There should be a definition of AGI that is a standard definition that is then used by the various code sections that need to do a calculation based on the AGI.
5. Medical Insurance Deduction – generally small business owners can get a deduction for the cost of medical insurance. The problem is that depending on what type of organization the taxpayer is using to operate their business the deduction will be handled differently. In some cases it is taken as a straight deduction against income. In a S Corporation it is added to the owners W-2, deducted by the owner personally. In a partnership or sole proprietorship it is not deducted by the business, it is taken as a deduction on the taxpayer’s personal tax return.

RECOMMENDATION: These, and other issues, should be reviewed for tax simplification.