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The Magazine for Tax and Accounting Professionals

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## DEEPEN CLIENT RELATIONSHIPS AND TRUST THROUGH FIXED-FEE PRICING



## USING E-SIGNATURES IN THE TAX AND ACCOUNTING PROFESSION



## FIRST-TIME PENALTY ABATEMENT: HOW YOU CAN USE THIS OFTEN-OVERLOOKED IRS WAIVER TO HELP YOUR CLIENTS



# Main Street Practitioner

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## PRESIDENT'S MESSAGE

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*By Harlan Rose*



Our NSA Spring Board Training and Meeting was held May 17-18 in the Minneapolis, MN area. NSA business was conducted, upcoming Bylaw proposals were discussed, and interested officer, governor, and state director election intentions were announced.

Many NSA Board members traveled to state affiliated organizations in June. I had the privilege to attend state organization meetings in Indiana, Virginia, North Carolina, and Illinois. Then I had the opportunity to attend NASBA's Eastern Regional Meeting June 26-28 in Chicago before returning home. "Are compilations/preparations to be part of an "attest" or "non-attest" function?" That is the question. NASBA and AICPA Boards are trying to make their decision on this and choose appropriate financial statement wording format during the next few months. For our NSA non-CPA members, we will continue to monitor any changes needed.

By now all NSA members should have received via email the Bylaw proposals to be acted on at our 68th Annual NSA Meeting. As times change, NSA must also be ready to address changes for NSA members' future and growth. The National Society of (Public) Accountants services all Main Street Practitioners—in both accounting and tax. This is my final "President's Message" in the *Main Street*

*Practitioner*. In the next publication, the newly installed leadership will address our future. Thank you to all members who helped make 2012-13 a successful NSA year! In the meantime, staff and leadership continue to put together the final touches for all members at the Indianapolis 68th Annual Meeting, August 21-24, 2013. It is not too late to join us in Indy.

Truly yours in NSA,

A handwritten signature in dark ink that reads "Harlan Rose". The signature is fluid and cursive.

HARLAN ROSE, EA, ABA  
NSA President 2012-2013

# LEGISLATIVE LINK

## NSA BYLAW PROPOSALS FOLLOW-UP

By Robert Thoma

[Click here to review the Bylaw proposals](#)

As you know, there are a number of Bylaw amendments and other governance proposals that will be considered at the NSA Annual Meeting in Indianapolis in August. These proposals range from “house-keeping” items, such as streamlining our Articles of Incorporation to the proposal to change the name under which our Society does business. In an effort to keep everyone informed, I sent out a detailed explanation of all of the proposals on June 27. A synopsis of the proposals are located in this magazine issue.

I am writing today to invite all members to attend the Annual Meeting and to participate in a detailed discussion of each of the proposals at a meeting hosted by the NSA Constitution and Bylaws Committee on Friday, August 23, at the Indianapolis Hyatt Hotel. The meeting will begin at 8:30 AM. The Committee’s outside counsel will be present to discuss Delaware law as it relates to the need to change our Bylaws with respect to voting. Although Committee members have been following the discussions of the proposals on the NSA website, we also look forward to hearing directly from members. So, please plan on joining the discussion in Indianapolis on August 23. The Annual Meeting registration form is available at <http://www.nsacct.org/education-events/nsa-annual-meeting-expo/register-now>.

The Committee has also noticed there are some misconceptions surrounding the voting proposal and would like to offer the following clarifications.

**1. Would trial members or associate members be allowed to vote on the proposals in Indianapolis?**

No. Article II, Section 12 of the Bylaws clearly states that, “Only Active Members and Life Members shall be eligible to vote or hold office.” Trial members and Associate Members are not considered either Active Members or Life Members and are therefore ineligible to vote in Indianapolis. Importantly, the voting proposal also does not propose a future change to this Section of the Bylaws.

**2. Are we voting on a proposal to allow online voting?**

No. The Committee debated whether to allow online voting, and concluded that Delaware law requires only that the members allowed to vote by the Bylaws—Active Members and Life Members in our case—be allowed to vote in person or by proxy. The voting proposal merely reflects this provision in the law and, consistent with Delaware law, leaves to the Board of Governors the decision whether online voting should be allowed.

A copy of the Bylaw proposal, unanimously adopted by the Committee, may be found here, with the voting procedures set out in proposed Article XV.

Thank you for your consideration of ALL of the proposals, which I believe will result in a better and stronger NSA.

Sincerely,

Robert Thoma, Administrative Chair  
NSA Constitution and Bylaws Committee



# DEEPEN CLIENT RELATIONSHIPS and TRUST

## Through Fixed-Fee Pricing

*By Jim Boomer and Drew West*

Imagine arriving tired and weary, late at night in a strange city. You hail a taxi for what you hope is a quick ride to your hotel. But with no knowledge of the area, you have no idea how long the ride will take or what the final fare will be. Isn't it unsettling to watch the meter tick up and up, while you just hope you have enough cash when you finally reach your destination?

While CPA firms may see little in common between themselves and taxi drivers, hourly billing basically takes our clients for a faithful ride in the backseat. Just like you in that unfamiliar taxi, clients have little idea about the path we take to deliver the end product, or how long it will take. Wouldn't an agreed-upon price upfront make both sides more comfortable

entering into a transaction—whether it's a cab ride across town or business advisory services?

### FIXED FEES | A BALANCING ACT

Many firms long attached to hourly billing feel uneasy about the risks of fixed-fee pricing. Even firms sold on the merits of switching still face internal resistance, fueled by the mindset of sticking to “how it's always been done.” Yet, with timely access to the right information, firms can confidently turn to fixed-fee pricing to reduce risk on both sides of the relationship, increase trust, and gain a competitive advantage.

Any firm considering fixed-fee pricing must consider both the advantages and the risks:

#### Advantages

- **Stand Apart.** In a profession dominated by the almighty hour, why not use fixed-fee pricing to set yourself apart? As one firm that has made the leap puts it, “Those who are different, inspire!”
- **Increase Client Confidence.** In fixed-fee pricing, fear and uncertainty are replaced by confidence. Clients are involved in establishing the price—and the ceiling is known and accepted by all.
- **Generate Cash.** Billing schedules made against milestones lead to consistent and predictable cash flow.
- **Fund Your Work.** Many fixed-fee arrangements receive an initial portion (or all) of the fee up front, ensuring you the leverage of cash-in-hand before the work starts.
- **Collaborate.** The accuracy required of a fixed-fee approach mandates a scoping discussion—a great opportunity to understand client needs, and often leading to additional services above the original scope.
- **Grow Trust.** Regular client discussions, proactive offers of additional services, and up-front pricing deepen clients' trust in you, your firm, and your services.

#### Risks

- **Costly Pre-Work.** The benefit of increased client collaboration could be offset by the amount of time it takes—potentially at the expense of other billable work. Don't underestimate this, and ensure your pricing or margin covers this effort.
- **Scoping Accuracy.** Fixed-fee pricing thrives on absolutes—not ambiguity. Engagement letters must clearly define the scope of what you will do and, just as importantly, what you won't do. Inaccurate estimates can also lead to low margins or lost revenue if you could have earned more by hourly billing.
- **Staff Discipline.** You can't rely on hourly billing to cover work outside the original scope, so the entire staff must understand the importance of change orders, and be trained to use them.
- **Financial Administration.** Internal financial administration must accommodate the revenue recognition differences between fixed-fee and hourly billing models. Don't underestimate time and effort possibly needed to modify financial systems to handle both approaches.
- **Widespread Adoption.** Fixed-fee pricing represents a major cultural shift and must have the complete embrace of your firm's leadership. Their strong support cascades to staff buy-in at all levels, since every role is an important contributor to the success of a fixed-price model.



## PROJECT MANAGEMENT REQUIRED

Breaking free of hourly billing means confidence in your engagements—confidence driven by accurate status of projects, appropriate guidance for your people, and knowledge about what works. For this kind of project management, your practice management system should deliver visibility into information, control over people and their work, and insight into the results.

Practice management systems with the following attributes provide the information you need to price, staff, manage, and deliver successful fixed-fee engagements.

**Visibility.** Visibility is all about the past, present, and future. To scope accurately, you want easy access into past work and results, so ensure all the firm's critical data is easily accessible—from either a single environment or a tightly integrated system. Present status is key—you want to know immediately when engagements are off schedule or budget, so look to dashboards and alerts to provide margin, utilization, or realization KPIs to partners and all involved staff. Looking to the future, effective resource planning means knowing who's currently available and their future capacity. Connect constantly-updated staff availability to the sales pipeline of fixed-fee engagements, so you can effectively plan resources.

**Control.** Control is about guiding engagements to the profits you expect. Don't take on costly inefficiency; make sure your invoicing and billing system has the flexibility needed for fixed-fee pricing—such as automatic invoicing triggered by progress milestones. Of course, doing this means progress has to be accurate, so once again look to your practice management system to enforce prompt collection of the hours spent on each project. Finally, control how people are treated. Ensure your practice-management system fairly measures each resource's true contribution, and accurately calculates realization or utilization targets—so staff working on early phases aren't penalized if revenue is realized at the end of the engagement.

**Insight.** Insight is going beyond the simply visibility of facts and status, to having true knowledge. Practice management systems that combine information together are good at providing knowledge, because people then have a path to connect outcomes back to the decisions behind them. Put in a much better place for deep analysis of past activity, the single set of historical data in a good practice management system helps consistently determine appropriate scope-of-work, accurately estimate costs, and even evaluate the historical effectiveness of involved staff. As insight gets increasingly deeper, fixed-fee engagements become easier to accurately scope, and increasingly less risky to deliver.

## MAKING THE LEAP | SOME RECOMMENDATIONS

You've weighed the benefits and challenges and you're ready to make the leap. What are some initial steps to take as you head out on your journey?

1. **Gain Buy-In.** Ensure the entire team is on board—you're impacting culture, and that's no small undertaking. Before diving in, conduct strategic planning sessions to gain consensus and set a roadmap for implementing fixed-fee pricing that includes initiatives, responsible parties, and due dates.
2. **Evaluate Readiness.** Assess your ability to access the information you need to effectively manage projects. Ready your practice management capabilities to support the firm's fixed-fee approach.
3. **Switch Your Pitch.** Focus engagement letters on value creation. Move important risk-mitigation language to an addendum to the main agreement.
4. **Select Early Adopters.** Look among your top clients for those using multiple services—and with entrepreneurial spirit. Pricing is an art not a science—so be ready to adjust to their feedback. You'll also gain confidence and skill as you get more engagements under your belt.
5. **Package and Price.** Bundle your services and price these packages for monthly billing. Give your clients pricing options based on ranges—like small, medium and large bundles. This can increase margins and monthly cash flow.
6. **Target Clients.** Define your target client in terms of ideal monthly fee and your acceptable minimum monthly fee. Beyond fees, consider other criteria such as:
  - Are they willing to take our advice—are they coachable?
  - Will they refer us to other clients that meet our defined criteria?
  - Will the client increase our capabilities?
  - Do we respect the client and do they respect our team?
  - Does the client appreciate our services and promptly pay bills?

## YOUR MOVE?

Instead of sitting lost and worrisome in the back of a taxi in an unfamiliar city, you now have a roadmap to take on fixed-fee pricing. Will you maintain the status quo and march in step with the rest of the profession? Or will you break out into the fixed-fee pricing model proven by innovative firms to deepen client relationships, increase revenues, and improve profitability?



*Jim Boomer, CPA, CITP, MBA  
Chief Information Officer  
Boomer Consulting, Inc.  
Manhattan, KS*



*Drew West  
Product Marketing Director  
Deltek  
Woburn, MA*

## 1031 Tax-Deferred Exchanges: Building Wealth through Real Estate

By Andrew G. Poulos, EA

**I**s it possible to build wealth and achieve the American Dream during a time when not only the American economy, but the global economy, is in a severe recession? Although many people are unemployed and struggling to pay bills and put food on the table, there is a huge opportunity for those who have the ability and the determination to purchase real estate. If you look at history, you will see that challenging economic times always create an opportunity to build wealth.

Owning real estate has traditionally been called the American Dream. Achieving the American Dream is a great feeling, but it's even better to own real estate and use the 1031 tax-deferred "like-kind" regulations to build wealth. Oftentimes, real estate owners want to sell their property and defer taxes. They think that the process is simply to sell their property and complete the like-kind exchange paperwork when they file their tax return. Unfortunately, those who do not seek professional advice get it wrong and the result ends up costing them money.

### Qualifications for a 1031

The 1031 tax-deferred laws are very specific and involve strict timelines for selling a property and purchasing a replacement property. Aside from the timeframes that must be followed, there are other requirements that must be met in order to successfully qualify for a like-kind exchange.

First, in order to qualify for a 1031 tax-deferred exchange, the property must be held for productive use in a trade or business, or for investment purposes, and must be exchanged for "like-kind" property that will also be held for the same purpose. Like-kind does not mean exactly the same. For example, a single family rental property can be exchanged for a warehouse, retail center, office building or farm property.

Once it has been determined that the property qualifies for a like-kind exchange, the identification period and exchange period requirements must be met in order to qualify for a tax deferral. The replacement property must be identified within 45 calendar days of the transfer of the relinquished property.

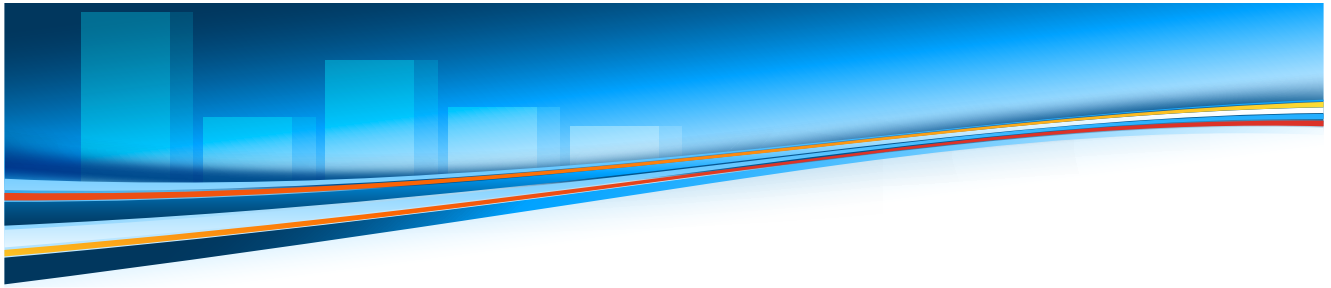
However, unlike other tax deadlines that roll over to the next business day, if the deadline falls on a weekend or holiday, the identification period does not get extended under any circumstance. Getting this requirement wrong is a deal breaker and can cost the taxpayer tens of thousands of dollars in unnecessary taxes. It is best to identify multiple properties during the identification period so you can have a back-up plan in case your first choice falls through. In the real estate world, deals fall through quite often for various reasons. Buyers find properties and get emotionally attached to them all too often. There should be no emotional attachment to a property if you are a serious real estate investor interested in profiting from an investment property.

After successfully identifying the replacement property, the purchase must be completed within the earlier of the 180-day exchange period or the due date of filing the taxpayer's federal tax return for the year in which the property was relinquished, including extensions. If the requirements are met for a like-kind exchange, and the taxpayer purchases a replacement property that is equal to or greater in value than the relinquished property, the taxpayer will have a fully tax-deferred exchange.

### The Role of the Qualified Intermediary

Aside from the requirements discussed above, a tax-deferred exchange requires a seller to use a Qualified Intermediary (QI) who will handle the exchange process and the funds from the sale of the relinquished property. All too often, the seller is not





aware that a QI must handle the process and hold the sales proceeds in escrow. If the seller is either in actual or constructive receipt of the cash proceeds, the tax-deferred exchange is terminated. Therefore, it is imperative that the seller use a reputable QI to handle the 1031 tax-deferred exchange.

A QI truly needs to be qualified or the 1031 tax-deferred exchange process can turn into a disaster. Not everyone can be a QI. Relatives or anyone who, within a two-year period prior to the exchange has acted as the seller's attorney, accountant, real estate broker or agent, is disqualified from being a QI. Unfortunately for the seller, the people that are in their trusted inner circle can't act as their QI.

The Qualified Intermediary will facilitate the 1031 tax-deferred exchange transaction and guide the seller through the process of achieving a successful tax-deferred exchange. The eight steps for a successful 1031 tax-deferred exchange process include the following:

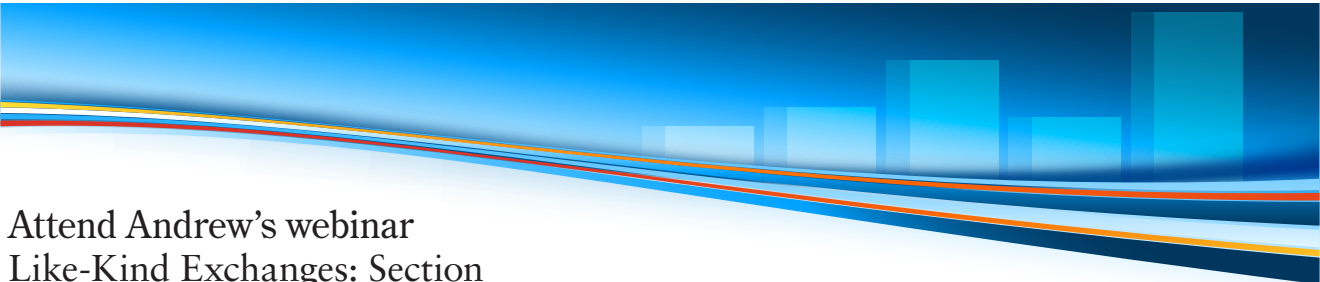
1. Enter into a purchase contract with the buyer for the relinquished property. A "cooperation clause" assigning the contract to the QI should be included in the contract.
2. Prepare exchange documentation. Contact the QI to begin the tax-deferred exchange process. The QI will prepare the exchange agreement and have the purchase contract assigned to their company.
3. Closing of the relinquished property. The property will be conveyed to the buyer and the cash proceeds from the sale will be delivered to the QI.
4. The Qualified Intermediary will hold the cash proceeds and provide the necessary forms to identify a replacement property within the 45-day identification period. Multiple properties should be identified to protect from any last minute snags.
5. Enter into a purchase contract for the replacement

property that is identified. The contract should have a "cooperation clause," as did the purchase contract for the sale of the relinquished property.

6. Prepare exchange documentation for the purchase of the replacement property. The contract will be assigned to the QI, notice of the assignment will be delivered to the seller of the property and instructions sent to the settlement agent.
7. The closing for the replacement property occurs. The Qualified Intermediary will deliver the exchange proceeds to purchase the replacement property for the buyer, and the seller will convey the replacement property. Remember, the closing must occur within the earlier of 180 days from the date of closing of the relinquished property, or the due date of the taxpayer's federal tax return.
8. Complete the exchange process. The QI will provide you with all the exchange documents, including proof of receipt and disbursement of all exchange funds. Form 8824 must be filed with the taxpayer's tax return, informing the Internal Revenue Service of the 1031 tax-deferred exchange.

A like-kind exchange is a great tool that real estate investors have at their disposal to defer capital gains taxes. As mentioned earlier, the like-kind exchange process is only for investment properties. The sale of a principal residence does not qualify for a 1031 tax-deferred exchange. Gain on the sale of a principal residence can be excluded under Code Section 121. Single taxpayers can exclude gains up to \$250,000 and a married couple filing jointly can exclude up to \$500,000. It is also important to remember that vacation homes that are not rented out are not considered investment properties and therefore do not qualify for a tax-deferred exchange.

Tax-deferred exchanges are a powerful tool if used properly. They are more complex than they appear on the surface. Therefore, investors who want to sell property using the



## Attend Andrew's webinar Like-Kind Exchanges: Section 1031 Tax-Deferred Exchanges July 23 at 2:00 PM EDT [Register Now](#)

tax-deferred exchange laws must contact a professional for planning before they decide to sell their investment property. One missed step or one missed deadline can be detrimental to the success of the transaction. However, a successful 1031 tax-deferred exchange affords bigger buying power and helps build wealth in a way that otherwise may not be possible.

Let's look at the following example to see the difference in buying power for a transaction being sold using a tax-deferred exchange versus a non tax-deferred sale.

### Like-Kind Exchange Example

- \$1,000,000 appreciation gain x 15% = \$150,000
- \$100,000 depreciation recapture x 25% = \$25,000

An investor acquires a commercial warehouse building for investment purposes in 2004 for \$800,000. In 2012 the investor decides to sell the property and purchase a like-kind replacement property. The facts of the transaction are as follows:

1. The current mortgage balance on the property is \$600,000.
2. The property has appreciated to \$1,800,000 as of the latest appraisal done 15 days ago.
3. The depreciation deduction for the property is \$100,000.

As can be seen in the table above, if the property is sold for the current value of \$1,8 million without a tax-deferred exchange,

the capital gains taxes will be \$175,000. If the property is sold with a tax-deferred exchange, there will be zero capital gains taxes. By not selling under a tax-deferred exchange, the investor will have \$1,025,000 for reinvestment. With a like-kind exchange, the investor will have \$1.2 million to purchase a replacement property. Assuming a 30% down payment for the replacement property, the tax-deferred exchange gives the investor the ability to purchase a \$4 million property, compared to a \$3,416,667 property if the sale does not occur as tax-deferred exchange.

Tax-deferred exchanges will soon become more popular than they have ever been in our lifetime. With the current economic environment providing investors the opportunity to purchase foreclosures for pennies on the dollar, large profits will be cashed in when the economy turns around and property values begin to rise. Some will take the money, pay taxes, and make other investments that are favorable to them at that time, while others will pursue tax-deferred exchanges in an attempt to defer taxes, increase their buying power and portfolios, and build wealth.

As a professional, you must not only advise your clients of the 1031 exchange laws, but you should help them understand the laws and how to use the process to build wealth. There is no greater satisfaction as a professional than seeing your clients become successful and knowing that you helped them achieve wealth. Making money is great, but providing excellent service and great knowledge to your clients brings the best satisfaction!



*Andrew Poulos, EA, is principal of Poulos Accounting & Consulting, Inc., in Atlanta, Ga., where he focuses working with tax clients and representing clients before the IRS. Andrew is the producer of the QuickBooks Ultimate Lesson Guide DVD Series being marketed nationally through wholesale and retail distribution channels. He is also founder of Elite Tax Seminars, a division of Poulos Accounting & Consulting, Inc. Contact him at [www.poulosaccounting.com](http://www.poulosaccounting.com).*

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# ConnectED WEBINARS

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## **Worker Classification: Getting it Right the First Time-Level 2**

July 30, 2013

2:00 PM EDT (11:00 PT)

Worker Classification audits are on the rise and your clients are at risk. This presentation covers in-depth elements of worker classification laws that can have a major impact on your clients.

NASBA CPE: 2 Hours/Taxes

IRS CE: 2 Hours/Federal Tax Law

*Presented by Andrew Poulos, EA, ABA, ATP*

## **S Corporation Officer Compensation: What is Reasonable?**

August 1, 2013

2:00 PM EDT (11:00 PT)

Who qualifies to be an officer of an S Corporation? Are they receiving "reasonable" compensation? Learn the various methods that can be used to determine what is reasonable and the consequences of unreasonable compensation.

NASBA CPE: 2 Hours/Taxes

IRS CE: 2 Hours/Federal Tax Law

*Presented by Andrew Poulos, EA, ABA, ATP*

## **Bankruptcy Questions Answered!**

August 13, 2013

2:00 PM ET (11:00 PT)

What role do you play in your client's bankruptcy? From understanding why a person enters bankruptcy to how it affects the tax returns you prepare for them and the money they owe IRS.

NASBA CPE: 2 Hours/Taxes

IRS CE: 2 Hours/Federal Tax Law

*Presented by Robert E. McKenzie, EA, Attorney*

## **Business vs. Hobby: Which is It?**

August 15, 2013

2:00 PM EDT (11:00 PT)

This webinar is a must as the IRS is scrutinizing tax returns with Schedule C losses. Make sure you have the tools needed to determine if your clients are operating a real business or hobby.

NASBA CPE: 2 Hours/Taxes

IRS CE: 2 Hours/Federal Tax Law

*Presented by Andrew Poulos, EA, ABA, ATP*

## **Financially Distressed Taxpayers: Cancellation of Debt, Foreclosures and Repossessions**

August 27, 2013

2:00 PM EDT (11:00 PT)

Some cancellation of debt is taxable and you need to know how to properly handle this as income. Learn how to handle cancellation of debt income, and in which situations you can use the available exclusions to forego income from cancellation of debt.

NASBA CPE: 2 Hours/Taxes

IRS CE: 2 Hours/Federal Tax Law

*Presented by Andrew Poulos, EA, ABA, ATP*

## **Preparer Penalties - Are you at Risk? Protecting your Practice....and your Clients!**

September 7, 2013

2:00 PM EDT (11:00 PT)

In this session, we will give you an overview of preparer penalties as well as tools and tips to stay in compliance. This is a "must attend" for every paid preparer who wants to build and protect their practice.

NASBA CPE: 1 Hour/Taxes


IRS CE: 1 Hour/Federal Tax Law

*Presented by Kathy Hettick, EA, ABA, ATP, RTRP and Gene Bell, EA, ATA, CFP, RTRP*

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# Using E-Signatures in the Tax and Accounting Profession

*By Steve Dusablon*

**E**lectronic Signatures (E-Signatures) became effective in the United States on October 1, 2000 when Congress passed the Electronic Signatures in Global and National Commerce Act ("ESIGN Act"). ESIGN was enacted specifically to ensure that any agreement signed electronically will not be denied legal force, effect, validity, or enforceability solely because an E-Signature was used in its formation. As a result, online E-signatures, in both personal and commercial transactions, have been granted the same legal status as a written signature—so they are now the legal equivalent of hand written signatures.

Most accounting firms have clients that have recently purchased a home using E-Signature technology. That's because we are seeing a rapid acceleration of E-Signature usage in the real estate, mortgage, healthcare, insurance, communications, recruiting and other industries through broad based E-Signature solutions such as Adobe EchoSign and DocuSign. These solutions were designed for mass markets and do not meet the needs, demands and workflow requirements of the tax & accounting industry. However, with the recent release of at least one tax & accounting specific E-Signature solution, they can now be used across a wide range of both client facing and internal firm documents.

## Using E-Signatures in the Tax & Accounting Industry

For firms that are embracing E-Signatures, they typically start by sending annual engagement letters or §7216 consent forms to clients, or annual independence surveys to their staff. These documents are ideal candidates for E-Signature

technology because they are often standardized forms, need annual signatures, can be batch processed with mail merge functionality for a higher efficiency gain and the signers can sign remotely from any PC, laptop, tablet or smart phone. Firms are reporting that they can process these documents at a fraction of the cost of mailing hard copies. They are receiving E-Signed documents back from their clients and staff in less than seven minutes and the overall workflow process is significantly improved.

As for other client facing documents, firms are also sending management representation letters, audit representation letters, A/R and A/P confirmations, new client acceptance forms, payroll processing forms, and Forms W-9 and 4506-T for E-Signature. They are also sending credit card authorization forms to accelerate cash collections. As for other internal documents, firms are also sending IT policy forms, partnership agreements, internal routing sheets, and a wide variety of human resource related documents including offers of employment, Forms W-4 and I-9, employee handbooks, medical, dental, insurance and 401k forms for E-Signature.

## The IRS and Form 8879

The biggest demand for using E-Signatures in the tax & accounting profession is on Form 8879. The IRS currently does not accept E-Signatures on Form 8879, even though they are rarely, if ever, submitted to the IRS. They are simply retained on file by the taxpayer and the ERO for a period of three years. The instructions in Form 8879 do not specifically address the use of E-Signatures, but there is

is a single sentence in Publication 1345 that states "This does not alter the requirement that taxpayers must sign Form 8879 and Form 8878 by handwritten signature." This is actually quite ironic, since the entire premise of e-filing tax returns is to reduce paper-based tax return filings. The only step to e-filing a tax return that requires paper is the requirement for the taxpayer to print, sign, and send back Form 8879.

On January 23, 2013, the IRS issued Internal Revenue Bulletin 2013-4, Announcement No. 2013-8, seeking recommendations for appropriate E-Signature standards in the tax and accounting profession. They stated "E-signature standards will promote efficiency, reduce burden, and improve identity proofing methods to confirm the identity of the signer." Unfortunately, we do not know when the IRS will provide formal approval or the specific requirements for using E-Signatures on Form 8879. Many industry thought leaders feel it will be at least two more years before we get the final approval.

So, are firms using E-Signatures on Form 8879 anyway? Yes, and with tremendous success. Firms using E-Signatures are basing their decision on the following points:

- The E-SIGN Act of 2000 makes E-Signatures legal and valid.
- Effective January 2013, the IRS is allowing E-Signatures on Form 4506-T and §7216 consents.
- At least one large tax vendor is currently in an E-Signature pilot program with the IRS on Form 8879.
- The purpose of e-filing tax returns is to reduce paper-based processes and create efficiency for the taxpayer, tax preparers, and the IRS. Requiring a handwritten signature from the taxpayer on Form 8879 is the only part of the e-filing process that requires anyone to print a piece of paper.
- Most tax & accounting firms spend countless hours and thousands of dollars tracking and managing manually signed Form(s) 8879.
- Form 8879 is rarely, if ever, submitted to the IRS. It is required to be maintained on file by the taxpayer and ERO for 3 years.
- The benefits outweigh the risks.
- IRS solicited industry feedback with Announcement 2013-8.

## Top Considerations When Choosing an E-Signature Solution

Every industry vertical has its own set of document types

and workflow requirements surrounding the E-Signature process. Your firm should look for a solution that is tax and accounting specific. For example, your staff should be able to quickly send documents for E-Signature while classifying each document with accounting-specific workflow and reporting data such as Document Type, Engagement Type, Tax Year, and Partner. Your solution should provide firm-wide reports that are accessible by all members of your firm and provide for centralized management of the E-Signature process. For example, firm administrators and partners should have complete visibility over every document sent for E-Signature within their firm. They should be able to quickly sort, filter, and search to send reminders, view documents, and download final signed documents of other users.

Accounting firms often need to mail merge and batch process documents requiring signatures. Examples include annual engagement letters and §7216 consent for clients, and annual independence surveys for staff. Your solution should provide the tools necessary to mail merge and batch process hundreds of documents for E-Signature with the click of a button. To effectively accomplish this, your solution should provide for text tags in documents to automate the signature placement process. Otherwise, your staff will need to manually drag and drop the signature location into each document.

Finally, be careful of monthly subscription fees. Most providers have "reasonable use clauses" which restrict the number of documents that can be sent monthly per licensed user. Accounting firms tend to have seasonal demands and can quickly surpass the reasonable use clauses, resulting in higher monthly fees. To obtain the full benefits of your E-Signature solution, you should license all members of your firm so they have access to the real time reporting, tracking and management features. As a result, we recommend solutions that allow free licenses to all members of your firm, and then bill based on the actual number of documents sent for E-Signature.



*Steve Dusablon  
President and CEO of cPaperless, LLC. Paperless partnered with Adobe EchoSign to develop CPA SafeSign, the first to market E-Signature solution, designed specifically for the tax and accounting industry.*



## YOUR CONNECTION TO WHAT IS HAPPENING AT NSA

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### GET INVOLVED: SIGN UP AT THE NSA VOLUNTEER HUB

*Volunteer Hub*



Would you like to get more involved? Are you looking for a way to connect with and help other members? Do you have valuable skills and perspectives that could benefit NSA's volunteer groups? If your answer is yes to any of these questions, consider joining the NSA Volunteer Hub and responding to NSA's Call for Volunteers. Click on either of the buttons below to sign up to receive email requests for short term projects, or to read about the committee descriptions and apply.

---

### SHORT TERM PROJECTS

NSA's Volunteer Hub is a great way to find out about volunteer opportunities as they become available and get involved by helping with both long- and short-term projects. We will put out calls for volunteers as needed for committees and special projects. Many tasks take just a few hours or less.

If you are looking for a short-term commitment or want to experience what it is like to volunteer for NSA before committing to a full-year, open volunteering is for you.

We accept new volunteers all year long. Once you join NSA's Volunteer Hub, you will be notified of opportunities to help when they come up.

---

### LONG TERM PROJECTS

The NSA President appoints committee volunteers for one-year terms beginning September 1st. On the Volunteer Hub webpages, you can learn more about each of our committee volunteer opportunities before deciding on which is best for you—simply click on the tabs with the committee names to read more. Once you select an opportunity and submit your application, your information will be forwarded to and reviewed by NSA volunteer leadership. You will be notified of the outcome over the summer.

*Get involved today!*

Go to the HUB



Sign up here





## NSA ANNOUNCES 2013 SCHOLARSHIP WINNERS

*NSA Scholarship Foundation*

A total of 39 students are gaining a boost to their college educations in accounting by earning scholarships from the National Society of Accountants (NSA) Scholarship Foundation. Together, they will receive \$32,700 in scholarship awards. The Foundation has provided more than \$1 million since 1969 to deserving undergraduate and graduate students who are committed to pursuing a career in accounting.

The scholarships range from \$500 to \$2,000. These recipients were selected on the basis of an overall outstanding academic record, demonstrated leadership and participation in school and community activities, honors, work experience, stated goals and aspirations, and financial need.

Congratulations to the following 2013 scholarship recipients:



Elizabeth C. Anderson  
Brigham Young University, Provo, UT  
Washington Association of Accountants: \$500



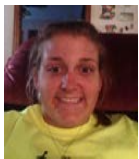
Amy J. Coogler  
University of Alabama – Tuscaloosa, AL  
Alabama Association of Accountants: \$1,000

No  
Photo  
Available

Anna R. Baines  
Liberty University, Lynchburg VA  
Montana Society of Public Accountants: \$500



Michaela M. Diamond  
University of Denver, Denver, CO  
Public Accountants Society of Colorado: \$1,000



Rachel M. Baker  
Southwestern College, Winfield, KS  
Oklahoma Society of Accountants: \$500



Shelby L. Diehl  
University of Nebraska—Omaha, NE  
Nebraska Society of Independent Accountants: \$1,000



Ellyn M. Bruckerhoff  
Missouri State University, Springfield, MO  
Steven Desdier Memorial Award: \$1,000



Annola L. Duke  
Rasmussen College: Bismarck, Bismarck, ND  
North Dakota Society of Accountants: \$1,000



Brenda M. Canosa  
Fairfield University, Fairfield, CT  
New York Society of Independent Accountants: \$750



Taylor M. Erickson  
University of North Dakota, Grand Forks, ND  
North Dakota Society of Accountants: \$1,000.00



Allison C. Carroll  
Arizona State University, Tempe, AZ  
Arizona Society of Practicing Accountants Merit Scholarship: \$2,000



Margaret E. Freeland  
Hillsdale College, Hillsdale, MI  
Washington Association of Accountants: \$1,000



Nicole K. Cartier  
Babson College, Babson Park, MA  
Maine Association of Professional Accountants: \$500



Vivica A. Futrell  
University of Illinois: Springfield, Springfield, IL  
Independent Accountants Association of Illinois: \$500



**Kiley A. Greene**  
Carthage College, Kenosha, WI  
Independent Accountants Association of Illinois:  
\$700



**Stephen M. Kucera**  
Kansas State University, Manhattan, KS  
Ronny Woods Memorial Award: \$1,000



**Madelyn G. Himmelwright**  
Southern Oregon University, Ashland, OR  
Alaska Society of Independent Accountants:  
\$500



**Katelyn A. Leal**  
University of South Florida, Tampa, FL  
Florida Society of Accountants: \$500



**Matthew J. Halowell**  
University of Maryland, College Park, MD  
\$500



**Geoffrey A. Lemay**  
Northern Illinois University, DeKalb, IL  
Independent Accountants Association of  
Illinois: \$500



**Hunter N. Hoyer**  
University of Central Missouri, Warrensburg,  
MO  
Missouri Society of Accountants: \$1,000



**Jason D. Moseley**  
Arkansas State University, Jonesboro, AR  
Ronny Woods Memorial Award —AR:  
\$1,000



**James T. Huet**  
University of Pittsburgh, Pittsburgh, PA  
Milton Brown Award: \$1,000



**Allison D. Nelson**  
University of Wisconsin-Superior, Superior,  
WI  
Millard Ashley Memorial Award:  
\$1,000



**Riley W. Kinser**  
Oregon State University, Corvallis, OR  
Oregon Association of Independent  
Accountants: \$500



**Ashley M. Ortiz**  
Arizona State University, Tempe, AZ  
Arizona Society of Practicing Accountants:  
\$1,000



**Kevin P. Krautscheid**  
Santa Clara University, Santa Clara, CA  
Oregon Association of Independent Accountants: \$500



**Matthew R. Ozturk**  
Northeastern State University, Tahlequah, OK  
Oklahoma Society of Accountants: \$1,500



**Katarina A. Krouse**  
Concordia University, Portland, OR  
Nevada Society of Independent Accountants:  
\$500



**Jasmine S. Pettaway**  
Auburn University, Auburn, AL  
Florida Society of Accountants: \$500



**Taylor A. Robinson**  
University of Arkansas, Fayetteville, AR  
Arkansas Society of Accountants: \$1,250



**Florencio E. Vera**  
Roosevelt University, Chicago, IL  
Independent Accountants Association of Illinois: \$500



**Meryl H. Saunders**  
University of Miami, Coral Gables, FL  
New Jersey Association of Public Accountants: \$1,000



**Ashlynn E. Watts**  
Auburn University, Auburn, AL  
Florida Society of Accountants: \$500



**Cameron J. Scotese**  
Rutgers, State University of New Jersey – Camden, Camden, NJ  
New Jersey Association of Public Accountants: \$1,000

No  
Photo  
Available

**Katrina N. Woods**  
Madison Area Technical College, Madison, WI  
Wisconsin Association of Accountants: \$500



**Hannah G. Sick**  
Lock Haven University of Pennsylvania, Lock Haven, PA  
Pennsylvania Society of Tax & Accounting Professionals: \$1,000



**Andy Z. Yau**  
Bentley University, Waltham, MA  
Massachusetts Association of Accountants: \$500



**Sherman L. Standberry**  
Georgia State University, Atlanta, GA  
Stanley Stearman Award: \$2,000

To learn more about the NSA Scholarship Foundation program or to make contributions, visit [www.nsacct.org](http://www.nsacct.org) and search under “About” for the “NSA Scholarship Foundation.”



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# Indianapolis

## Join Us in Indianapolis

Network with fellow tax and accounting professionals at the NSA 68th Annual Meeting & Expo. Get CPE, attend the NSA business sessions, take part in the Scholarship Foundation Walk, and celebrate with this year's award winners at the annual awards breakfast.

Click the links below:

- [Register to attend](#)
- [Preliminary program](#)
- [Reserve your hotel room](#)
- [Plan your trip](#)



**Early Bird Discount Extended!**  
**Register by July 29 and Save \$100**

## Hotel Information



### Hyatt Regency Indianapolis

**Special NSA Room Rate: \$149/single or double**

[Reserve your room by July 29th](#)

Reserve your hotel room today for the NSA Annual Meeting and lock in your discounted rate. Stay close to all events and activities in the official NSA hotel.

[Visit the Hyatt Regency website](#)

## Meeting QR Code



Scan with your Smartphone to  
view the annual Meeting webpages

*Register today!*

## CPE Sessions

*Earn 10 hours of CPE*



Robert McKenzie, EA, Esquire

### Avoiding Ethical Violations

During 2011 the IRS announced major revisions to Circular 230. We all try to do the right thing but many of us have busy practices and those pressures may cause us to inadvertently face an ethical problem. Circular 230 has recently been revised and it has imposed new duties and responsibilities upon practitioners who represent taxpayers before the IRS. Anyone who practices before the IRS must comply with these requirements. This class is designed to help you avoid violating your ethical duties and topics include the following:

- New standards and penalties for tax preparers
- New Circular 230 duties
- Potential conflicts of interest
- Correction of taxpayer mistakes
- What fees are unconscionable?
- Return of client records
- What taxpayer confidences may you disclose to the IRS?

### Money Laundering and Foreign Bank Accounts

Many of our clients may be engaged in cash transactions or have opened foreign bank accounts to avoid IRS scrutiny. This class will alert you to IRS enforcement efforts and the compliance requirements for both cash transactions and foreign accounts. You will learn of the filing requirements for reporting:

- Cash transactions
- Money service businesses
- Money laundering
- Structuring
- Foreign bank accounts
- Foreign trusts
- Foreign corporations
- Foreign partnerships



Steven Siegel, JD

### Critical Eldercare Issues in 2013

This course discusses issues of concern for an aging population. As the baby boom population ages and reaches their retirement years and as senior citizens live longer and more active lives due to improvements in life style and health care, the topic of Eldercare Planning becomes relevant and immediate to a rapidly growing number of individuals.

The need for a well-considered estate plan is addressed. We examine the complexity of the social security system, particularly as it involves the various choices one has in taking the available benefits. The government entitlement programs of Medicare and Medicaid are reviewed, particularly with an analysis of what is and is not covered and how planning may increase one's chances of securing the benefits of these programs. Retirement planning issues are explored, focusing on the financial considerations of what must be saved for retirement, the array of alternative plans that are available, and the issues of when and how distributions may or must be taken from plans and taxed. How a senior citizen can use his or her home in planning is also addressed.



William A. Leonard, CPA,  
ABA, ATA, CFFA

### Accounting Basis' for Small Practitioners

This session will cover three non GAAP basis' of accounting. Small firm practitioners seeking to utilize more concise and less cumbersome basis' will find that the methodologies presented offer a more practical approach to conventional, generally accepted accounting principles. Topics to be discussed will include cash and income tax basis - Special Purpose Framework, (f/k/a Other Comprehensive Basis of Accounting); the International Financial Reporting Standards utilized in over 120 countries, and Financial Reporting Framework for Small and Medium Size Entities introduced on May 12, 2013 by the AICPA. Accountants now have multiple options to choose from when preparing non GAAP financial statements.



Register by  
July 1 and  
**SAVE  
\$100!**

**August 21-24, 2013**

**Hyatt Regency Indianapolis**

## 2013 REGISTRATION FORM

*Please print legibly to avoid errors and delays on-site*

Name \_\_\_\_\_

Title \_\_\_\_\_

Name to Appear on Badge \_\_\_\_\_

Company \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

NSA Member ID# \_\_\_\_\_

CTEC Member ID# \_\_\_\_\_

PTIN# \_\_\_\_\_

- ☐ This is my first NSA Convention.  
☐ I am an ACAT credential holder.  
☐ Special meal request: \_\_\_\_\_  
☐ I have special needs and would like to be contacted by an NSA representative.

### 4 Easy Ways to Register



**Fax form with credit card payment to: 703-549-2984**



**Mail this form with a check or credit card payment to:  
NSA, 1010 North Fairfax St., Alexandria, VA 22314**



**Call NSA toll-free: 800-966-6679**



**Online: www.nsaacct.org**

### Method of Payment

☐ Check ☐ American Express ☐ Discover ☐ MasterCard ☐ Visa

Credit Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_

Signature \_\_\_\_\_

Check # \_\_\_\_\_

**Total Due: \$ \_\_\_\_\_**

### REGISTRATION PACKAGES

#### Full Conference

**Includes a full year  
NSA membership** →

	Member:	_____ \$579	_____ \$679
<b>Nonmember:</b>	_____ \$699	_____ \$799	
<b>Spouse/Guest:</b>	_____ \$249	_____ \$299	
<b>Each child 6-17:</b>	_____ \$99	_____ \$139	

**Early Bird Discount**  
by July 1\* After July 1  
(\*postmarked)

Spouse/Guest/Child Name \_\_\_\_\_

Spouse/Guest/Child Name \_\_\_\_\_

Spouse/Guest/Child Name \_\_\_\_\_

### Daily Rates (Please select option, and days you wish to attend.)

#### ☐ 1-Day

\_\_\_\_\_ Member: \$209

\_\_\_\_\_ Nonmember: \$259

#### Select 1 Day

\_\_\_\_\_ Thursday 8/22

\_\_\_\_\_ Friday 8/23

\_\_\_\_\_ Saturday 8/24

#### ☐ 2-Day

\_\_\_\_\_ Member: \$399

\_\_\_\_\_ Nonmember: \$439

#### Select 2 Days

\_\_\_\_\_ Thursday 8/22

\_\_\_\_\_ Friday 8/23

\_\_\_\_\_ Saturday 8/24

### Additional Tickets\* (order now, prices increase \$10 onsite)

\_\_\_\_\_ NCAA Hall of Champions Museum 8/22: \$80 x \_\_\_\_\_ = \_\_\_\_\_

\_\_\_\_\_ ACAT Reception 8/23: \$25 x \_\_\_\_\_ = \_\_\_\_\_

\_\_\_\_\_ Awards Breakfast 8/24: \$45 x \_\_\_\_\_ = \_\_\_\_\_

\_\_\_\_\_ Installation Banquet 8/24: \$85 x \_\_\_\_\_ = \_\_\_\_\_

\_\_\_\_\_ Child Installation Banquet 8/24: \$42.50 x \_\_\_\_\_ = \_\_\_\_\_

\* Children age 2 and under are free if seated in lap or high chair.

### NSA PAC Suite Deal Raffle

Buy your NSA PAC Suite Deal Raffle ticket(s) and you'll be entered to win an upgrade from a standard room already purchased to a suite for up to 5 nights. Raffle ticket sales end on August 1st. The drawing will be held on August 10, 2013.

NSA PAC Suite Deal Raffle Tickets: \$50 each x \_\_\_\_\_ = \_\_\_\_\_

*The PAC can not accept corporate contributions.*

### NSA Scholarship Walk:

Pre-registration: \$35 per person x \_\_\_\_\_ = \$ \_\_\_\_\_

Sleep in for Scholars \$50 person x \_\_\_\_\_ = \$ \_\_\_\_\_

### Hotel Information: Hyatt Regency Indianapolis

Room rate: \$149 Single/Double

Rooms at the NSA group rate will be available for arrival beginning on August 18, 2013 and departures no later than August 26, 2013. Cut-off date is July 18, 2013 if rooms are still available in the room block.

**Cancellation Policy:** In accordance with NSA policy, the NSA registration fee is refundable (less a \$75 per registration administration fee) until August 1, 2013 should someone's plans change. In that event, any room reservation you have made will also be cancelled. No refunds after August 2, 2013

**Questions?** Call NSA toll-free: **800-966-6679**



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# HOT TOPICS AND TIPS FROM OUR TAX DESK

By Deborah Aiken, JD, CPA

## EXCLUDING PRINCIPAL RESIDENCE GAIN AND LESS THAN TWO OUT OF FIVE YEARS

There is a reduced exclusion for taxpayers who have to move early for unforeseen circumstances and fail to meet the 2 out of 5 years requirement to exclude gain on a personal residence under section 121. The specified events are: involuntary conversion of a residence, casualty to the residence caused by natural or man-made disasters or acts of war or terrorism, death of a qualified individual, loss of employment as a result of which the individual is eligible for unemployment compensation, change in employment or self-employment status that results in the qualified individual's inability to pay housing costs and reasonable basis living expenses for the taxpayer's household, divorce or legal separation of a qualified individual under a decree of divorce or separate maintenance, multiple births resulting from the same pregnancy, or certain other situations (see Reg. Sec. 1.121-3(e)(2),(3)). The reduced exclusion is computed by using a fraction the numerator of which is the shortest of the following: (1) the period of time the taxpayers owned the property, (2) the period of time the taxpayers used the property as their principal residence, or (3) the period of time between the previous sale for which the taxpayers excluded gain and the current sale. The denominator is two years.

## TOTAL LOSS ON BUSINESS PROPERTY FROM CASUALTY

If you have business or income-producing property, such as rental property, that is completely destroyed, the decrease in FMV is not considered. Your loss is your adjusted basis in the property, less any salvage value, less any insurance or other reimbursement you receive or expect to receive.

## PROPERTY DEPRECIATION AFTER CASUALTY LOSS

Following a casualty loss, you must decrease your basis in the property by any insurance or other reimbursement you receive and by any deductible loss. The result is your adjusted basis in the property. You must increase your basis in the property by the amount you spend on repairs that restore the property to its pre-casualty condition. Generally, if a single casualty involves more than one item of property, you must figure the loss on each item separately and then combine the losses to determine the total loss.

## PARTIAL LOSSES ON BUSINESS PROPERTY FROM CASUALTY

Partial losses on business or rental property are calculated the same way as for personal casualties. The loss is the decline in the property value but limited to the property's adjusted as reduced by salvage value and insurance and other recoveries. If insurance proceeds exceed the adjusted basis in the property, a gain is realized. Businesses may, like individuals, postpone the gain by investing the proceeds in qualified replacement property. (Section 1033(a). Any depreciation taken and the cost of business personal property expensed under section 179 reduces the cost basis in the property. Thus, the amount of the casualty loss is reduced by the amount of depreciation previously claimed or the amount expensed under section 179.

# NSA BLOG

NSA recently began a new series that brings the latest articles, checklists, and other helpful tools and information to you via the NSA Blog. You are able to read new posts directly on the NSA website and/or you can subscribe to receive new posts in your inbox as they happen. We will also feature blogs in MemberLink and on NSA social media as well.

The NSA Blog includes information submitted by NSA staff, guest authors, and NSA ConnectED webinar instructors who will post short articles on a weekly to bi-weekly basis focused on practice management tips, checklists, member interviews, and more great information. Below are a few recent posts.



## Report Finds IRS Did Not Always Comply with Legal Guidelines When Conducting Seizures of Taxpayers' Property

*Posted by Julene Joy | Jul 10, 2013*

A recent report from the Treasury Inspector General for Tax Administration (TIGTA) found that the IRS did not always comply with specific statutory requirements in the IRS Restructuring and Reform Act of 1998. The term "seizure" is commonly used to refer to the taking of a taxpayer's property for unpaid tax. In an effort to ensure that taxpayers' rights are protected during this process, the IRS Restructuring and Reform Act of 1998 amended the seizure provisions in the Internal Revenue Code. The TIGTA report noted that noncompliance with these requirements could result in abuses of taxpayers' rights. As a result, TIGTA is required to evaluate the IRS's compliance with the legal seizure provisions annually to ensure that taxpayers' rights were not violated during property seizures.

[read more](#)

## NSA meets with IRS to discuss announced retirement of Disclosure Authorization and Electronic Account Resolution options on e-Services

*Written by John Ams | Jun 13, 2013*

Following predictable outrage in the tax professional community, NSA Executive Vice President John Ams and others met with the IRS to discuss why these services are being retired and options to allow these services to be continued.

[read more](#)

## Succession Planning - Part 1: A New Chapter

*Posted by Julene Joy | Jun 10, 2013*

Follow along the path with a veteran tax practitioner who transitioned from owning his own practice to becoming part of a larger firm, bringing his client base with him. Succession planning is imperative for every business owner but is often put off for another day. This article gives great advice on how one person found answers to the tough questions and moved ahead with a successful plan.

[read more](#)

## Get it Right the First Time: Independent Contractor vs. Employee Status

*Posted by Julene Joy | Jun 05, 2013*

How does a business determine if its workers are employees or independent contractors? This distinction is not as simple as most may think. The old adage of "My workers are subcontractors because they pay their own taxes," is not one of the 20 questions that the IRS or state labor agencies use to determine worker classification—and that defense would not ever carry any weight in an employment audit. In an era where worker misclassification and due diligence requirements are at an all-time high, accounting professionals must understand all the complexities. Improper classification not only carries a huge burden on the business, but can also have a significant impact on the worker.

[read more](#)

# NSA MEMBERCONNECT IN ACTION

NSA members actively connect & engage in our professional membership community. Here are some statistics to show the resources available to you, as a member of NSA. *Get Engaged...Get Connected!*

## TAX TALK

As a member, you are automatically subscribed to NSA's Tax Talk email discussion forum and idea exchange.



**28,800+**  
messages

completely searchable by topic,  
author, and date



more than

**5,400**

new discussions  
on hundreds of topics



replies to discussion  
**23,300+**



**50** average  
number of  
messages  
per day

unique  
authors  
**1,346**



[Go to Tax Talk](#)

## RESOURCE LIBRARY



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Completely and easily searchable so you can find what you need fast!

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NSA tax organizer

client letters, tools,  
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Resource Library](#)



See what almost 1 million  
people are checking out on  
[www.nsacct.org](http://www.nsacct.org).



## NSA MEMBER SPOTLIGHT



In this Member Spotlight we meet a particularly active member of NSA's "Tax Talk" forum, Eric M. Schwartz, EA, PA, ABA, ATA, ATP, RTRP. Schwartz, who has served as an NSA mentor, feels strongly about the importance of encouraging young people to enter the fields of finance and accounting, and has ideas as to how today's tax professionals can help achieve that end. Learn about the many ways NSA has helped Schwartz advance his career, and what accounting and tax professionals can do to spread the word about the importance of this practical and important career choice.

### ERIC SCHWARTZ

**How did you wind up working in the tax and accounting field? What is it you like most about accounting?**

My first Bachelor's degree was in history (magna cum laude.). While working on that degree, I had completed four math courses, two business law courses, and an economics course. Those courses made me realize that getting a Bachelor's degree in accounting (cum laude) would be an excellent career choice.

What I like the most about accounting is the fact that accounting and tax professionals can help management leaders and business owners to allow companies to succeed and, thereby, to allow the economy to grow.

**You took advanced courses (Advanced Financial Accounting and Advanced Accounting II via independent study) at Berkeley in California. Did you take them on campus or remotely? Why did you choose to take these courses and how have they helped you?**

I completed Advanced Financial Accounting and Advanced Accounting II via independent study (not on campus), through the University of California at Berkeley. This university has excellent professors. As a result, I learned so much. I have utilized that knowledge in my accounting and tax career.

**Your specialties are in coordinating, prioritizing, and investigating financial and tax information. What do you like about these specialties; were they simply where you felt your strengths were or was there another reason to develop expertise in them?**

Accountants and tax professionals need to provide accurate and timely financial and tax reports for their employers and/or their clients. As a part of achieving this, such professionals need to prioritize and coordinate such financial information. These are some of my strengths during the more than 25 years of my accounting/tax career.



**What do you like best about your membership with NSA?**

What I like most about my membership in the National Society of Accountants is that my membership has encouraged me to advance my knowledge. For example, I became an Accredited Business Accountant (ABA), an Accredited Tax Advisor (ATA), and an Accredited Tax Preparer (ATP). These exams also helped me to become an Enrolled Agent (EA), a Public Accountant (PA) in Delaware, and a Registered Tax Return Preparer (RTRP).

Another aspect of membership I truly enjoy is participating in the online tax discussions on the NSA website. Accountants and tax professionals should increase their knowledge and share their experiences, too.

**You mentioned you enjoy the discussions on "Tax Talk." You recently posted on "Tax Talk" a comment about there not being enough young people entering the accounting field. Why do you think fewer people are entering the field, and do you have any thoughts on how young people might be encouraged to enter the accounting and/or tax fields?**

College students need to be made aware that there are many professional accounting and tax certifications for which they can study. The National Society of Accountants does an excellent job of communicating to the public that there are many certifications to achieve. Such programs make the potential of accounting and tax careers exciting. Though some students may perform well in Principles of Accounting I & II, they might struggle in Intermediate Accounting I and/or II. However, by reviewing, researching, and asking questions, there is great opportunity for such students to succeed. Students also can learn by participating in accounting internships. We, as professionals, should also teach accounting software to such students to help them prepare for their potential careers.

**You had posted on "Tax Talk" that evidently certain public schools don't teach those courses, and wrote, "We, as professionals in accounting and tax careers, need to speak and write to our communities about how vital it is for the public to have a good foundation in this area of information. We need to emphasize that it is very relevant to people on a family basis and on an individual basis."**

**Can you elaborate on those statements at all? Can you suggest specific things accountants and tax professionals might do about that, e.g. write letters to the editor, etc.?**

Many college students find accounting courses to be uninteresting. However, no matter what career they might pursue, the accounting and tax professionals need to emphasize that all for-profit, not-for-profit businesses, and sole proprietorships need such career-minded persons so that those organizations can track and analyze their balance sheets, income statements, cash flow statements, general ledgers, and tax returns. If businesses don't survive, what type of successful careers can any of us expect to have?

Why is this necessary? Those businesses need to prosper, serve clients well, and/or manufacture quality products. Making sound financial and tax decisions can help in this goal. Even in regard to an individual or a family's personal lives, we need to know where we stand financially so that we can make wise decisions.

.....

“ We need to speak at local or national forums to emphasize the importance and the relevancy of accounting and tax careers. ”

.....

We need to speak at local or national forums to emphasize the importance and the relevancy of accounting and tax careers. We can speak on local television and radio stations. Of course, we can write our concerns on the internet and in newspapers and magazines, too.

**You've worked most of your adult life in Florida but went to college in New York. Where are you from originally?**

I grew up in Rockland County, NY, where I received two Bachelor's degrees and three Associate's degrees.

**What do you like best about Florida; what are your favorite things to do there?**

The weather in Florida, especially from November through May, is excellent. Exploring the west coast of Florida and having fun in Orlando are also great things to do here.

### What do you like to do in your free time?

In my free time, I enjoy spending time with my family and friends. I also enjoy swimming and playing tennis.

### As you no doubt know, the IRS has been enjoined from enforcing the RTRP regulatory requirements. All the effort (and money) people put into fulfilling the requirements went to waste, at least at this point. Do you see the RTRP returning? Do you have any thoughts about the need to regulate the tax preparation industry?

Similar to other professions, the tax preparation industry should be regulated. Tax return professionals need to prepare complete, accurate, and timely tax returns for their clients.

A small handful of states regulate their tax return professionals. Will this number grow? What is the future of the RTRP litigation? The future should be quite intriguing..

Let us stay on the forefront so that we can learn more, contribute greatly, and help businesses, as well as individuals, succeed and prosper.

ERIC

FACTS

SCHWARTZ

- Practices before the IRS as an ENROLLED AGENT.
- ADVOCATES for bringing young people into the tax and accounting industry.
- Received his PA (DE), ABA, ATA, ATP, and RTRP credentials.
- Hails Originally from ROCKLAND COUNTY, NY.
- Specializes in COORDINATING, PRIORITIZING, and INVESTIGATING financial and tax information.
- Enjoys SPENDING TIME WITH FAMILY AND FRIENDS, SWIMMING, and TENNIS.

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**NSA Booth #461**



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**August 27 - 29**

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**NSA Booth #516**



### **San Diego**

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[See Hotel Details](#)

**NSA Booth #613**

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NSA SPEAKER

Kathy Hettick, EA, ABA, ATP, RTRP  
Enumclaw, WA



NSA SPEAKER

Gene Bell, EA, ATP, CFP, RTRP  
Bellingham, WA

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More and more, taxpayer compliance relies on the due diligence of the tax professional and they, likewise, are more exposed to preparer penalties. This session provides an overview of preparer penalties, as well as tools and tips to stay in compliance. This is a “must attend” for every paid preparer who wants to build and protect their practice.

#### **Self-Rental Tax Dilemmas—Are You in Danger? Is Your Client?**

The Tax Reform Act of 1986 brought about the enactment of Internal Revenue Code (IRC) 469, and many taxpayers and tax professionals unaware of its provisions. The mechanical nature of the rule subjects taxpayers and tax professionals to significant risk of penalty for failure to adhere to the regulations. This presentation will review and discuss examples of the eight most common problem areas and how you and your client can avoid them.

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# First-Time Penalty Abatement

## How you can use this often-overlooked IRS waiver to help your clients



**I**n 2011, the IRS assessed 38.6 million penalties to taxpayers, totaling almost \$11 billion. According to the IRS, the purpose of penalties is to deter noncompliance, not to raise revenues. Certain penalties can be waived or abated if your client has a past history of compliant behavior. In effect, the IRS rewards taxpayers with a history of compliant behavior with a one-time penalty amnesty. For individuals, this relief applies to two of the most common penalties: failure to file (delinquency) and failure to pay. For businesses, this relief also applies to the failure to deposit penalty for payroll taxes.

### TYPES OF PENALTY RELIEF

Penalty relief is usually classified according to one of the following categories:

**Reasonable cause.** This is a facts and circumstances test in which the taxpayer demonstrates that he or she exercised ordinary business care and prudence in determining the tax obligation, but nevertheless failed to comply. Depending on the penalty, the taxpayer must also prove that he or she acted in good faith or that his or her failure to comply with the law was not due to willful neglect. The IRS determines reasonable cause abatement on a case-by-case basis, treating each tax form and year separately. The IRS often grants penalty abatement based on reasonable cause because of circumstances beyond the taxpayer's control, such as illness, natural disasters, or destruction of taxpayer records.

**Statutory exceptions.** The IRS waives or abates penalties because of specific exceptions. For example, Section 6654(e) provides exceptions to the estimated tax penalty when the tax is less than \$1,000, when there is no tax liability in the preceding year, or when the taxpayer is newly retired or disabled. Another example is Section 7508, which prohibits penalty assertion for taxpayers in combat zones.

**Correction of an IRS error.** The IRS waives penalties when it makes an error. For example, if the IRS incorrectly posted an extension to file, resulting in a failure to file penalty, the

IRS would waive the penalty. This category can also include erroneous written or oral advice from the IRS that the taxpayer relied on using ordinary business care and prudence.

**Appeals nonassertion or relief due to hazards of litigation.** The IRS Office of Appeals can waive penalties to settle a case based on "hazards of litigation," which is the probability that the IRS determination will not be upheld in court. For example, an IRS appeals officer may waive penalties in an appeals hearing to reach an agreement with the taxpayer. This is used primarily for accuracy-related penalties in appeals proceedings involving audits.

**Administrative waiver.** The IRS can waive penalties to provide relief to taxpayers. For example, in 2012, the IRS provided relief for the failure to pay penalty for taxpayers with financial hardship.

The most prominent example of an administrative waiver is often overlooked and misunderstood: first-time penalty abatement (FTA) for taxpayers with a clean compliance history. This type of penalty relief allows abatement of certain penalties for a single tax period (one tax year for individual and business income taxes, and one quarter for payroll taxes).

### FTA OVERLOOKED

The IRS instituted the first-time penalty abatement waiver in 2001 to bolster voluntary compliance and help fairly administer the application of penalties.

**According to a 2012 TIGTA report, in 2010, about 1.65 million individual taxpayers qualified for FTA. However, according to the same TIGTA report, only 8% actually received the abatement.**



According to a 2012 TIGTA report, in 2010, about 1.65 million individual taxpayers qualified for FTA. However, according to the same TIGTA report, only 8% actually received the abatement. The report indicates that the primary reason for this disparity is that most taxpayers and tax professionals do not know FTA exists. This is largely because the IRS doesn't indicate FTA as a relief option on its penalty-related notices. This is likely a strategic move. If the IRS publicized FTA, it would be inundated with requests.

The TIGTA report also highlights that the IRS often incorrectly applies its rules in determining whether taxpayers qualify for FTA, due in part to the IRS' unreliable Reasonable Cause Assistant, an internal system tool used to make penalty abatement decisions. This inconsistency often necessitates that practitioners send a written request for abatement using one of the other four categories of penalty relief. With sufficient knowledge of the FTA process and a phone call to the IRS, tax professionals can often save their individual and business clients from penalty assessments.

## REQUESTING FTA

The most complex part of requesting FTA is determining whether your client qualifies. FTA applies only to certain penalties and certain returns filed. Your client must also satisfy the clean compliance criteria.

- For individuals, FTA applies to the failure to file and failure to pay penalties. Estate and gift tax returns do not qualify for FTA waivers.
- For businesses and payroll clients, FTA applies to the failure to file, failure to pay, and/or the failure to deposit penalties. S corporation and partnership late-filing penalties also qualify under FTA.

For individual and business clients, FTA does not apply to the estimated tax and accuracy-related penalties. The assertion of an accuracy-related penalty is based on the facts and circumstances of each taxpayer and each tax year. However, similar to the spirit of the FTA qualifications, accuracy-related penalty responses often carry more weight with the IRS when your client has a proven track record of filing accurate returns on time.

To qualify for FTA, your client must meet the clean compliance criteria rules:

**Clean three-year penalty history.** Your client cannot have penalties of a "significant amount" assessed in the prior three years on the same type of tax return. IRS procedures do not publicly define "significant amount," but in practice, the IRS has used any penalty amount as significant in its

With sufficient knowledge of the FTA process and a phone call to the IRS, tax professionals can often save their individual and business clients from penalty assessments.

application of the FTA qualification. Practitioners should remind the IRS of the "significant amount" qualification if the IRS rejects the request because of a small penalty amount assessed in the past three years. The estimated tax penalty is an exception and would not disqualify your client from receiving FTA.

**Required returns filed.** Your client must have filed all tax returns for the past three years, as required.

The remaining steps are easy. FTA requests do not have to be in writing. If your client meets the criteria, you can request FTA by phone. If your client's case is not in an IRS compliance function, such as Examination, Collection, or the Underreporter unit, you can request FTA with the IRS Practitioner Priority Service.

Keep in mind that there is an unpublished ceiling on the penalty amount that the IRS will abate under FTA by phone. If your client's penalties are substantial, you can request FTA in writing. If you request abatement in writing, provide other relevant penalty relief arguments, including any reasonable cause arguments. This will increase your client's chances of penalty abatement.

FTA has been traditionally used by tax professionals who know internal IRS procedures. Now, you have all of the information you need to request FTA for your clients with a clean compliance history and save them from IRS penalties.



*Jim Buttonow, CPA/CITP, is the cofounder of New River Innovation, creator of [Beyond415 \(Beyond415.com\)](http://Beyond415.com). He has more than 25 years of experience in IRS practice and procedure. [jbuttonow@beyond415.com](mailto:jbuttonow@beyond415.com).*

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# 7 Specific Requirements for a PAYMENT to be Deemed ALIMONY

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A payment will be classified as alimony, regardless of the parties' designation of such payment, regardless of whether or not it is specifically designated as satisfying a support obligation, and regardless of how the payment may be classified under state law, if it satisfies the following criteria:

## **1. THE PAYMENT IS MADE IN CASH**

Transfers of services or property, the execution of a promissory note or other debt instrument, or allowing the payee to use property of the payor do NOT qualify as cash payments of alimony.

## **2. PAYMENT MUST BE RECEIVED BY OR ON BEHALF OF A SPOUSE PURSUANT TO A "QUALIFYING INSTRUMENT"**

A divorce or separation instrument is a decree of divorce or separate maintenance or a written instrument incident to such a decree or a written separation agreement. Payment must be made under the instrument. Cash payments to a third party on behalf of the payee spouse under the terms of a divorce or separation agreement can qualify as a cash payment to the spouse.

Cash payments made to a third party at the written request, consent, or ratification of a spouse qualify as alimony, provided the payments are in lieu of payments of alimony directly to the spouse and are intended by both spouses, per the written request, to be treated as alimony.

Where the property constitutes jointly-owned residential property, one-half of the total amount of mortgage payments, including both principal and interest, may be treated as alimony, and one-half of the interest may be deducted as mortgage interest, if it is qualified residential interest.

## **3. THE PARTIES DO NOT DESIGNATE THAT THE PAYMENT IS NOT ALIMONY**

The divorce or separation agreement does not designate the

payment as nondeductible by the payor or excludable from the payee's income.

The decree must make the tax effect known directly or expressly.

The payee spouse must attach a copy of the instrument designating the payments as not constituting alimony to his or her income tax return for each year that such a designation applies.

## **4. MUST RESIDE IN SEPARATE HOUSEHOLDS WHEN THE PAYMENT IS MADE**

A formerly shared home is considered one household, even if the parties are physically separated within the home.

## **5. THE PAYOR IS NOT LIABLE TO MAKE ANY PAYMENT FOR ANY PERIOD AFTER THE DEATH OF THE PAYEE SPOUSE**

- Alimony payments must end at the death of the payee spouse.
- An agreement may provide that payments are to continue to the payee spouse after the death of the payor spouse.

## **6. THE PARTIES MUST FILE SEPARATE INCOME TAX RETURNS**

- The payor must include the payee's Social Security number on his or her first tax return for the taxable year in which the payment is made.
- The payee is required to furnish this number to the payor.
- Alimony payments will NOT be recognized if the payor and payee file a joint return.

## **7. THE PAYMENT MUST NOT BE A PAYMENT FOR CHILD SUPPORT**

When a payor having both an alimony obligation and a child support obligation makes a payment that is less than the amount otherwise specified as due under the agreement, the payment is first applied to the child support obligation, and then to the alimony obligation.

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# NSA Proposed Governance and Bylaw Amendments

## PROPOSED NAME CHANGE

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Proposed bylaw amendment to change the NSA name to: National Society Of Tax And Accounting Professionals  
A number of NSA members at both the state and national levels have commented that it is difficult to attract new members because the word “tax” or “taxation” is not in our name. Simply put, many of our current and future tax professional members do not self identify as accountants even though it is clear that a tax professional should have a good understanding of accounting in order to properly prepare business tax returns. Rather, they consider themselves tax professionals, and prefer to belong to an organization that represents tax professionals as identified in its name (i.e. NSTP, NATP).

The NSA income and fee survey has long indicated that the majority of the income of our members is from tax related services provided to clients. The most recent survey indicates that over 61% of NSA members revenues are from tax services and less than 39% from accounting services.

The sponsors of the Bylaw proposal also believe that the name under which NSA does business should more accurately reflect our mission statement, which is to provide national leadership in the profession of accountancy **and Taxation**.

A number of NSA affiliated state organizations have also recognized the emerging trend in the profession and decided to incorporate “tax” into their names.

For example, the Pennsylvania Society of Public Accountants (PSPA) has voted to do business under the name, the Pennsylvania Society of Tax and Accounting Professionals (PSTAP);

The Board of what was then known as the Pennsylvania Society of Public Accountants wanted to adequately plan for emerging trends in the profession and continue to flourish in the future. So, last fall PSPA sent out an online membership survey. This survey was a culmination of several years of research regarding the organization’s name.

Here are the results of research conducted by PSPA’s marketing firm:

- PSPA members listed member services, small firm advocacy and quality continuing professional education as their reasons for joining the PSPA;
- More than 70% of current PSPA members and 85% of nonmembers surveyed think that the current name, Pennsylvania Society of Public Accountants, is confusing because new Public Accountants are no longer being licensed in Pennsylvania; the word Accountant also creates confusion as many tax professionals don’t identify themselves as accountants, therefore thinking they could not join PSPA.
- 50% of the nonmember CPA respondents indicated they were unaware that 65% of PSPA’s membership is comprised of CPAs. These same nonmember CPAs thought PSPA’s membership was composed of only Public Accountants. Tax professionals thought it was only an Accounting organization.
- Because PSPA’s name had the words “Public Accountant” in it, non Pa. State Licensee’s could not even display the organization’s certificate on the wall.

The PSPA Board of Directors, based on these findings, concluded that a change to the organization’s name was needed to eliminate this confusion, to encourage growth, and to sustain the longevity of the organization. PSPA is now known as the Pennsylvania Society of Tax and Accounting Professionals (PSTAP). Member benefits have remained constant, but the name change and rebranding efforts are credited with PSTAP experiencing a more than 30% increase in membership over the last two years.

For similar reasons, the Maryland Society of Accountants has begun the process of changing the name under which it does business to the Maryland Society of Accountants and Tax Professionals, Inc.

Several other ASOs are considering similar proposals and expect to address the name change in the near future.

The sponsors recognize that it is more and more the case that current and prospective NSA members view themselves as being in the tax business. Given short attention spans, we are not afforded the opportunity to explain that NSA is the society for Main Street accounting and tax professionals. Our name needs to change to include a reference to tax. With the word TAX in the name; the name itself would do the selling for the NSA to professionals that identify themselves as non-accountant tax professionals.

Finally, a number of state laws prevent any individual who is not a CPA from referring to themselves as an accountant, whereas these individuals can refer to themselves as accounting professionals without a problem. Similarly, some state



Board's of accountancy will not let a person hang a certificate from an organization that has only accounting in the organization's name or public accounting in the organization's name. Adding taxation to the name of the organization solves the problem of the State Board of Accountancy claiming that the non-licensed members are holding themselves out to the public as a state licensee, simply by hanging the organization's certificate on your wall.

Accordingly, the undersigned active members of NSA recommend that Article 1, Section 1 of the Bylaws be amended to change the commercial name of the NSA to the National Society of Tax and Accounting Professionals (deletions are struck through; additions in red). The proposal is set out under the signatures below.

Sponsors:	Christine Z. Freeland	Cynthia Hunt
Shirley Buchanan	Harold Stamey	Andrew Morehead
Steven Hanson	Erin Nebben	Brian Thompson
Linda J. Cuddie	Robert Thoma	Virginia Bruns
William Silzer	Leonard Larson	Curtis Lee
Matthew Lewis	Carolynn Holomon	Brad Crain
Dean Taylor	Eric Hansen	Ralph Walters
Francis J. Cellini	Jerome V. Sweeney	Sharon Cook
Kathy Hettick	Harlan Rose	Mary Lemons

#### ARTICLE I COMMERCIAL NAME

Section 1. The National Society of Public Accountants is also known as the National Society of ~~Accountants~~ Tax and Accounting Professionals.

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## PROPOSED BYLAW AMENDMENTS WITH RESPECT TO MEMBER VOTING

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### Background

#### 1. NSA's Bylaws with respect to voting

Article XIV of NSA's Bylaws provides that the NSA "National Council of Delegates" shall elect Officers, District Governors, and State Directors. The Council is also the only body authorized to vote on Bylaw amendments. Article XIV also provides that the National Council of Delegates shall be composed of all Active or Life Members who attend the Annual Convention in a given year. Accordingly, NSA requires any Active or Life Member to attend the Annual Convention in order to exercise their right to vote.

#### 2. Delaware corporate law – statute amended

Delaware statute in place for many years provided that, unless otherwise provided in a nonprofit corporation's governing documents, members of a nonprofit corporation such as NSA were entitled to vote in person or by proxy. Since NSA's governing documents did provide otherwise (only voting members "who attend the Annual Convention in a given year" may vote), the requirement to allow voting in person or by proxy was inapplicable to NSA.

The State of Delaware has recently amended its corporate law with respect to both stock and nonprofit corporations. Because NSA is a Delaware corporation, the NSA Constitution and Bylaws Committee reviewed the changes with our long-time outside counsel, whose practice specializes in the law as applied to nonprofits. Counsel has informed us that the "unless otherwise provided" language mentioned in the paragraph above *has been deleted*. Consequently, according to outside counsel, Section 215 (b) of Delaware's corporate law, as amended, gives voting members of nonprofit corporations the right to exercise whatever voting rights they may have: (a) in person; (b) or by proxy. Counsel states that NSA is required to allow all Active and Life members to vote in NSA elections, even if they do not attend the Annual Convention. Counsel also states that, "The statute does not refer to any option by the organization to override this right."

The NSA Governance Constitution and Bylaws Committee met in April to be briefed on the changes to the Delaware law. The members of the Committee unanimously agreed with Counsel's interpretation of the Delaware statute and, as a consequence, reviewed NSA's Bylaws to determine the extent to which they must be changed in order to conform to Delaware law.

#### 3. Delaware amended corporate law - "In person" or "proxy" voting

The Delaware statute provides the option to allow voting either in person or by proxy. In turn, in person voting can be by mail bal-

lot or, if authorized by the governing body (the Board of Governors in the case of NSA), by a ballot submitted by electronic transmission.

The Constitution and Bylaw Committee unanimously believes that an in person vote is the preferred method of voting. Proxy voting may give rise to:

- Uninformed voting. In a three person race, NSA's procedure is to hold a runoff election between the two individuals receiving the most votes on the first ballot. The proxy holder may vote for any candidate in the runoff election, even if the member giving the proxy is adamantly opposed to the candidate.
- Fraud. A member may not realize that an individual is soliciting a proxy ("Just sign here and I will vote for you.") or that an individual is voting because they merely *claim* to be holding a proxy for another.
- Unethical conduct. An individual holding numerous proxies may be offered inducements to vote all proxies for a particular candidate.

For these reasons, even Robert's Rules of Order recommends that proxy voting be avoided if at all possible.

The Constitution and Bylaws Committee agrees that proxy voting is inherently deficient. Accordingly, the Committee developed a Bylaw amendment proposal providing only for in person voting.

#### 4. Delaware amended corporate law – voting by those who are members on the "Record Date"

In order to allow members of a nonprofit corporation to vote on any matter, it is necessary to first determine who is eligible to vote. Without doing so, it would not be possible for NSA to know which member should be sent a ballot.

Since ballots must be sent out well in advance of a voting deadline or to provide a longer period of time to vote, Delaware statute allows the Bylaws to provide that only those voting members who are in good standing as of a particular date may in fact vote. This date, known as the "Record Date," is the date of the membership meeting, unless NSA sets some other date in its Bylaws, or by corporate resolution of the Governors. Voting members who are not in good standing with NSA on the Record Date (for example, if an individual is not an Active Member of NSA because they are not current with respect to dues payments) can be removed from the list of voting members.

#### The Bylaw amendment proposal

The proposal would amend NSA's Bylaws to accommodate the changes in Delaware law as follows:

1. All references to the National Council of Delegates would be removed.
2. A member interested in running for an NSA officer or District Governor position must notify the chair of the Governance Committee no later than June 1 by using a form available on the NSA website. Such form shall include the member's pertinent information as well as the signatures of a minimum of fifteen Active or Life members supporting the member's candidacy. A candidate for State Director must notify the Committee not later than July 1 using the form referenced above but need not include any supporting signatures.
3. The Governance Committee will notify the members of the candidates for (1) officer or Governor no later than June 10 and (2) not later than July 1 for State Director.
4. All eligible candidates may have election materials posted on the NSA election website.
5. Any individual who is an Active or Life Member of NSA as of the Record Date of July 1 in the election year would be eligible to vote.
6. Eligible members may vote from July 10 through July 31
7. NSA would contract with an independent, third party entity to conduct voting, with appropriate safeguards for confidentiality and verification of results.
8. In the event there are more than two candidates for any office, a runoff election between the two candidates receiving the highest number of votes cast in the initial balloting would be held in early August.
9. Election results would be announced at the NSA Annual Convention.
10. Any proposed amendments to the NSA Bylaws would follow a similar schedule. Amendments would need to be submitted to the Governance Committee no later than June 1, with voting at the same time as voting for candidates for office.
11. Conforming amendments would be made to various provisions in the existing Bylaws to conform to the changes outlined above.

#### Sponsors:

Frank Cellini  
Andrew Morehead  
Shirley Buchanan  
Dean Taylor  
Leonard Larsen  
Robert L. Thoma

The text of the proposed Bylaw amendments related to both voting and the reference to the NSA Constitution are attached hereto in the same document. The proposed changes with respect to voting are in **green**; the changes with respect to the Constitution are in **red**.

# **PROPOSED BYLAW AMENDMENT TO DELETE ANY REFERENCE TO THE NSA CONSTITUTION IN THE BYLAWS**

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As part of an extensive review of NSA's governing documents required because of the change in the Delaware corporation statute, the Governance Committee noticed a total of thirteen references to the NSA Constitution. The Constitution repeats (sometimes using the exact language) many of the provisions currently in the Certificate of Incorporation and the Bylaws. Consequently, NSA has three separate documents that address many of the same rights of members as well as the responsibilities and duties of the Board of Governors.

The references to the Constitution in the Bylaws typically relate to activities covered in detail in the Bylaws. Generally, such references provide that such activities "must be consistent with" or "not inconsistent with" the Bylaws. For example:

- Article IV, Section 1 relating to membership – "provided, such procedures are consistent with the Constitution and Bylaws of the Society";
- Article VIII, Section providing that the NSA President shall have the power to remove a committee member for "...violation of the Constitution or Bylaws"
- Article XI, Section 2 providing that the Board of Governors shall have the power "to carry out the provisions of the Society's Constitution and Bylaws..."

The reference to both the Constitution and the Bylaws creates a problem: if NSA members vote to amend the Article IV, Section 1 of the Bylaws with respect to membership procedures, for example, and do not concurrently vote to amend the Constitution, there could be a different membership rule in the Bylaws than there is in the Constitution. This raises the real possibility that NSA would be in violation of its own Bylaws since the revised procedures may not be "consistent with the Constitution and Bylaws of the Society."

Furthermore, this situation —where a variety of governance documents purport to address and provide rules for the same function or activity—also exists with possible differences between provisions in the NSA Certificate of Incorporation, the Constitution and the Bylaws.

NSA's outside counsel has advised us, in the strongest terms, to remove references to the Constitution in the NSA Bylaws and to archive the document. Doing so would not have any impact on NSA governance because, unlike the Certificate of Incorporation and the Bylaws, the Constitution is not a required governance document under Delaware law. We have also been advised to amend and restate the Certificate of Incorporation in order to prevent any possible conflict with provisions in the Bylaws. It is for this reason that another proposal to be voted on by members relates to amending the Certificate.

For the foregoing reasons, the sponsors, all of whom serve on NSA's Governance Committee, recommend that the NSA Bylaws be amended to remove all reference to the NSA Constitution and the Bylaws and further recommend that the Constitution be archived.

## **PROPOSED AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS**

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### CURRENT ISSUE

Time and changes occur, as we know, and it affects our organization. Changes have occurred in the Delaware Statutes since the National Society of Accountants (NSA) Certificate of Incorporation was formed on December 17, 1945. Recent amendments to the Delaware Statute required a review of our organization's Certificate. Our review made clear that this extremely detailed and cumbersome. In fact, it rambles on for fourteen pages and addresses many areas also (and more properly) covered in the Bylaws, including such mundane items as how many times a year the board of governors must meet and that the seal of the Society shall be a "band or scroll." The complexity of it could require us to seek amendments to the Certificate when Bylaw changes approved by the membership are also addressed in the Certificate. It is cumbersome and inefficient to have two governing documents that both address governing procedures.

### RESOLUTION

We, as an organization, seek to remain in compliance with the Delaware State Statute under which we were formed and to streamline NSA so that our primary governance document is our Bylaws. After consultation with outside counsel, we have been advised that Delaware requires only a very few items in any Certificate, including such items as the corporate name, the registered agent in Delaware, and the purposes for which the corporation is formed. This is consistent with the experience of our members, many of whom have participated in the incorporation process and know that state statutes require a Certificate to provide only basic information.

The members of the Governance Committee have consulted with outside counsel familiar with Delaware law, who has advised that a restatement is the most effective way to align our organization with the current requirements in the Delaware Statute. Accordingly, the Governance Committee unanimously recommends amending the Certificate as set forth below.

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF THE  
NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (the “Corporation”), hereby certifies as follows:

- A. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 17, 1945.
- B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation’s Certificate of Incorporation.
- C. The text of the Certificate of Incorporation of this Corporation is hereby amended and restated in its entirety as set forth to read as follows:

ARTICLE I. NAME

The name of the corporation is NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS.

ARTICLE II. REGISTERED OFFICE

Its principal office in the State of Delaware is located at Colonial Charter Company, 3500 S. Dupont Highway, County of Kent Dover, Delaware 19901.

ARTICLE III. PURPOSES

The Corporation is formed as a business league, within the meaning of section 501(c)(6) of the United States Internal Revenue Code of 1986, as amended (hereinafter referred to as the “Code”). The Corporation is organized and shall be operated for the promotion of the field of accountancy and its practitioners and to represent the common interests of and improve the business conditions among accountants, including but not limited to: the development of industry standards; elevating and maintaining among its members a high standard of proficiency and integrity; promoting and protecting the interests of accountants everywhere; cultivating a spirit of professional cooperation among its members; promoting local associations of accountants in every State; and establishing goodwill and understanding between the general public and the public accounting profession throughout the United States. In furtherance of such purposes, the Corporation shall have and may exercise all the rights and powers conferred on nonprofit corporations under the laws of the State of Delaware.

The Corporation is not organized for profit and has no authority to issue capital stock. No part of its net income shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, but the Corporation may pay reasonable compensation for services rendered and make payments and distributions in furtherance of the purposes set forth in these articles. It shall not engage in any activities or exercise any powers, whether express or implied, so as to disqualify the Corporation from exemption from federal income tax under section 501(a) of the Code by reason of being an organization described in section 501(c)(6) of the Code.

Upon the dissolution of the Corporation or the winding up of its affairs, the assets of the Corporation shall be distributed exclusively for the common business interests of its members or to organizations that are exempt from Federal income tax under section 501(c)(6) of the Code, provided however that in no event shall the assets of the Corporation be distributed to its members.

ARTICLE IV. MEMBERS

The Corporation shall have members in at least two classes: Active and Life Members, who are accountants that meet criteria as set forth in the Bylaws, who shall have the right to vote as set forth herein and in the Bylaws; and Associate Members, who are individuals with an interest in accountancy, who shall not have the right to vote. The further conditions, qualifications, rights, privileges, and obligations of each of these Classes of members, and any additional Classes of non-voting members, shall be as set forth in the Bylaws and as established from time to time by the Board of Governors.



Members shall be interested in and supportive of the purposes of the Corporation and shall timely remit dues within their applicable Class of membership as established by the Board of Governors. Upon payment of the requisite dues as set from time to time by the Board for each class of members, each applicant shall be afforded all rights of membership subject to subsequent ratification or invalidation by the affirmative vote of a majority of the Board of Governors present and voting at a duly constituted meeting, or in such other manner as the Board of Directors may resolve. Membership and all attendant rights shall cease in the event of nonpayment of dues, unless the Board acts otherwise.

ARTICLE V. BOARD OF GOVERNORS

The administration of the affairs of the Corporation shall be under the direct supervision of a Board of Governors, consisting of the Corporation’s officers as set forth in the Bylaws, who serve as ex-officio voting members, as well as one Governor from each of the geographic Districts as set forth in the Bylaws, elected by the Members entitled to vote, whose authority, responsibilities, process of election, terms of office, meeting times, and governance procedures shall be as set forth in the Corporation’s Bylaws.

ARTICLE VI: CORPORATE EXISTENCE

The Corporation shall have perpetual existence.

ARTICLE VII: INDEMNIFICATION

In accordance with the procedures and any further applicable criteria set forth in the Delaware General Corporation Law, the Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful.

To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.

ARTICLE VIII: AMENDMENTS

The Corporation’s Articles of Incorporation may be amended only by a two-thirds majority vote of those Members entitled to vote who vote on the matter.

IN WITNESS WHEREOF, after the approval by a two-thirds majority of the governing body of the Corporation of this Amended and Restated Certificate of Incorporation, the undersigned officer, on this \_\_\_\_ day of \_\_\_\_\_, 2013, does hereby execute this Amended and Restated Certificate of Incorporation and acknowledges the same to be the act of the Corporation.  
By:

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John G. Ams  
Executive Vice President  
National Society of Public Accountants,  
a Delaware non-profit, non-stock corporation.

**BYLAWS AS AMENDED**

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[Click here to read the Bylaws as amended](#) (takes you to the document in the NSA MemberConnect library.)