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Welcome to Edition 5 of The Newsletter from Scott H. Novak, Attorney at Law. The Newsletter is designed to bring timely and interesting topics to accountants and attorneys. Comments and suggestions are always welcome. Feel free to call or write at any time.

IRS Systems Issues. The Treasury Inspector General for Tax Administration (TIGTA) recently audited the Internal Revenue Service's Automated Non-Master File (ANMF) of taxpayer accounts. This is a database that cannot be managed through the Service's Master File because of systems limitations. Manual processing is required to establish accounts and to process account activity. What does manual processing lead to? Significant calculation errors and inefficient processing, according to TIGTA. As of September, 2015, the ANMF had 9,145 open accounts associated with about $4.5 billion in unpaid taxes, penalties and interest. Among the errors TIGTA found were the IRS over-assessing failure to pay penalties totaling $88,576 over 153 accounts, under-assessing failure to pay penalties totaling $354,153 over 277 accounts and that the IRS failed to assess $1.7 million in failure to file penalties on 85 accounts. There were many more errors that were found, including misapplication of funds. TIGTA made 6 recommendations to improve the ANMF processes; the IRS agreed with all of them. Unfortunately, significant systems modernization does not appear to be in the budget for the IRS any time soon.

The 9th Annual Tax Controversy Forum. This conference was held on June 15 and 16 at the Crowne Plaza Hotel in New York. What makes this conference the go-to annual tax controversy meeting is not only the highly distinguished private sector industry professionals who speak, but the fact that the conference also attracts so many high-level government officials as speakers. A couple of take-aways follow. The IRS and the Department of Justice are just getting started with foreign account owners. They are looking closely at quiet disclosures and first time disclosures and there could be large penalties for those who chose this route and should possibly have gone on a different path, such as the Offshore Voluntary Disclosure Initiative (OVDI). They are also looking at Streamlined Disclosures to see if some of the people who chose this route should have gone into the OVDI. Streamlined? Signed under penalties of perjury that failure to file FBARs was non-willful, thus a 5% penalty, as opposed to OVDI, which has a 27.5% or 50% penalty.

There are significant changes taking place to the partnership audit rules that go into effect in 2018, too numerous to cover in this newsletter. One major change is that audit adjustments are required to be paid by the partnership, though there is an election that can be made in some circumstances whereby the adjustments will be passed down to the partners. Another change is that there will no longer be a tax matters partner. Instead, there will be a "partnership representative." This person must have a substantial presence in the United States. The representative can be a person or an entity, but if it is an entity, a specific person must be identified. The appointment of a representative is made on the partnership income tax return. Partnerships with 100 or fewer "eligible partners" can opt out of the new rules. "Eligible partner" is defined as any person who is an individual, C corporation, eligible foreign entity, S corporation, or an estate of a deceased partner.

There was much more to the conference, including a lively discussion with Donna C. Hansberry, Esq., Chief, Appeals, Internal Revenue Service, about the value (or not) of face to face appeals meetings, rather than phone conferences. If you have a passion for tax controversy work, this is an invaluable annual forum.

Filing a 706 to Elect Portability. You may be aware that for 2017, the estate tax exclusion amount is $5,490,000. A married couple can double that amount for an exclusion of $10,980. If the first spouse uses less than his or her full exclusion, the second spouse can use the balance. A good example is when the first spouse leaves everything to the surviving spouse. The surviving spouse can use the full amount of both exclusions at death, provided that portability was elected by the first spouse's estate through the filing of a 706. In the example I gave, the first spouse is not required to file a 706, except to elect portability. Usually, a 706 must be filed within 9 months after death (a six-month extension is available). In a case where there is no other reason to file a 706, the IRS opined in Revenue Procedure 2017-34 that when a 706 is being filed for portability only, the return can be filed on the later of January 2, 2018, or the second anniversary of the decedent's death. This gives the executor just a bit more time to get the return in to protect the portability election.

A Case to Watch: The Maze case involves plaintiffs Eva Maze, Suzanne Batra, and Margot Lichtenstein, who are 95, 80, and 93 respectively. Mrs. Maze and Mrs. Lichtenstein are refugees from World War II. Eva Maze was born in 1922 in Bucharest, Romania. She moved to the United States to escape Nazi occupation of Romania during World War II. In 1948, after the end of World War II, Mrs. Maze returned to Europe, where she lived until 2012, when she returned to the United States. Her husband left her a Swiss account that she moved to France. Mrs. Batra was born in New York in 1937. She married Lekh Raj Batra, who was born and raised in India, in 1960. After the 1985 Savings and Loan Crisis in the United States, Mrs. Batra and her husband decided to deposit the funds in foreign bank accounts because of the continued instability of the U.S. banking system and the financial security offered in foreign jurisdictions. Mrs. Lichtenstein was born in Berlin, Germany in 1924. She came to the United States in 1951 with her husband, Boruch Lichtenstein, whom she had just married. Mr. Lichtenstein was Jewish. He was born in Poland, escaped to Russia during the Polish anti-Jewish pogroms, and left Russia around 1951. After Mrs. Lichtenstein's husband passed away in 1997, Mrs. Lichtenstein inherited certain foreign bank accounts from her husband.

Each woman assumed that the accounts were not taxable in the United States. When they discovered their errors, each went into the only thing that was available at the time, the Offshore Voluntary Disclosure Initiative (OVDI), with its very heavy penalty scheme. When the Streamlined program (5% penalty) came out, the women tried to come out of the OVDI to go into the Streamlined program. The IRS would only allow the change pursuant to very harsh transitional rules. They are suing the IRS under several theories to be treated like any other individual going into the

Streamlined program. The most telling piece of this matter is that the IRS is treating these three elderly, clearly nonwillful women so harshly. Will the District Court?

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