

MAY/JUNE 2017

Today's CPA

TEXAS SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

**Is Code Section 125 Non-compliance
Relative to Deductions for
POP Plans Being Overlooked?**

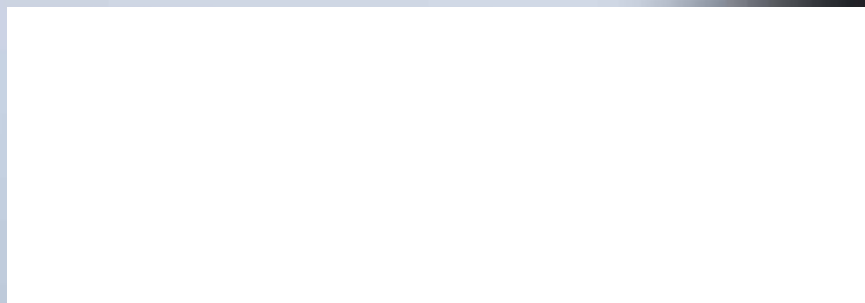
Managing Engagement Creep

**Exception to the Three-Year
Statute of Limitations**

**TSCPA's
2016-2017**



Year in Review



Three Steps to Boost Your Revenue

by Dr. Chandra Bhansali, Co-founder and CEO, AccountantsWorld

In the past, advances in technology have primarily helped accountants perform client engagements faster and easier and manage their practices more effectively. Now, for the first time, you have direct access to technology that actually creates new revenue-generating opportunities for accountants.

Capitalizing on these opportunities lets you not only raise your bottom line, but also add value to your clients' businesses and help them run their own operations more efficiently. It's a win-win for both you and your clients. Cloud technology has opened many revenue-generating and bottom-line-boosting avenues for accountants, allowing accountants to:

1. Offer Existing Services More Profitably

Utilize automated bank feeds: Most cloud solutions enable you to download bank and credit card transactions directly from providers to reduce data entry for write-up clients who write manual checks by 70% - 80%, minimize data entry errors, and make bank reconciliation faster and easier.

Reduce client errors: Client bookkeeping errors are the single largest drain on productivity for accountants. A good professional cloud-based accounting system lets you work collaboratively with your clients, enabling you to customize the system for each client to give them access only to the functions they can perform, leaving little room for client errors.

2. Regain Services Lost to Competing Forces

Payroll services: Payroll processing was taken over by service bureaus who had enormous processing centers that could automate complex payroll processing tasks. Accountants had no such tools. But the cloud has leveled this playing field. Cloud-based professional payroll systems created exclusively for accountants have completely automated payroll processing, and have even eliminated the need for accountants to do data entry or print checks in their offices. Using these systems, you can make payroll processing one of your most profitable services, and one that, unlike tax and accounting, requires little professional time and generates a perennial revenue stream.

Client accounting services: Just like how cloud-based professional payroll solutions have transformed payroll services, cloud-based professional accounting systems like Accounting Power are transforming accounting services. With these solutions, your staff can do what your clients' staff currently does – only faster, easier and more accurately, right from your office. Now you can easily take over all accounting functions, including bill payment and bookkeeping from clients who consider accounting as a headache and want to offload every accounting function to you. This way your business clients get more time to manage and grow their business, and you have the ability to monitor their cash flow and Key Performance Indicators in real-time and offer them the financial advice they need. Now you can reduce your clients' pain while raising your bottom line.

3. Have the Right Billing Model

To capitalize on these opportunities, you need to switch to a simple flat fee billing model, if you haven't already done so. That's the only way to monetize the increases in productivity and efficiency. It's easy to do, and your clients will love it.

These tactics make it possible to generate additional revenue without increasing staff - you do it by performing existing services more efficiently to make time for additional services. Most of these services need little of your scarce professional time. And because the best candidates for these additional services are your existing accounting clients, you can grow your practice without acquiring any new clients.

The cloud has enabled perhaps the only large scale revenue-boosting opportunity you'll see in your professional lifetime, so don't miss it. As the accountants who have already taken advantage of these opportunities will confirm – today, making more money is easier than ever.



Chandra Bhansali started AccountantsWorld to leverage the Internet and advance the cause of accountants. AccountantsWorld's innovative solutions use cloud technology to help accountants reclaim lost ground and benefit from new opportunities in accounting and payroll. Dr. Bhansali has been named one of the "Top 100 Most Influential People in Accounting" by Accounting Today magazine for the past decade.

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Final Thoughts on 2016-2017

Editor's Note: In the final *Today's CPA* issue of TSCPA's fiscal year, Chairman **Kathryn Kapka**, CPA-East Texas, takes a look back at 2016-2017.

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By **Kathryn W. Kapka**, CPA | 2016-2017 TSCPA Chairman

ow! I had been warned that this year would go by quickly, but it has flown! It's hard for me to believe that it's already the end of my term as your TSCPA chairman. It has been a privilege to serve as chairman of this wonderful organization and to meet and interact with so many of our fascinating members and leaders. As I traveled to all the chapters across the state, I've been inspired by the diverse and talented group of individuals involved in TSCPA and this profession. I have learned so much about our members by visiting them where they live and work. While we share many common values and goals, we are as diverse as this great state that we live in!



Since this is my last Chairman's Message for the year, I'd like to highlight some areas of focus that members identified as being important to them. Be sure to read

the "Year in Review" article for more details. It's the cover article in this *Today's CPA* issue.

The CPE Foundation continued to provide high-quality educational programs. The world we live in today is notably different from what it was five or 10 years ago and continues to change at a rapid pace. Technology has shifted the way we receive information and take our education. A task force was appointed this year to evaluate our CPE function and how we can better serve our members. New programs are developed on a regular basis and you can also look to the Society for free CPE programs designated for members-only. Other changes are in the works to maximize the benefit of our quality CPE products.

One of the most important values of your membership is the ability to network with other members. For more than a century, TSCPA has served as a community of accounting professionals. In this community, relationships are developed and dialogue on key issues takes place. Whether you work in public accounting or business and industry, having a network of your peers can be indispensable in your career. They are colleagues, friends, experts and go-to professional resources. With TSCPA, you can choose how to tap into this network through chapter activities, community service projects, mentoring opportunities, LinkedIn groups or the myriad of other ways members keep in touch and share information. I encourage each of you to plug into your CPA network and reap the benefits of a collective group of knowledgeable and dedicated peers.

Protecting your profession and CPA license is a vital role that TSCPA plays. Whether it's in Texas or nationally, with new legislation, regulations or standards, you can count on TSCPA to be watching out for your interests. This past year was packed full with activities by our dedicated leaders and volunteers who did an

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I'VE BEEN INSPIRED BY THE DIVERSE AND TALENTED GROUP OF INDIVIDUALS INVOLVED IN TSCPA AND THIS PROFESSION.

”

incredible amount of stellar work in this area. They continued to be respected voices to legislators and regulators. I was so impressed by the way they developed and advanced TSCPA's legislative agenda, hosted an Advocacy Day, reviewed numerous proposed bills, served on a panel at an IRS public forum, testified before the IRS, issued a number of comment letters and more, all to ensure the views of our membership were represented. As your chairman, I appreciated the amazing work they did on behalf of TSCPA.

One other area I wanted to touch on here is communications. As busy CPAs, how can we stay on top of the ever-changing practice of accounting, not to mention the opportunities to serve in our communities and with our professional organization? TSCPA keeps us informed through accurate and timely communications that go to all members, as well as to the various segments of the membership. As your valued partner, TSCPA saves you time by providing content and resources that allow you to find what you need quickly to solve your challenges, enhance your perspective, and keep you up to date on innovations and trends in the profession.

As we close out the year, I'd like to thank you for all the support you've given me as I served as your 2016-2017 chairman. Next year will be another significant one for TSCPA as we develop a new strategic plan that will serve as a solid foundation for the future. My hope is that we will continue to attract new, diverse individuals to join us in helping to build an even stronger organization in the years to come. ■

Kathryn W. Kapka, CPA | can be contacted at kkapka@uttyler.edu.

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Why (Nearly) Every Partnership Agreement Should be Amended

By Jason B. Freeman, JD, CPA | Column Editor

The new partnership audit rules generally take effect for tax years beginning in 2018 – partnerships and their partners will ignore them at their peril. The new rules, enacted under the Bipartisan Budget Act of 2015 (BBA), dramatically change the regime that currently governs partnership tax audits, assessments and collection. The changes will impact not only *how* tax adjustments are assessed, but *who* is ultimately responsible for them. In many cases, the new rules will substantially alter the allocation of risk among partners (e.g., among past, current and future partners) related to uncertain tax positions or future tax adjustments.

As a result, they will impact the valuation of partnership and LLC interests and the due diligence necessary in a transaction that involves such an interest. In some cases, they will also create potentially costly disputes among partners that could even embroil CPAs who may be viewed as having failed to inform the partnership of the impact of the new rules or the need to have their operating or partnership agreement reviewed.

The good news, however, is that the BBA offers many opportunities for both flexibility and certainty. But to fully take advantage of these opportunities, partnerships will need to review and revise their agreements now – before the new regime goes into effect. Indeed, nearly every partnership (including LLCs treated as a partnership) should have its operating or partnership agreement reviewed (and probably revised) before the end of the year to incorporate provisions that are specifically tailored to the BBA regime.

Background

The BBA, as amended by the Protecting Americans from Tax Hikes Act of 2015, repeals the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and Electing Large Partnership audit regimes that currently govern partnership administrative procedures. In their place, it imposes a new, centralized partnership audit regime that generally provides for the assessment and collection of tax at the partnership level.

The new rules were designed to streamline partnership audits and to reduce the administrative burden on the IRS. They were also designed to make it easy to collect partnership-related tax assessments. The result will be a renewed focus on partnership audits. Partnerships and their professionals can expect to see an increase – likely a fairly dramatic one – in the number of partnership audits after 2017.

The default rules under the BBA regime completely change the partnership audit landscape. Assessments will now generally be made against the partnership itself, a change at odds with the traditional concept of the partnership as a non-taxpaying, flow-through entity under Subchapter K. And where the IRS makes an assessment based on a prior year (a “reviewed year” in the BBA terminology), the current partners will be responsible for paying that assessment – unless, that is,

the partnership makes an available election to push those assessments out to prior reviewed-year partners.

As one can see, the decision about whether to make such an election may pit various partners’ interests against one another. Partners may not only have come and gone, but their respective interests may have shifted over time. Add in the fact that one person – the “partnership representative,” who may owe competing state-law fiduciary duties to various partners and may also have their own self-interest in mind – has sole discretion under the new law to make those decisions and one can see that the prospect for costly disputes under the default BBA structure is ripe. Fortunately, many of these otherwise inevitable disputes can be avoided by proactively revising the partnership’s operating or partnership agreement to address the new rules.

New and Uncertain Sources of Guidance

While much is clear under the new legislation, there are still many issues up in the air with respect to its implementation. In January of 2017, the IRS issued proposed regulations on the new rules. However, those proposed regulations were quickly withdrawn by an executive order imposing a moratorium on federal rulemaking. As a result, their status remains somewhat unclear, but they do provide a source of relevant guidance and a window into the IRS’ thinking on a number of issues.

In addition, both houses of Congress previously introduced a technical corrections bill, The Tax Technical Corrections Act of 2016, that would have enacted several fundamental changes and clarifications to the BBA’s rules. However, the Technical Corrections Act was not adopted before last year’s session adjourned. With the renewed prospect of tax reform on the horizon, it may very well serve as a blueprint for any partnership tax changes that make their way into future tax legislation.

Regardless, however, of the status of any proposed regulations or technical corrections bills, the BBA’s statutory provisions will go into effect in 2018 by force of law. So, again, partnerships should ready themselves for the changes to come.

Issues to Address

There are numerous BBA-related issues that should be addressed in new and existing partnership and operating agreements. This Tax Topics column will briefly address a few of the more common issues.

Electing Out of the BBA

Partnerships with 100 or fewer partners that meet certain requirements may be eligible to elect out of the BBA regime. Such eligible partnerships should address whether an “election out” of the BBA will be mandatory. Each election out must be made on an annual, year-by-year basis. It is important to keep in mind that the election-out decision is not a one-

size-fits-all proposition; some partnerships may actually benefit from the new BBA regime depending on their circumstances. Most, however, will probably prefer to elect out of the BBA.

Under the BBA and the proposed (but withdrawn) regulations, a partnership with a partner that is itself a partnership, trust, disregarded entity or nominee is not eligible to elect out of the BBA regime. Partnerships that want to avoid the new BBA rules may want to impose restrictions on the transfer of partnership interests to such partners and limit ownership to certain eligible entities to maintain their ability to elect out.

The Partnership Representative

The BBA does away with the TEFRA tax matters partner and, in its place, creates an entirely new role: the partnership representative. The partnership representative has sole authority to unilaterally bind all other partners in an administrative or judicial proceeding, including the ability to settle, extend a statute of limitations or bring court action. The IRS will communicate exclusively with the partnership representative throughout any such proceedings and the partnership representative is not obligated to provide notice to partners.

Existing partnership and operating agreements are drafted around the soon-to-be-outdated TEFRA tax matters partner concept. TEFRA, for instance, provides rules that require notice to be provided to partners and that give certain partners a right to be involved in proceedings. TEFRA also provides for background rules to select a tax matter partner where one is not in place. Those rules will not govern in a BBA world. In contrast to TEFRA, under the BBA, if a partnership representative designation is not in effect, the IRS has authority to select any person to serve in that role.

At a minimum, partnership and operating agreements should provide a process for selecting, removing and replacing the partnership representative. Under the BBA, and unlike under TEFRA, a partnership representative need not be a partner. A partnership representative could, for instance, leave the partnership but still remain as the partnership representative. This scenario and others can be addressed.

Operating and partnership agreements can also be used to impose state-law obligations on the partnership representative to provide notice to partners of certain events. For instance, they can be used to impose an obligation to notify partners of the commencement of an audit, any proposed assessment and the procedural options available at any given stage.

Finally, many partnerships may wish to limit the partnership representative's authority over certain tax matters. For instance, a partnership may provide that certain decisions – such as extending a statute of limitations or settling a dispute – require a majority, supermajority or even a unanimous vote of the partners. While such restrictions may not limit the partnership representative's authority from the standpoint of the IRS, they will provide state-law recourse for actions that do not comply with the operating or partnership agreement. In a similar fashion, partnerships may want to address the fiduciary duties, if any, of the partnership representative, either limiting or expanding such obligations in light of the unique needs of the partnership.

The 'Push Out' Election

The BBA provides for a "push-out" election that allows a partnership to push, as the name implies, a partnership adjustment out to prior-year partners ("reviewed-year" partners). In other words, the "push-out" election provides a mechanism to push the liability related to the adjustment back to those reviewed-year partners who received the economic benefit from the adjusted tax item, rather than imposing liability on the partnership itself, which would cause current-year partners – who may be different from the reviewed-year partners – to bear the ultimate economic burden of the assessment.

However, the push-out election is not automatic or self-executing. The partnership must make the election within 45 days of the notice of final partnership adjustment and must provide the reviewed-year partners with a statement reflecting their share of the adjustments. The reviewed-year partners must then take those adjustments into account and pay any resulting tax, penalties and interest.

Of course, there are considerations that may impact the desirability of a push-out election. For instance, a push-out election may subject the adjustments at the partner level to greater interest rates and may also have self-employment tax, net investment income tax and state tax implications.

Partnerships can address the push-out election in their operating or partnership agreements. Doing so may avoid costly disputes among reviewed-year partners and current partners about the proper treatment and whether to make the election that will determine who is ultimately liable. A partnership representative – who has the authority to choose whether to make the push-out election – may even have a self interest in the decision, underscoring the need to address these issues ahead of time and before the question arises.

Moving Forward

Practitioners can expect to see significant increases in the number of partnership audits in future years as a result of the BBA. Practitioners will find that the new audit rules under the BBA are far different from those under the existing TEFRA and Electing Large Partnership regimes.

The BBA will have a dramatic impact both in terms of how partnership assessments are made and who is ultimately responsible for them. In many cases, its default rules will lead to inequitable results and opportunities for elections or procedural steps that present serious conflicts of interest and questions about fiduciary duties. That, of course, will inevitably lead to costly disputes and unnecessary tension among partners. In fact, in some cases, CPAs may even find themselves embroiled in future disputes, accused of failing to inform the partnership of the impact of the new rules or notifying it of the need to have its agreement reviewed.

Many of these issues and risks, however, can be addressed and mitigated by proactively having legal counsel review and, where appropriate, amend partnership and operating agreements to anticipate and address the changes to come. ■

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Driving Innovation

By Mano Mahadeva, CPA, MBA | Column Editor

Health care continues to be in transformation. Despite the uncertainty of the Affordable Care Act (i.e., Obamacare), investment in health care continues to outperform the broader market, driven by favorable long-term fundamentals. When people get sick, they need care and they need it quickly. This care needs to be affordable, of measurable outcomes and with many points of access. If these can be shaped by customized and convenient experiences, the rewards can be significant.

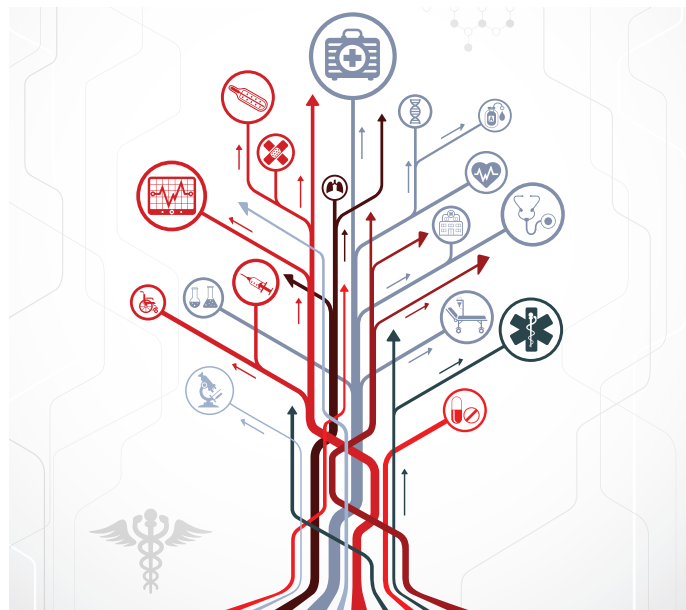
The Affordable Care Act, enacted in 2010, was created as a first step toward addressing our historically unsustainable and dysfunctional health care system. This system had limited access to care, offered inequitable care, had many uninsured and was fraught with waste. The 2016 presidential election and its outcome suggest that greater change lies ahead for us.

The impending change offers many opportunities for those with a sound understanding and knowledge of the health care delivery system and those with deep pockets. One such investor type is a pillar of alternative investments, namely those in private equity investing. These investors provide venture capital for early stage companies, growth capital for mid-stage companies and equity capital for buyouts of mature companies.

These companies invest across all major sectors. They help by providing liquidity and operational expertise. Think of a company that has the potential to expand its products or services, but does not have the working capital to meet demand. By offering liquidity, it allows the management team to grow the company to its full potential and helps the economy with additional jobs. They also help the economic cycle by supporting innovations that help better peoples' lives.

Private equity participation is increasingly important in the health care service sector. In the past, they have invested in large, well-known health care companies and are also investing in upstarts with innovative strategies. Some participants have become increasingly more knowledgeable and comfortable with investments involving direct patient care and reimbursement risk, while others spend more time on businesses critical, but ancillary, to direct patient care businesses.

We have witnessed significant growth in certain subsectors within health care – health systems and hospitals, imaging centers, physician practices, wound care, pain management, anesthesia, ambulatory surgery centers, urgent care, addiction and rehabilitation treatment, chronic disease, dialysis, hospice, dental practices, dermatology, primary care, physical therapy and in information technology, to name a few. In each of these opportunities, private equity companies believe they have found a better, cheaper and faster model to deliver care to the patient.



As better models evolve in health care delivery and care, the consumer wants more – he/she wants more personalization, more convenience and more digital experiences. And even though our health care system is one of the most advanced across the globe, it is a very complex system to grasp, so it takes more time to grasp. In response, providers of care are working collaboratively with payers, pharmacies, technology companies, device makers and other ancillary groups to streamline processes.

Today, we find apps through which appointments can be made with smartphones. We find iPads at the front desk that help to make changes to your profile, which takes only a minute or two, instead of filling out reams of paperwork at each visit. Telehealth has offered a convenient and quick way for a person to visit with a health provider to discuss an issue over a computer. We have devices strapped on to us constantly monitoring our blood pressure, heart rate and calories burned. Even the Apple watch tells us to stand up and take a break every hour!

There is a very high risk/return tradeoff, which motivates the private equity investor and those who continue to have faith in them. Institutional funds, such as endowments, pension funds, foundations, corporations, exchange traded vehicles and even wealthy individuals provide an important source of capital and are very willing to accept the higher risk, volatility and lock-up periods in lieu of superior returns. There are no guarantees of success in this sector as poor due diligence, failures in prediction, poor choice of management teams, non-sustainable models, and legal and/or regulatory changes could lead to greater dispersion of returns, failure rates or loss of investment.

Private equity does play an important role in markets, especially across health care. It should not be simply about investing in an asset class – it should be about representing a competitive force for change in established health services markets to provide quality care, efficiently, quickly and with many access points. This will be a critically important development for the broader market. ■

Mano Mahadeva, CPA serves on the Editorial Board for TSCPA. He can be reached at manomahadeva@gmail.com.

With Six You Get Eggroll

Outgoing Chapter President Sees Life's Possibilities

By Anne McDonald Davis

Shannon Adams, CPA-Wichita Falls, says it's never too late to reinvent yourself. "As many times as it takes," she laughs.

Born in Palestine, Texas, Adams is a self-described "Army brat" who spent the next 14 years of her life living "all over the world." When the family returned to their hometown, she finished high school – showing an aptitude for math – and enrolled in UT-Tyler. But romance beckoned and she married her husband of 27 years, Randy Adams, ultimately leaving college to start a family.

Over the next 13 years, Adams became a stay-at-home mother of six, a life she found meaningful (and somewhat less chaotic than Doris Day's in "With Six You Get Eggroll" (1968)). Still, when Randy had a job opportunity and the Adamses moved from Palestine to Wichita Falls, she couldn't help but notice the presence of nearby Midwestern University. By then, all the kids were school-aged, the older three in high school.

She decided: "It was time. I worked with Randy in the restaurant for a while, but I've always loved school and wanted to do something more."

The daughter of a bookkeeper, Adams took a cue from her mother and chose to study accounting. The year before she graduated magna cum laude, local CPA firm Hupp, Bauer, Hanson & Lewis offered Adams an internship, ultimately hiring her. For the past decade, she's remained on board as a tax and audit accountant, largely for the oil and gas industry.

Wait, there's more. Adams serves as secretary of the local chapter of the Council of Petroleum Accountants Society (COPAS) and is the outgoing president of TSCPA's Wichita Falls Chapter.

Please recall, this is a woman who was a wife and mother of six! Frankly, the energy in her voice as she describes her morning workout with a trainer is enough to make the average person want to just take a nap.

Adams cheerfully admits to being a high-energy person who likes to run, cycle and be outdoors. Support from family has also been an uplifting influence.

She acknowledges: "My kids are probably the ones who are the most proud. And my dad. My husband too, but he hates tax season."

Today, her oldest – Kirsten, Danielle and Alexandra – are out of the house and married (and grandchildren have been added to the mix). Samuel, the only boy, is a junior in high school.

"My two younger daughters, Genna and Bella, are dancers and I like to watch them compete. I love people," Adams enthuses. "That's my favorite thing, spending time with people. There's never enough time to do everything I want to do."

Adams plans to continue her education and hopes to add CGMA to her professional designations this summer. She also looks forward to exploring volunteerism at the state level.



Randy Holley; Monty Walker, CPA; Rep. James Frank; Shannon Adams, CPA; Jeff Gregg, CPA; and Jerry McGee, CPA



Back: Phillis Bunton, Alexandra Lopez and Genna Adams
Front: Shannon Adams, Bella Adams and Danielle Kistler

She recalls: "It wasn't until I passed my CPA exam and got the welcome packet from TSCPA that I became aware of the Society. Then another member with COPUS invited me to be on the chapter board. It's been encouraging to serve as president with such a great group of men and women, and amazing to meet all the different kinds of people in the industry. Our chapter's tried to start making changes, to be more active, to help members see the benefits of TSCPA membership. We're all super busy ... it's just a matter of finding the time to pull everybody together."

Admitting that she's borrowing from a Nike ad, Adams says that her philosophy is: Just Do It. "I like to encourage people, especially people who think they're 'too old.' Don't be so sure you're 'too old.' You have life, experience, wisdom and discipline. I think older students have so much to offer younger students and special gifts to bring to the workforce. It can be even better later in life – you know yourself. Life's too short; do it!"

So ... small town girl, world traveler, stay-at-home mom, CPA, professional leader ... will the real Shannon Adams please stand up? "They're all me," Adams smiles.

Secure Your Computers and Data: It Can Be Done!

By Thomas G. Stephens Jr., CPA, CGMA, CITP, Guest Columnist

Viruses, malware, ransomware, identity theft and the list goes on. The number of ways that the sensitive and confidential data, that we have been entrusted to maintain and protect, comes under attack seemingly increases on a daily basis. Yet that does not mean we should sit back and take a passive, reactive approach to data security. On the contrary, aggressively and proactively managing the security of your information systems can yield extraordinary results with respect to data security. In this column, you will learn about five simple, but highly effective steps you can take to secure your computer.

Enhance Authentication Controls

For most users, authentication controls focus on using a combination of a user ID and a password to log in to a computer, smartphone or other device. In these cases, ensure that you are following best practices for “long-and-strong” passwords to minimize the risk of unauthorized access. According to The Sans Institute, in today’s world that means that your passwords need to be at least 12 characters in length, including a mixture of numbers, letters and special characters such as punctuation marks. Further, you should never share your passwords with anyone or write them down and you should change them every 60 to 90 days.

Of course, from a practical perspective, these guidelines are almost impossible for humans to adhere to; therefore, you should also consider using password management applications such as LastPass, Password Depot and RoboForm to assist you in creating, managing and recalling strong passwords.

Do Not Login with Administrative Rights

On a PC, you can login with either “administrative” rights or “standard” rights, based on how your user ID is established. You should ensure that your user ID provides standard rights. If you login with administrative rights, you can make (presumably accidental) changes to the configuration of your PC that could compromise the security of the device. For instance, an administrative user could disable the firewall or anti-virus software on a computer, whereas a standard user does not have the ability to make such changes on the device.

In fact, one study published by Avetco indicated that as much as 92 percent of the security risk associated with operating a Windows-based PC is eliminated when users login as standard users, instead of as administrative users. However, if you occasionally need to operate the computer as an administrator – such as when installing new software – you can have a second user ID on the machine with those rights attached to it. Then, simply login as an administrator when and only when the situation demands it. Otherwise, your default login should be as a standard user.

Disable USB Ports for Data Transfer

USB ports provide incredible convenience for connecting devices such as printers, keyboards and mice. Yet this convenience comes at the price of potentially compromised data “leaking” out of the organization through unsecured flash drives and external hard disks connected through USB ports. Accordingly, you

should consider blocking your USB ports for data transfer to and from flash drives and external hard disks. To block USB ports from data transfer, talk with your IT staff about implementing a relatively simple registry edit that can be implemented to make your USB ports read-only, while still permitting keyboards, mice and other peripherals to connect conveniently through these ubiquitous ports.

Encrypt Disk Drives

Particularly so for mobile devices, you should ensure that the hard disks on these devices are encrypted. By encrypting the drives, you minimize the risk that if the device is lost or stolen, someone could access all of the sensitive data on the device. An added potential bonus associated with encrypting a drive is that many states’ security breach notification laws provide for an exemption from notifying potentially impacted parties that their information may have been compromised if the storage on a lost or stolen device is encrypted.

Although encrypting a disk drive sounds like a complex and cumbersome task, in Windows Vista and newer, it can be quite simple. If you are running a business-oriented version of Windows, you have access to two built-in tools: BitLocker (used to encrypt your hard disk) and BitLocker To Go (used to encrypt flash drives and external hard disks in



Thomas G. Stephens Jr., CPA, CGMA, CITP

is a shareholder in K2 Enterprises, where he develops and presents continuing professional education programs to accounting, financial and other business professionals across North America. You may contact him at tommy@k2e.com.



situations where blocking USB ports from data transfer is impractical.) If you have administrator rights on your computer, you can access BitLocker and BitLocker To Go from the Control Panel. Simply follow the prompts to secure all of the data on your drive(s) and minimize the risk associated with unauthorized access.

Whitelist Software Applications

As stated at the outset of this column, we face an ever-growing list of threats. One increasingly popular approach is to abandon trying to block all malicious software that can attack our devices and instead block all software from running, except for those applications that we specifically authorize, such as Excel, Outlook, our web browser, and various accounting and tax applications. This approach is known as "whitelisting," and is proving to be highly effective in enhancing the security of computers and the data that resides on them. However, this is not likely an approach that you can (or should) implement by yourself. Rather, talk with your IT staff about whether whitelisting makes sense for you and others in your organization.

Layer Techniques

The threats are real and the risks are great, but that does not mean that we cannot effectively secure the sensitive data on our devices. On the contrary, by "layering" the techniques outlined above, you can and will create a highly secure environment that hackers will find difficult to penetrate. Good Luck! ■

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CPA Month of Service

By Rhonda Ledbetter | TSCPA Chapter Relations Representative

A project initiated by TSCPA's Young CPAs and Emerging Professionals Committee (which includes chapters' local chairs), the CPA Month of Service was held during November 2016. Volunteers in chapters around the state participated in projects benefiting their communities. They stocked food pantries, cleaned up parks, provided support for schools in need, participated in charity run/walk events and much more. Here is information shared by the chapters.

The **Austin** Chapter volunteered with a Habitat for Humanity Build, participated in the ZERO Prostate Cancer Run/Walk and served at the Central Texas Food Bank. Nine members participated in the chapter activities and many more members volunteered with other organizations on their own.

The **Central Texas** Chapter worked with the Central Texas Hospitality House in Gatesville. The Central Texas Hospitality House provides a place for families traveling more than 250 miles to stay while visiting family and friends who are incarcerated.

The **Corpus Christi** Chapter held two events. The Miles for Meals Glow Walk benefitting the Corpus Christi Food Bank had about 20 participants. The Share-a-Meal event at the Ronald McDonald House had approximately 30 participants.

The **East Texas** Chapter held a luncheon in Lufkin to support local law enforcement officers. In Tyler, the chapter teamed up with the East Texas Food Bank and encouraged organizations to collect

food up to the day of volunteering. There were 18 people, including students from UT Tyler, who participated that day. Volunteers collected more than 1,100 items, totaling 1,000 pounds of food, along with \$170 in cash donations.

The **El Paso** Chapter held a food drive for the El Pasoans Fighting Hunger Food Bank. The chapter collected food in bins at CPA firm participants' offices and at its monthly member meetings. The chapter also volunteered at the food bank to help with stocking and sorting.

The **Fort Worth** Chapter UP (Under Forty Professionals) Group Committee participated by focusing on children living in poverty in Tarrant County. More than 220 chapter members and 150 nonmembers contributed in excess of 450 hours and \$17,000 in gifts and warm clothing.

The **Houston** CPA Society Young Professionals group volunteered with the Houston Food Bank at the Kitchen location. Volunteers and food bank staff worked side-by-side to prepare hot meals for children participating in the Kids Cafe after-school program.

Panhandle Chapter members volunteered at the High Plains Food Bank.

The **Permian Basin** Chapter participated in a food drive to benefit the West Texas Food Bank.

There were 40 **San Antonio** CPA Society volunteers, friends and colleagues who gave back in two ways. One group scrubbed



picnic tables, picked up trash and weeded the landscaped grounds at Morgan's Wonderland, the world's first accessible family fun park. A second group unpacked, sorted, tossed and repacked tons of donated food at the San Antonio Food Bank.

The **South Plains** Chapter participated in the Junior League of Lubbock's Food2Kids program. The chapter collected more than 2,000 PopTarts at their autumn meetings. The chapter had 13 members who volunteered at two food sack stuffing shifts.

At the **Southeast Texas** Chapter, 13 Lamar University students organized the warehouse and storefront of a Habitat for Humanity

ReStore location. Also, members and students sorted and stocked at the Southeast Texas Food Bank.

Editor's Note: A special thanks to TSCPA's Catherine Raffetto for her contributions to this Chapters column. ■

Contact

Contact your chapter's leaders with project ideas for the next month of service in November and begin mobilizing your colleagues to take local participation to the next level.

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Improving Employee Benefit Plan Audits

By Barbara Apostolou, Ph.D., CPA, CGMA, and Alan Reinstein, DBA, CPA, CGMA

The accounting profession has long sought to improve audit quality. While the popular press tends to emphasize improving the quality of public company audits, another important and relatively unnoticed area is employee benefit plan audits. This article describes the Employee Benefit Plan Audit Quality Center's (EBPAQC's) role in helping CPAs perform higher-quality benefit plan audits. These engagements entail trillions of dollars of economic value and are no less important than those supporting shares of stock in public companies. A quality audit provides assurance about an employee benefit plan's financial integrity, which is critical for employees who have earned their employer-provided retirement benefits.

The *Employee Retirement Income Security Act* of 1974 (ERISA) protects pension assets, valued at \$21.7 trillion in 2016,¹ from fraud, mismanagement and abuse – and ensures that workers receive their earned benefits. Congress delegated enforcement of ERISA provisions to the Department of Labor (DOL) and its Employee Benefit Security Administration (EBSA). However, the DOL and EBSA lack regulatory authority to correct audit deficiencies or provide sanctions, despite identifying and publishing these audit deficiencies. Even though this regulatory oversight of employee benefit plan audits exists, the accounting profession currently self-regulates the quality of this work.

ERISA requires employee benefit plans with over 99 participants to include key data with the annual Form 5500 filed with the DOL, consisting of financial statements, schedules and an independent auditor's report. ERISA wants auditors to assure the plan follows applicable laws and regulations, thus protecting employee benefit plan assets. ERISA permits either a regular, full-scope financial statement audit or a limited-scope election if conditions are satisfied.

A limited-scope audit does not audit certified investment information, but instead tests such participant information as contributions and benefit payments. A limited-scope audit results in an auditor disclaimer, because the most significant account (investments) is not audited. Legislators have debated the usefulness of limited-scope engagements since the 1970s. Despite concerns over the effectiveness of a limited scope, the proportion of plans that used limited-scope audits grew from 46 percent in 1987 to over 83 percent in 2013.

Regulatory Reviews of Employee Benefit Plan Audit Quality

We identified four major DOL studies of audit quality of employee benefit plan audits conducted from 1986-2011, plus one Government Accountability Office (GAO) report of additional analysis of the DOL findings, which we summarize in Table 1.

The DOL's Office of Inspector General's 1986 study of 279 randomly selected plan audits found 64 (23 percent)

contained at least one auditing standards violation – of which 14 (5 percent) were referred to AICPA for investigation. A GAO follow-up investigation to the DOL study randomly selected 25 of the 50 deficient audits not referred to AICPA. It found egregious violations in nine of the 25 plans reviewed, primarily due to the auditor lacking specialized knowledge and not grasping auditing standards and ERISA requirements. In response to the DOL study, AICPA publicized audit problems to its membership, improved CPA education initiatives and expanded guidance on how to conduct benefit plan audits.

The DOL's review of the 1992 audits followed up on its 1986 analysis. After randomly sampling 276 of 51,352 conducted audits, it found 19 percent did not meet professional standards and 33 percent violated ERISA requirements. The DOL identified an overall deficiency rate of 33 percent in audits conducted in 2004, but did not publicly report the details of that review. Next, the 2011 deficiency rate grew to 39 percent, a rate inversely related to the number of CPA-conducted audits. Firms performing the fewest number of audits had a 76 percent deficiency rate, while those conducting the most had a much-lower 12 percent rate. The DOL added that 95 percent of CPA firms audit fewer than 25 plans annually and 1 percent audit over 100 plans. Fewer deficiencies also arose when the engagement partner in the recent three years earned continuing professional education (CPE) specific to employee benefit plans.

The DOL measured conformity with professional standards and compliance with applicable ERISA laws and regulations to assess audit effectiveness. It noted audit deficiencies related to (1) compliance with applicable professional standards, (2) inadequate understanding of employee benefit plans and (3) ineffective use of available technical support materials. The DOL acknowledged that increased limited-scope audits may establish an air of auditor carelessness; a remediable situation if the DOL disallowed limited-scope audits of employee benefit plans.

In summary, employee benefit plan audit deficiency rates have deteriorated in the nearly three decades covered by four major DOL studies (i.e., ranging from 23 percent in 1986 to 39 percent in 2011). The DOL seems tolerant of professional efforts to improve employee benefit plan audit quality. The EBSA Office of the Chief Accountant (OCA)² sought to improve employee benefit plan audit quality in 2005 by adopting: a CPA firm inspection program (akin to Public Company Accounting Oversight Board inspections) for firms with over 200 annual ERISA audits, a mini-inspection program for firms with 100-199 annual audits and an augmented workpaper review program for firms with one-99 annual audits. Enforcement actions for deficient work include rejecting Form 5500 filings and referrals to AICPA's Professional Ethics Division or State Board of Public Accountancy for disciplinary actions.³

Table 1: Summary of Regulatory Reports Employee Benefit Plan Audit Quality

Entity Conducting Study	Year of Report	Year of Audits Studied	Number of Audits	Deficiency Rate
Office of the Chief Accountant, DOL ⁵	2015	2011	400	39%
Office of the Chief Accountant, DOL ⁶		2004	Not reported	33%
Office of the Chief Accountant, DOL ⁷	1997	1992	276	19%
Office of Inspector General, DOL ⁸	1989	1986	279	23%
GAO ⁹	1992	Subsample of the deficient audits found by DOL in 1986	50	18% egregious violations

Table 2: EPBAQC Membership Services

Service
1. Discussion forum for members
2. Timely technical updates
3. Communication of regulatory changes that impact employee benefit plans
4. Links to Department of Labor information
5. Best practices
6. Technical hotline
7. Marketing toolkit

How the EPBAQC Addresses the Deficiency Problem

AICPA recognizes the importance of employee benefit plan audit quality and that DOL scrutiny should provide an impetus to improve the quality of this work. AICPA's Employee Benefit Plan Audit Quality Center (EPBAQC) was established in 2004 to serve this objective by creating a central repository of information to help members conduct high-quality employee benefit plan audits. Membership is voluntary.

The EPBAQC offers many features to promote better outcomes than were demonstrated in the regulatory reviews since 1986, which are summarized in Table 2. Ultimately, the EPBAQC creates a community that engages those CPAs performing employee benefit plan audits to permit timely exchange of information regarding technical and regulatory updates, best practices and marketing tools. Potential clients may go to the EPBAQC and find a member CPA firm to conduct their audit.

Membership requirements for the EPBAQC are designed to provide a minimum quality standard to join and maintain participation. The firm must designate an audit partner who is responsible for employee benefit plan audit quality, including an annual webinar requirement. Personnel must complete eight hours of employee benefit plan CPE triennially. Each firm must conduct an internal quality inspection and provide these reports for AICPA's triennial peer review. Member CPA firms are listed on the EPBAQC website for the benefit of potential clients, including the partner name and contact information, organized by state in which the firm practices or alphabetically. A notable sidebar is that individuals who serve as peer reviewers of employee benefit plan engagements must be associated with CPA firms that are members of the EPBAQC.

AICPA's *Employee Benefit Plans—Audit and Accounting Guide* provides an essential resource for all employee benefit plan auditors. Other helpful publications include audit risk alerts and technical practice aids. Access to these items is generally available, but the EPBAQC member is informed quickly when updates occur to ensure timely implementation.

AICPA's Six-Point Plan to Improve Audits includes "CPA Learning and Support" as a key feature.⁴ The EPBAQC provides resources to develop competency in conducting audits of a significant part of the U.S. economy.

As a result of the DOL study of audits conducted in 2011, it communicates with state boards of accountancy to find ways to ensure that only competent CPAs work on employee benefit plan engagements. The DOL has also suggested specific licensing requirements, including training and experience, for employee benefit plan auditors. The EPBAQC provides member firms with timely access to the tools that promote quality audits. ■

The authors wish to thank Natalie Churyk (Northern Illinois University), Dave Dupree (Comerica), John Fleming (Loscalzo Associates), Gerald Hepp (Gnosis Praxis Ltd.) and Mel Houston (attorney) for their helpful comments on this article.

Citations

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2. The OCA was created in 1988 to ensure audit quality: <http://www.dol.gov/ebsa/enforcement/OCAManual/cha1.html>.
3. <http://www.dol.gov/ebsa/enforcement/OCAManual/cha4.html>.
4. <http://www.aicpa.org/InterestAreas/PeerReview/DownloadableDocuments/EAQ-6-point-plan.PDF>.
5. *Assessing the Quality of Employee Benefit Plan Audits* issued by the Employee Benefits Security Administration, Office of the Chief Accountant (May 2015): <http://www.dol.gov/ebsa/pdf/2014AuditReport.pdf>.
6. The details of this study were not made publicly available; summary data appear on page 8 in <http://www.dol.gov/ebsa/pdf/2014AuditReport.pdf> (May 2015).
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Carol Severyn, CPA-San Antonio, Receives First-Ever Business & Industry Award



TSCPA congratulates **Carol J. Severyn**, CPA-San Antonio, on being named as the recipient of the first-ever B&I award. This award spotlights the professional accomplishments of CPAs who have spent their careers in business and industry and have made significant contributions through the recruitment of others to the accounting profession.

During her career, Severyn has performed a variety of roles in the savings and loan

and banking industries. She is currently executive vice president and auditor at Frost Bank, where she manages the internal audit department. The department includes approximately 30 internal auditors.

Severyn also hires university accounting students to work as interns in her department and at the end of their internships, she encourages the students to apply for full-time internal audit positions. She is an acknowledged advocate for the profession, encouraging others to become CPAs and playing an important role in shaping the next generation of leaders. ■

Free Financial Literacy Resources Available on ValueYourMoney.org

TSCPA offers free personal finance resources for the workplace. The information is available for download on the Society's financial literacy website, ValueYourMoney.org, and can be shared with your employer, employees and colleagues. Topics include buying a home, setting and keeping a budget, establishing good credit, protecting your identity, teaching kids about money and more.

You can access the material in a variety of sources, including articles for newsletters/intranets, table tents for the break room, flyers for bulletin boards and paycheck inserts. Go to the Workplace Financial Education area of the site at ValueYourMoney.org to read and download the information. ■

Renew Your TSCPA Membership

TSCPA is pleased to have the opportunity to be your valued partner, protector of your interests and a trusted resource for your career. If you haven't already renewed your membership for the 2017-2018 year, now is the time! Dues renewal notices were sent via email in April. For those members who have no email or have requested not to receive emails, paper invoices were sent.

You can pay your dues online by visiting TSCPA's website at <https://www.tscpa.org/membership/payments>. If you have a question regarding your membership, please contact Member Services at 800-428-0272, option 1. We look forward to continuing to serve you in the coming year. ■

Accountants Confidential Assistance Network



The Accountants Confidential Assistance Network (ACAN) supports Texas CPAs, CPA candidates and/or accounting students who are addressing alcohol, chemical dependency and/or mental health issues.

ACAN provides a confidential phone line at **1-866-766-ACAN** to help people who need assistance or you can also contact TSCPA's Craig Nauta at cnauta@tscpa.net.

ACAN groups and Friends of Bill Wilson meet regularly at the following times and locations.

Austin

Covenant Presbyterian Church
3003 Northland Drive
Third Friday of the month, 12 p.m.

Dallas

Saint Michaels and All Angels Church
8011 Douglas Ave.
Every Monday, 6:15 p.m.

Houston

LCL/ACAN Meeting
Wortham Tower Cafeteria
2727 Allen Parkway
Every Monday, 7:30 a.m.

San Antonio

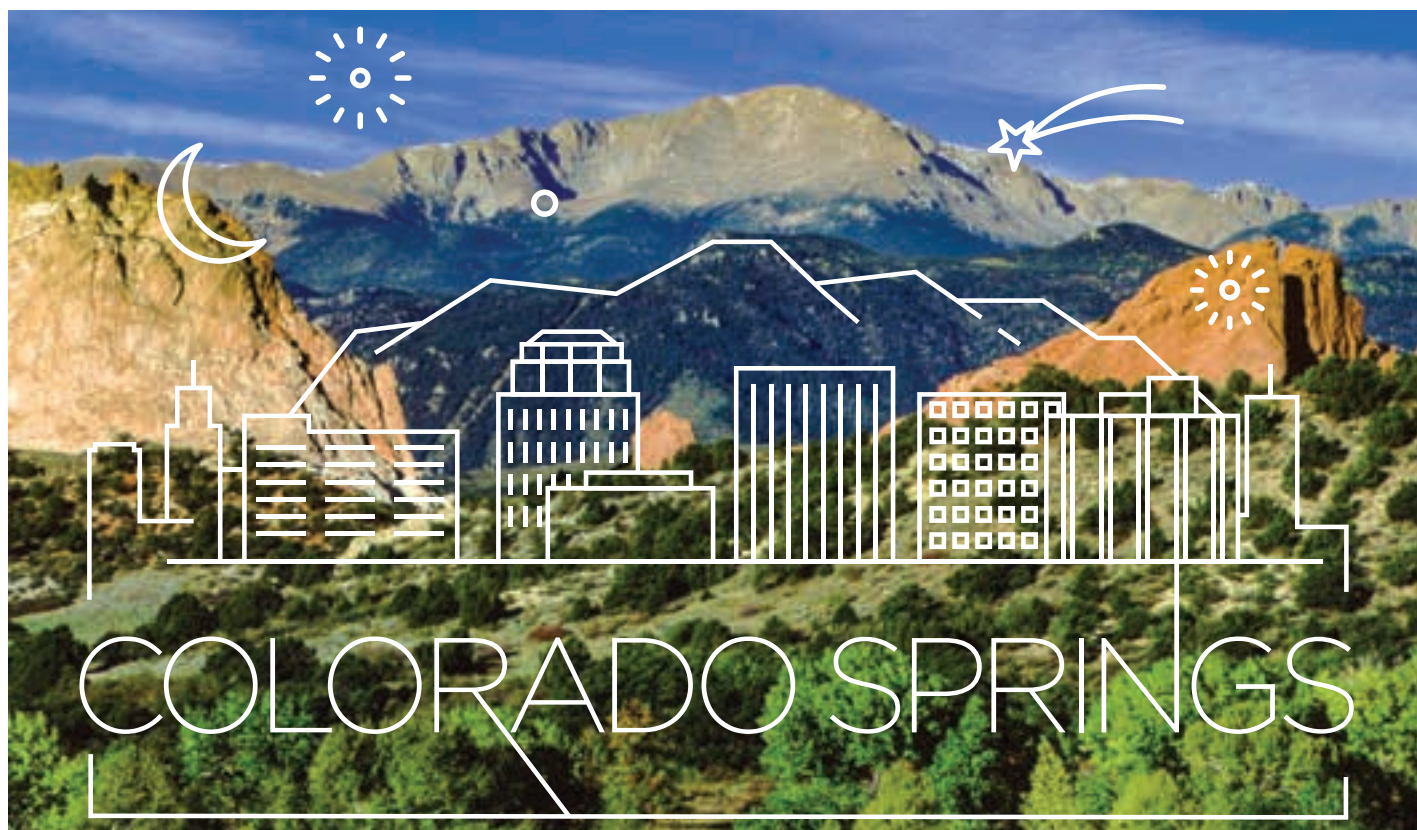
Eileen Lanagan, P.C.
11950 Starcrest, Ste. 201
2nd Monday evening, 6 p.m. ■

Submit an Article to *Today's CPA* Magazine

Do you have expertise in a certain practice area that would be important to cover in *Today's CPA* magazine? The editors are currently seeking articles for consideration in upcoming issues. We are soliciting technical submissions in all areas, including taxation, regulation, auditing, financial planning, ethics and corporate governance, information technology, and other specialized topics.

The magazine features articles and columns that focus on issues, trends and developments affecting CPAs in all facets of business. If you would like to submit an article for consideration or to learn more, please contact managing editor DeLynn Deakins at ddeakins@tscpa.net or technical editor Brinn Serbanic at Brinn_Serbanic@baylor.edu. ■





Notice of 2017 TSCPA Annual Meeting of Members and Board of Directors Meeting

June 30-July 1, 2017

Cheyenne Mountain Resort, Colorado Springs, Colorado

The Cheyenne Mountain Resort in Colorado Springs is the site for TSCPA's 2017 Annual Meeting of Members and Board of Directors Meeting. Make plans now to attend this phenomenal event that offers an excellent opportunity to hear from accounting and business leaders on hot topics and issues affecting CPAs, find out more about TSCPA's plans for the upcoming year to be your valued partner and protect your professional interests, and connect with your friends, colleagues and peers from around the state. More than 200 members attend the Annual Meeting each year.

You'll enjoy the amenities of a world-class meeting facility and four-diamond resort where the scenery is spectacular and the hospitality is gracious. A full range of outdoor activities include hiking, tennis, rafting and a newly renovated championship Pete Dye-designed golf course.

And don't forget to make time for a pampering spa treatment. Bring family and friends with you to explore a unique southern Colorado destination and take advantage of the resort's lake and beach area, Kidz Club, splash pad and more.

The fabulous indoor and outdoor venues will create the backdrop for a TSCPA meeting you won't want to miss this summer.

The speakers will include:

Alfonzo Alexander

Chief Relationship Officer of NASBA and President of NASBA's Center for the Public Trust, Nashville, Tennessee

Dan Domagala

Technology Strategist and IT Advisor, EKS&H, Denver, Colorado

Tom Morrison

Chief Energy Officer, TomMorrison.Biz, Jacksonville, Florida

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Resort fee is waived

Check-in: 4 p.m.

Checkout: Noon

Hotel cut-off date: May 27, 2017*

*Please note: The number of rooms available in our block is not unlimited. The block may sell out prior to this date. Make your reservations as early as possible to ensure that you are accommodated.



TSCPA Thanks 2016-2017 Student and Faculty Reps

As part of TSCPA's outreach to accounting students, the Society utilizes volunteer campus reps to maintain a presence at Texas colleges and universities. The campus rep program serves to promote TSCPA student membership, share information and gain valuable feedback from students. A special thanks goes to those students and faculty members who represented TSCPA so well throughout the year.

Faculty Reps

Larry G. Stephens – Austin Community College
Paula Miller – Collin College
Debra L. Moore – Dallas Baptist University
Robert Nass – Dallas Baptist University
Michael R. Daub – Howard Payne University
Tamalla Jones – Lamar State College - Port Arthur
Ricardo Colon – Lamar University
Sheryl Jimerson – Lone Star College
Karen Russom – Lone Star College System
Bob Thomas – Midwestern State University
Calvin Fogle – Northwest Vista College
Ranita Nunn – St. Edwards University
Lisa Hull – Tarleton State University - Waco Campus
Tara Blasor – Texas A&M University
Caroline Hayek – Texas A&M University - Commerce
Rabih Zeidan – Texas A&M University - Corpus Christi
Mary Stanford – Texas Christian University
Kim Webb – Texas Wesleyan University
Lynn Z. Irving – Texas Woman's University
Veronda Willis – University of Texas at Tyler
Amy Foshee Holmes – Trinity University
Susan Rhame – University of Dallas
Rob Walsh – University of Dallas
Tiffany DeLuze – University of Mary Hardin-Baylor
Allison McLeod – University of North Texas
Madhuri Bandla – University of North Texas
Patricia Wynn – University of North Texas at Dallas
Ramon Fernandez – University of St. Thomas
Art Agulnek – University of Texas at Dallas

Faculty Reps *continued*

Linda R. Vaello – University of Texas at San Antonio
Deborah Gonzalez – University of Texas Rio Grande Valley
Linda Acevedo – University of Texas Rio Grande Valley
Seth Collwell – University of Texas Rio Grande Valley - Brownsville
John Darcy – University of Texas Rio Grande Valley - Edinburg
April R. Poe – University of the Incarnate Word

Student Reps

Mark Franklin – Austin Community College
Sara Piracha – Dallas Baptist University
Neil Horie – Devry University
Kristina Stasser – Hardin-Simmons University
Caroline Stanley – Hardin-Simmons University
Hayley Shiflet – Lamar University
Joshua Velasco – Our Lady of the Lake University
Alan Hester – Prairie View A&M University
Cheryl Reed – Schreiner University
Lauren Bailey – St. Mary's University
Justin Ramer – Texas A&M University
Yvonne Uribe – Texas A&M University – Corpus Christi
Luz Arias – Texas A&M University – San Antonio
Alvina Durvesh – Texas Southern University
Chloe Zhaorong Xu – University of Texas at Dallas
Kindle Chapman – University of Texas at Tyler
Thuong Nguyen – University of Houston
Sarah DeVore – University of Texas at Arlington
Jinsl Jung – University of Texas at Austin
Roy Padilla – University of Texas at El Paso
Robert Pena – University of Texas at El Paso

Disciplinary Actions

Admonished –

William M. Schuh Jr., San Antonio, entered into a settlement agreement effective March 17, 2017, under the Joint Ethics Enforcement Program in lieu of further investigation and proceedings of alleged violations of the codes of professional conduct of the Texas Society of CPAs and the American Institute of CPAs. Without admitting or denying any wrongdoing, Schuh is hereby admonished by TSCPA and AICPA.

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Accounting for Tomorrow



By Kimberly Ellison-Taylor, CPA, CGMA, and Tim Christen, CPA, CGMA

At the top of *Fast Company* magazine's list of the 50 most innovative companies in the world this year was not a startup, but a company that many of us first met two decades ago: Amazon. Today, Amazon looks very different than it did in 1995 when it primarily sold books. Its business model has expanded significantly to include music streaming, digital assistants, grocery delivery, TV shows, logistics, drones, web services and much, much more. Amazon "has continued to be nimble even as it has achieved enviable scale," *Fast Company* wrote. It demonstrates a "willingness to embrace uncertainty, experimentation and messy inconsistencies."

To thrive in today's environment – shaped by geopolitical shifts, rapid technological change and the unrelenting challenge of complexity – such dexterity is a must. In a KPMG survey, two-thirds of CEOs said that the next three years will be more critical for their industries than the last 50. And four in 10 said that they plan to transform their organizations into significantly different entities as a result.

"The question organizations need to ask themselves is this," a recent Conference Board report concluded, "Are we driving change and disruption, or are they driving us?" That's a question our profession has long asked – and one we have answered time and again by choosing the path of innovation. There are numerous examples in our history: The embrace of specialization nearly 30 years ago, computerization of the Uniform CPA Exam more than a decade ago, adoption of cloud computing and our focus on the future of learning, to name just a few.

AICPA members again picked the path of transformation last summer. By approving an international association with The Chartered Institute of Management Accountants (CIMA) in June, they enabled a platform for enhanced resources and benefits for members, employers and most importantly, the public interest. This bold path will allow us to promote, protect and grow the profession and extend its relevancy far into the future while advancing the strength of the CPA.

Since the approval of our members, we have been very busy working to make that vision a reality through the new Association of International Certified Professional Accountants (the Association). It combines the strengths of AICPA and CIMA to advance public and management accounting and power-enhanced resources for members of both professional bodies.

To date, we have integrated the management, strategy and operations of both organizations, and are pleased to note that we currently have one team working across 35 offices in support of CPAs and CGMAs around the world. We are already making progress.

In January, for instance, the Association took a stand against mandatory audit firm rotation in South Africa on behalf of the 650,000 members and students it represents. In March, we launched a new website (www.aicpaglobal.com) for the Association and an iconic new look for our

family of brands to underscore the dynamic role of our profession in powering trust, opportunity and prosperity worldwide.

In Washington, we are working to represent the public interest and keep you informed on policy changes and the impact as our new president and Congress act on tax, trade and other key agenda items. We have also launched an online resource (aicpa.org/taxreform) where members can get the latest information and insight on proposed and passed tax law changes.

Members will soon see new tools to assess and advise on a rapidly growing risk – cybersecurity. Members in business and industry will gain access to a new daily newsletter to help them keep up with developments relevant to their work. We have new initiatives to provide awareness and understanding of emerging technologies that create both opportunities and challenges for our business models and the services we offer. One key area is audit. We are beginning research into the auditing function of the future – how it's performed, what tools are needed and what skillsets will be required.

At the heart of this work is a question that guides us: How do we drive a dynamic profession forward? There is plenty of evidence that shows the strength of our profession today. The CPA is unmatched for trust – business decision makers and investors rank the CPA first among financial and business professionals. The Center for Audit Quality, in its annual Main Street Investor Survey, found confidence in public companies at an all-time high. And our unwavering commitment to the pipeline of future talent continues to pay dividends.

Additionally, the CGMA continues to grow in demand as employers seek talented leaders and team members who can transform data into actionable insight that drives better decisions. More than 150,000 professionals around the world now hold the CGMA, and our Global Management Accounting Principles and CGMA Competency Framework are setting the benchmark for management accounting practice and competency development.

Maintaining that strength for the profession of tomorrow will require new ways of thinking and increasingly faster responses to changing client and business needs. We have to work across many fronts to advance the profession in a world that will be more and more influenced by technology, as well as international business forces. As a profession of public and management accountants, we must be agile and willing to embrace uncertainty and experimentation.

In that way, the Association – with its expanded reach and resources – is an accelerant for innovation. And, similar to Amazon's metamorphosis, 20 years from now the profession will likely look quite different, but just as strong and relevant. Through our initiatives and collective efforts today, we will ensure that we are well prepared for different services, technologies and skills. ■

Kimberly Ellison-Taylor, CPA, CGMA

is chairman of the American Institute of CPAs and Public Accounting Board.

Tim Christen, CPA, CGMA

is the immediate past chairman of the American Institute of CPAs and current vice chairman of the Association of International Certified Professional Accountants.

An Update on *Today's CPA*

T By *Today's CPA* Technical Editor Brinn Serbanic and *Today's CPA* Managing Editor DeLynn Deakins

Today's CPA is a bi-monthly, peer-reviewed magazine provided for the benefit of TSCPA members. Each year in the May/June issue, we offer an update of the Editorial Board's progress in fulfilling its mission of supplying relevant, informative and thought-provoking material for our readership.

In the past year, *Today's CPA* has covered several hot topics, such as data analytics, changes to the CPA Exam, private company financial reporting accomplishments, and base erosion and profit shifting. We also discussed the Financial Accounting Standards Board's new lease accounting standard released early in the year, as well as the Fair Labor Standards Act updates to exempt vs. non-exempt and independent contractor vs. employee classifications, which continues to challenge many businesses. From a practice management standpoint, exercising professional skepticism and managing engagement creep were popular pieces with our readership.

Moving forward, public accounting staff recruiting and retention continues to be a challenge for accounting firms of all sizes and the upcoming September/October issue will include an article analyzing the current state of staff retention and offering potential solutions. Impending tax reform and the state of the Affordable Care Act should also prove to be topics ripe for coverage in future issues.

Overview

Articles submitted for consideration in *Today's CPA* are reviewed and selected by members of TSCPA's Editorial Board. The names of the members are listed in the magazine's masthead each issue. The Editorial Board represents a cross-section of the overall membership of TSCPA, including representatives from industry, public practice and academia.

Certain issues of the magazine during the year are devoted to a specific interest area of TSCPA's membership, such as business and industry, tax or financial accounting. Each issue includes feature columns and an article that offers continuing professional education (CPE) credit. The CPE article is peer-reviewed and the quiz is pre-tested by reviewers prior to publication. Articles in the publication may include case studies, technical analysis and informed commentary on the topic.

Figure 1. Summary of 2014 - 2016 Activity

Articles	2016	2015	2014
Received	45	36	28
Accepted	29 (64%)	21 (58%)	20 (71%)
Rejected	15 (33%)	11 (31%)	6 (21%)
In Review	1	4	2
Invited Short Articles	2 accepted	2 accepted	2 accepted

Figure 1 is a comparative summary of our activities for the past three calendar years. Submissions increased 25 percent in 2016 and we have seen a surge in the number of submissions from practitioners. The key to maintaining high-quality material in our journal is increasing the number of submissions. The Editorial Board is continuing its efforts to solicit a large number of submissions from a diverse author pool.

Acknowledgements

We would like to thank the members of the **Editorial Board** for their time and effort in volunteering to review articles for publication, pre-test CPE quizzes, and participate in meetings and on conference calls. We also recognize and thank our copy editor and contributing writer, **Anne Davis**, and the column editors and contributors: TSCPA Chairman **Kathryn Kapka**, CPA-East Texas; **Jason Freeman**, CPA-Dallas; **Mano Mahadeva**, CPA-Dallas; **C. William (Bill) Thomas**, CPA-Central Texas; TSCPA Chapter Relations Representative **Rhonda Ledbetter**; **John Sharbaugh**, CAE; and TSCPA Executive Director/CEO **Jodi Ann Ray**, CCE, IOM.

We also thank the accounting and financial professionals who author articles for *Today's CPA*. If you or someone in your organization would like to write an article for the magazine or have an idea you feel can be developed into an article, we encourage you to contact us. The Editorial Board maintains a list of topics desired for publication and we would be willing to work with you to find a match to your particular area of expertise. If you would like to receive our editorial guidelines, please contact DeLynn Deakins at ddeakins@tscca.net.

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TSCPA's Conferences and Clusters Bring Summer Learning Options to Members



By DeLynn Deakins, *Today's CPA* Managing Editor

The TSCPA CPE Foundation, Inc. offers a variety of course topics and delivery methods that meet the education preferences of our members. TSCPA's conferences and clusters are large audience programs that bring state and national speakers to Texas who cover current issues, trends and applications on important subjects. It's an excellent opportunity for you

to meet and connect with other members, while also gaining knowledge from leading experts.

There is a full schedule of conferences and clusters coming up this summer. Following is a summary of upcoming programs, dates and locations.

Texas School District Accounting and Auditing Conference, San Antonio, June 5-6 – For the latest information affecting

Texas schools, don't miss the popular Texas School District Accounting and Auditing Conference. You'll find all the relevant subjects presented by a great team of instructors. They'll discuss cybersecurity, fraud, a GASB update, internal controls, legislative news, child nutrition audits and more. The conference is packed with a mix of what has changed and what has remained the same in this unique field.

2017 Audits of Employee Benefit Plans Conference, San Antonio, June 12 – Covering recent regulatory changes from the Department of Labor and the IRS, this conference will provide guidance on accounting and auditing standards, in addition to helpful tools to assist you in delivering on client expectations. There will also be a panel of experts in a Q&A session at the end of the day to give you insight on the issues. A webcast option is available for those who would like to attend from the comfort of their home or office.

CPE By The Sea Conference, Galveston, June 14-16 – Enjoy sun, sea and CPE at a perfect gulf coast getaway location. This program has professional educational sessions to keep you informed on accounting and auditing processes you need to know. A few areas covered include: ethical principles and values, Texas property taxes and economic outlook, SEC financial reporting enforcement matters, fraud detection and estate planning.

South Padre Island Cluster at The Pearl, South Padre Island, June 19-21 – The Pearl South Padre is a premier resort for those who would like to experience tranquil views and the soft, sandy beaches of south Texas. The cluster presents three days of exceptional training on an extensive range of tax, accounting and auditing topics, all at a beautiful oceanfront location where you can combine learning and relaxing with family and friends.

NEW: Cowboy Summer Cluster at the Gaylord Texan Resort, Grapevine, June 26-28 – At the new Cowboy Summer Cluster, you can select from 18 four-hour seminars on a variety of tax, accounting and auditing topics. Enjoy an outstanding vacation destination as you earn CPE credit hours. The Gaylord Texan Resort & Convention Center overlooks the beautiful Grapevine Lake and has first-class restaurants, eclectic shops and acres of indoor gardens and winding waterways.

2017 Oil and Gas Institute, Addison, July 17 – Today's oil and gas companies continue to face increasing complexity, risk and volatility. This year is shaping up

to be an interesting and challenging one for the industry. The 2017 Oil and Gas Institute is a one-day conference packed with power and the recent updates. It's your go-to source for staying current on this important field.

2017 Advanced Healthcare Conference, San Antonio, July 24-25 – The La Cantera Resort & Spa is the site for the 2017 Advanced Healthcare Conference. At the conference, you'll receive the latest information on this ever-changing field and find luxury in the heart of the Texas Hill Country, with emerald fairways, sparkling pools and views of scenic vistas. Also plan to attend the pre-conference workshop on July 23.

2017 Advanced Estate Planning Conference, San Antonio, Aug. 17-18 – In our complicated society, almost all families, regardless of their resources and ages, can benefit from overall financial planning and one aspect of this is estate planning.

Get indispensable instruction to help your clients prepare for the future. The La Cantera Resort & Spa will be your host, providing a perfect destination for business and relaxation time. A pre-conference workshop is also available on Aug. 16.

Register Now

In addition to these conferences and clusters, TSCPA offers hundreds of programs to meet your educational needs. The comprehensive online course catalog on the TSCPA website at tscpa.org delivers a wide range of topic offerings, scheduling flexibility and price levels that can accommodate your budget.

Whether you're looking to attend a program in-person or watch via webcast or webinar, TSCPA gives you a range of options. To learn more and register online, visit the website or call the TSCPA staff for assistance at 800-428-0272 (972-687-8500 in Dallas). ■



Follow TSCPA CPE on Twitter

TSCPA CPE is on Twitter! Follow @TXCPACPE for the latest information on CPE conferences, webinars, early bird deadlines, registration information, event photos, promotions and much more. It's a great way to stay up-to-date on all things CPE-related. Don't forget to share your photos from TSCPA CPE events using the hashtag #TXCPE2017.

The Sausage Machine

By John Sharbaugh, CAE | TSCPA Managing Director, Governmental Affairs

There is an old saying attributed to Otto von Bismark (although some say it was actually a misattribution) that, “Laws, like sausages, cease to inspire respect in proportion as we know how they are made.” That assessment was made in the 1800s, but it is still readily applicable to today’s legislative process. Most people are not usually enamored in seeing how our laws are made – it’s a messy process that can be less than inspiring.

This session of the Texas Legislature probably fits with this image for a lot of folks. That’s because it involves human beings and all their foibles and it takes place in a compressed period of time. As the legislative session drags on, the clock starts to run out, nerves get frayed, tempers get short and you have all the conditions for bringing out the worst in some people. Fortunately for Texas, our Legislature only meets for 140 days (regular session), so eventually the process ends and the legislators have to go home. But until then, anything can happen in Austin, so never let your guard down.

Budget Battle Takes Center Stage

Before this legislative session started, everyone knew that it was going to be a difficult one because of the financial challenges legislators would be facing. Available revenue was significantly down from the prior two-year period due to reduced tax revenue from oil and gas production. While in the 2015 legislative session state coffers were flush and the Legislature could argue about how big and what type of tax cuts to give, the 2017 session is a completely different story. The comptroller advised in his report to the Legislature back in January that it would have 2.7 percent less revenue to spend than two years ago. When you factor in growth in population and inflation over the past two years, it presents a real challenge to cover the cost of government and provide the same level of services.

The budget passed by the Senate would spend \$106.3 billion in state revenue, which is a significant bump from the \$103.6 billion budget the Senate Finance Committee originally presented back in January. The remainder of the \$217.7 billion total budget will come primarily from federal funds.

To make up for the larger budget with less revenue coming in, the Senate budget uses an accounting maneuver to divert sales tax revenue from the state highway fund for one month to get it into the next budget cycle. This provides an additional \$2.5 billion in the Senate budget this go ’round, a move criticized by the House Speaker, Joe Straus. There was also a question about whether it is constitutional and the attorney general recently weighed in with an opinion saying this strategy was acceptable and did not violate the state constitution.

Meanwhile, on the House side, it approved a \$106.8 billion state budget for the next two years that uses \$2.5 billion from the rainy-day fund, defers a \$1.9 billion payment to the school funding system until the following budget year and assumes \$1 billion savings in Medicaid spending due to federal action, a move questioned by some.



So the gap between the two chambers’ plans has narrowed significantly from back in January. Senate and House leaders put forth initial proposals that were \$5.3 billion apart. Including federal money and funds dedicated for specific purposes, the House plan now spends \$218.1 billion in total and the Senate \$217.7 billion. The half a billion difference in state revenues between the two budgets is considered not that big a deal in the overall scheme of budgeting and legislators are hopeful of resolving it.

Both House and Senate plans aim to spend less state money in the next budget cycle than in the current \$108 billion two-year budget. After factoring in inflation and population growth, they amount to a roughly 7 percent cut from current spending levels, according to Legislative Budget Board data.

The House’s plan includes a creative accounting strategy, as well. The House budget would delay a \$1.9 billion monthly payment to the Foundation School Program until the first month of 2020, an accounting maneuver the Legislature has made in the past. One of the biggest sticking points between the two legislative bodies will be the use of rainy day funds that the House prefers and the Senate opposes.

Led by Lt. Gov. Dan Patrick, fiscal conservatives in the Senate have said the rainy-day fund should only be used during natural disasters or for one-time expenses. Former lawmakers and Capitol staffers who drafted and approved the fund in 1987, however, have said that the intended use was to smooth out the inevitable ups and downs involved in managing and budgeting in a state dependent on the boom-or-bust energy industry.

With their respective budgets now adopted, the two chambers are trying to work out their differences in a conference committee. That will likely be a difficult and painful process. It happens in private, so

we won't get to see all the high drama. After the conference committee reaches agreement on a version of the budget/appropriations bill, it sends the bill back to both houses for a final up-or-down vote. At that point, there are no amendments allowed.

Many political insiders have said that this negotiation process between the two legislative chambers will be extremely difficult and may not get done within the regular time frame for the legislative session. So we may be looking at a special session of the Legislature to reach that goal. It's the only bill the Legislature is obligated to pass under the constitution. The last day of the regular session is May 29, 2017, and the countdown is now underway.

TSCPA Legislative Agenda

While the budget battle is the big show taking place this legislative session, TSCPA has its own agenda that it is pursuing on behalf of members and progress is taking place on that front. The legislation to provide a limited/de Minimis exemption from the insurance services tax for licensed CPA firms was approved in the Senate. Senate Bill 1083, sponsored by Senator Charles Perry, CPA, (R-Lubbock) will provide an exemption from the insurance services tax for a licensed CPA firm if their revenue from this kind of activity is less than 1 percent of their total firm revenue for the prior year. The bill now must clear the House, where there is a companion bill (HB 2381) sponsored by Rep. John Frullo (R-Lubbock) who is also a CPA. HB 2381 has been voted favorably out of the Ways and Means Committee and at press time, we are hopeful it will be scheduled for a vote in the House very soon.

The other bill TSCPA is working on would repeal Texas code section 2266 and require state and local governments to follow GAAP in their financial reporting. The legislation was also sponsored by Perry and Frullo. The bill in the House (HB 1930) has been passed and the counterpart bill in the Senate (SB 753) was approved by the full Senate. So we hope to see final enactment of the legislation on this issue in the very near future. We think this

will be a victory for Generally Accepted Accounting Principles and the citizens of our state.

Tax Relief

Even though the Legislature is facing financial challenges, they are still determined to offer some kind of tax relief, or at least try. It is in the DNA for some of them, I guess. A number of bills either completely eliminate the franchise tax (which has no chance of passing) or to phase it out over time, if state revenue estimates meet certain growth thresholds (which has a better shot at passing).

In addition, state lawmakers have proposed bills to limit property tax increases by restricting local authorities' ability to raise property taxes above an amount tied to an inflation factor or requiring local approval through a ballot initiative to have voters approve increases above a certain amount. Some find this somewhat hypocritical, as at the same time state legislators load local authorities with unfunded mandates to do certain things. But no one ever said the Legislature was a hypocrisy-free zone.

The Art of the Possible

While the Bismark quote I started with has been questioned by some, there are two others he is known for that are verifiable and also ring true today. He said, "Politics is not an exact science" and "Politics is the art of the possible." We will soon see what ends up being possible in the Texas Legislature this year. Whatever the outcome, it will undoubtedly not please everyone. We'll give you the final analysis on what happened this session in the next issue of Capitol Interest. ■

John Sharbaugh, CAE

is TSCPA's managing director of governmental affairs. Contact him at jsharbaugh@tscpa.net.

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Our Advice.

Is Code Section 125 Non-compliance Relative to Deductions for POP Plans Being Overlooked?

By Alison Polidano, CPA

American businesses face increasing burdens in this age of higher health insurance costs. As of 2015, 45.7 percent of private-sector businesses offered health insurance to their employees.¹ While in 2016 on average, companies paid in excess of \$18,142² in health care coverage premiums for the employee and his/her family, and costs are rising. In fact, the *New York Times* has reported that “Health insurance companies around the country were seeking rate increases of 20 percent to 40 percent” in 2016.³ Whether this increase was due to the Affordable Care Act (ACA) coverage mandates (which require capping individuals’ out-of-pocket expenses), to the increase in medical costs in general, or to a combination of both, small businesses are especially affected. In addition, these small businesses could face penalties unless correct procedures for handling health care costs are followed (particularly employee contributions).

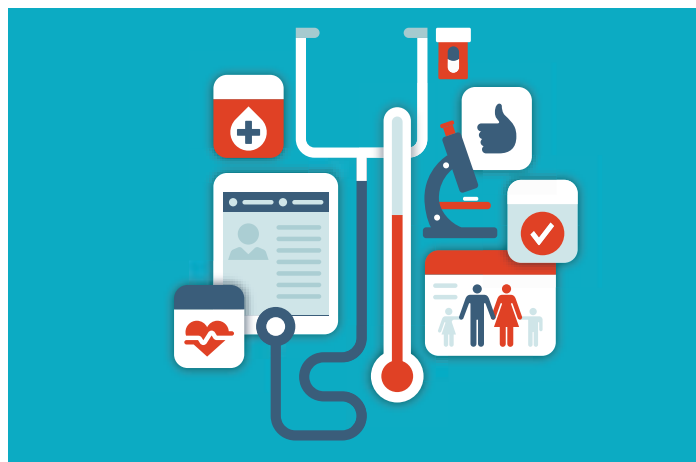
To help alleviate some of the expense of benefits, an emerging trend finds employees being asked to participate in the coverage of their health care premiums at a level nearing 40 percent of the total burden. In 2016, the average U.S. employee’s personal annual contribution for premiums was \$5,277, approximately 29 percent of the employer’s cost.⁴

The Plan

When a small business decides to review options for employee participation in health care costs, its first step is generally to consult an insurance broker. The broker will usually recommend at a minimum that an employer wishing to pursue premium cost sharing with employees set up an IRC Section 125 Premium Only Plan (POP). To purchase insurance from most insurers, an employer is required to contribute at least half of the premium cost for each covered employee. The health insurance premium is the total amount an employer pays in advance to obtain coverage for employees under a particular level of service. It is usually billed monthly.

If the POP (also known as a cafeteria plan) is set up correctly, the employer may deduct each employee’s portion of the premium payment from wages. Employers implement POPs to help employees save on federal, state and Social Security taxes, as well as to help themselves save on the employers’ portions of FICA, FUTA and workers’ compensation insurance premiums.

IRC Section 125 was created in November 1978, and sets forth requirements and tax treatments for cafeteria plans. Such plans allow employees to choose between receiving cash or taxable benefits for qualified benefits excluded from wages. Examples include insurance premiums and medical or dependent care expenses that are not covered by insurance.⁵



Businesses can draw on three main categories of cafeteria plans:

1. Premium Only Plans (POP);
2. Flexible Spending Accounts (FSAs), either a Health Care Spending Account (HCSA) or a Dependent Care Spending Account (DCSA); and
3. Cafeteria plans that use “credits or benefit bucks” referred to as either Consumer Driven Health Care (CDHC) or Defined Contribution plans.

If an employer implements a qualified cafeteria plan, a participating employee will approve an amount to be excluded from income as a “pre-tax” deduction.⁶ Payroll then adds this as a “Section 125” or “pre-tax” deduction. Under Section 125 qualifications, small businesses that implement a simple cafeteria plan must pay a minimum percentage of the benefits, which by regulation rules is greater than 2 percent of employee compensation for the plan year. If an employer does not meet that qualification, the employer must pay either the lower of at least 6 percent of the employee’s compensation for the plan year or twice the amount of the salary reduction contributions for simple cafeteria plans as outlined by the IRS.⁷

Simple cafeteria plans for small businesses allow any corporation, partnership, limited liability company (LLC), limited liability partnership (LLP), sole proprietor or nonprofit organization to implement a Section 125 plan if they had 100 or fewer employees on business days during either of the two preceding years.⁸ However, prohibited from participating in POPs are individual members of an LLC or LLP, partners in a partnership, the owner of a sole proprietorship, or a shareholder of a Subchapter S corporation owning at least 2 percent of stock (including the spouse of the shareholder) since they are not defined as employees.⁹ Also, employers who self-insure medical benefits for their employees may be ineligible.¹⁰

Administration

With regard to POPs in particular, the question arises of who is responsible for ensuring the employer has correctly implemented the plan and checked it for compliance with IRS and Department of Labor (DOL) guidelines. Generally, payroll companies do not question the Section 125 deduction when an employer requests adding it as a payroll deduction. Not all insurance companies offer a Section 125 plan. Insurance brokers are not responsible for setting up a POP. While insurance agents could possibly detect non-compliance, they rarely do.

Often, company owners and many CPAs or controllers are not up to date with IRC Section 125 requirements. In fact, an informal survey of small businesses and practicing CPAs in southeast Michigan revealed that those surveyed were unaware that a small business must set up a POP plan to take an IRC Section 125 deduction when their employees pay a portion of the health care premium. Many of those surveyed had been taking the deduction with no POP documentation in place.

Unlike HCSAs, which require Employee Retirement Income Security Act (ERISA) compliance, POPs require very little work to implement and maintain; essentially, a POP's one-time implementation includes the creation of a plan document and a plan description. There are also annual requirements. The first is to obtain each participating employee's signature on a salary reduction agreement stipulating that the employee has elected to participate. Second, one must conduct minimal year-end discrimination testing to ensure the plan does not

favor key or highly compensated employees.

While not an ERISA plan, the contributions elected by employees to the POP medical plan are considered to be ERISA "plan assets." The DOL requires that these contributions be segregated from the employer's general fund within 90 days or earlier if the employer payroll system is able to segregate contributions more quickly. Once contributions become plan assets, employers are subject to ERISA fiduciary standards.

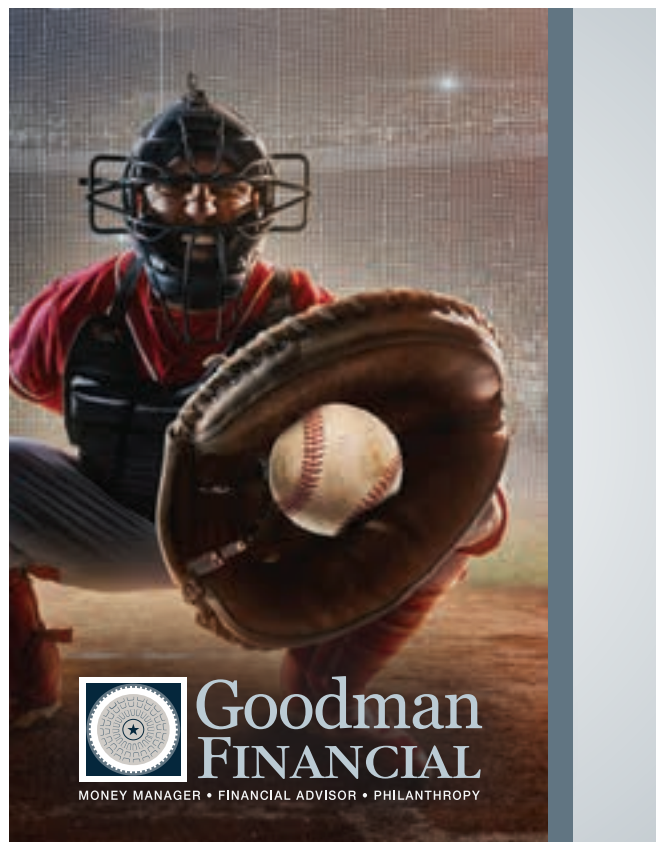
Sanctions

Both the DOL and IRS have oversight responsibilities over Section 125 compliance and small businesses that have not set up the system correctly may not be prepared in case the business is audited. In the absence of proper implementation and compliance, businesses and owners run the risk of sanctions. Thus, failure to comply with Section 125 rules could result in plan disqualification, in which case employee payroll deductions would be treated as taxable. Other consequences could include disallowing the company's tax-free treatment of the deductions back to the inception of the Section 125 deductions and assessment of back taxes with interest and/or penalties and DOL fines.

Implementation

An employer deciding to implement a POP that will ensure that employee deductions for premium sharing are tax-free should designate a plan sponsor/administrator. The administrator will have the sole

continued on next page



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responsibility of complying with all of the plan's administration, implementation, amendments, filings, reporting, disclosure and compliance requirements imposed by the plan, ERISA, the Internal Revenue Code (IRC) or any other applicable law.¹¹

The administrator should follow these steps:

1. Create a formal plan document spelling out plan terms, election rules and administration procedures;
2. Review the plan with legal counsel and get board approval;
3. Distribute the plan description to all eligible employees;
4. Maintain annual summary election deduction forms, which spell out the maximum amount of elective contributions (the amount contributed to the plan through payroll deductions) available under the plan;
5. Set up Section 125 payroll tax deductions;
6. Complete annual discrimination testing; and
7. Maintain all forms in case of an IRS or DOL audit.

Employers may automatically enroll each employee as long as the employee has the option to opt out of coverage and receive taxable cash in lieu of the benefit.¹²

Affordable Care Act

The implementation of the ACA means health insurance is now offered through exchanges in most states. Due to this, IRS Notice 2013-54 prohibits any arrangements designed to fund the purchase of individual insurance policies through the exchanges or through the marketplace with pre-tax employee contributions via a cafeteria plan.¹³ If the employer covers at least 50 percent of the health insurance premium, the ACA offers small businesses tax credits to help offset the cost of insurance. Starting in 2014, employees can waive employer coverage and find coverage on the exchanges. If the employee waives coverage due to the affordability test (i.e., costs exceed 9.5 percent of the employee's adjusted gross income), the employee will be eligible for tax breaks on the exchange.⁴

Enforcement

If, after implementing a Section 125 plan, the company fails to operate the plan in accordance with Section 125 rules, the result is an operational failure, the consequence of which could be to disallow the company's preferential tax treatment. Operational failures may include:

1. Offering benefits prohibited under the plan;
2. Operating to defer compensation; and
3. Allowing employees to revoke or make new elections that are not in accordance with the plan's rules.

Some reasons a company could be targeted for an audit include:

1. A participant complains about a possible violation under ERISA, COBRA, HIPAA or ACA law;
2. The IRS refers a case to the DOL; and
3. The DOL does a database search to identify "red flag" companies it feels are out of compliance.

IRS and DOL audits have ensnared some businesses. Usually the

finding of a failure occurs during a payroll audit. In 2010, the DOL created a national enforcement project called the Contributory Plans Criminal Project (CPCP) designed to "target persons who commit fraud and abuse against participants and beneficiaries of contributory employee benefit plans."¹⁵ In 2010, the DOL announced a joint initiative with the IRS to improve enforcement of workplace laws. Since the joint initiative's inception, the DOL has initiated 623 investigations, referred 424 investigations to prosecutors and obtained 141 indictments.¹⁵ In 2012, the DOL's Employee Benefits Security Administration (EBSA) created the Health Benefits Security Project (HBSP), which is the comprehensive national health enforcement project. Some of the focus of the project is to examine plans for compliance with ERISA Part 7 and the ACA.¹⁶

While the main focus of these project investigations is on uncovering embezzlement of employee withholdings for health care benefits or for retirement benefit programs, assessment of Section 125 deductions could be included.

Recommendation

If you act in an advisory capacity to an employer regarding the administration of employee benefits, take the time to determine if adding a POP would benefit the employer. If the business already requires an employee to contribute a portion for health insurance premiums, review the current deductions with the payroll company. If the deduction is classified as a Section 125 deduction or a "pre-tax" deduction, the deduction is being treated as a pre-tax withdrawal from employee pay. If the business has been taking a Section 125 deduction without properly setting up a POP, ensure the business is aware of this deduction's ramifications. Review the current plans to determine if the company is in compliance with DOL and IRS regulations. Above all, insure compliance with all the current changes and administrative guidelines regarding the ACA and health care rules. ■

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Mark Your Calendar – June and July CPE Courses

For more information, number of CPE credit hours and to register, go to the CPE section of the website at tscpa.org or call the TSCPA staff at 800-428-0272 (972-687-8500 in Dallas) for assistance.

Date	Course	City
June 5-6	Texas School District Accounting and Auditing Conference	San Antonio
June 7	Employment Law Update: Key Risks and Recent Trends	Fort Worth
June 8	Advanced Business Law for CPAs	Fort Worth
June 8	Personal and Professional Ethics for Texas CPAs	Tyler
June 12	2017 Audits of Employee Benefit Plans Conference	San Antonio
June 12	Employment Law Update: Key Risks and Recent Trends	Austin
June 13	Advanced Business Law for CPAs	Austin
June 13	Personal and Professional Ethics for Texas CPAs	Houston
June 14-16	2017 CPE By the Sea Conference	Galveston
June 19-21	South Padre Island Cluster at The Pearl	South Padre Island
June 22	Personal and Professional Ethics for Texas CPAs	Dallas
June 22	Revenue Recognition: Mastering the New FASB Requirements	Austin
June 23	Common Frauds and Internal Controls for Revenue Purchasing and Cash Receipts	Austin
June 23	Preparation, Compilation and Review Annual Update and Review	Houston
June 26-28	Cowboy Summer Cluster at The Gaylord Texan Resort	Grapevine
June 29	Preparation, Compilation and Review Annual Update and Review	Dallas
June 29	Real World Fraud in Today's Small-to-Medium-Sized Entities	Houston
June 30	Revenue Recognition: Mastering the New FASB Requirements	Houston
July 7	Texas Franchise Tax	Austin
July 10-12	Hill Country Cluster	San Antonio
July 13	Annual Accounting and Auditing Update	Dallas
July 14	Audits of 401(k) Plans	Dallas
July 17	Annual Accounting and Auditing Update	Houston
July 17	Texas Franchise Tax	Dallas
July 17	2017 Oil and Gas Institute	Addison
July 18	Audits of 401(k) Plans	Houston
July 19	Texas Franchise Tax	Houston
July 20	Employment Law Update: Key Risks and Recent Trends	Dallas
July 21	Advanced Business Law for CPAs	Dallas
July 23-25	2017 Advanced Healthcare Conference Plus Pre-Conference Workshop	San Antonio
July 24	Personal and Professional Ethics for Texas CPAs	Houston
July 25	Personal and Professional Ethics for Texas CPAs	Dallas
July 26	Annual Accounting and Auditing Update	Austin
July 26	Employment Law Update: Key Risks and Recent Trends	Houston
July 27	Real World Fraud in Today's Small-to-Medium-Sized Entities	Dallas
July 27	Advanced Business Law for CPAs	Houston
July 27	Personal and Professional Ethics for Texas CPAs	Lubbock
July 27	Audits of 401(k) Plans	Austin
July 28	Revenue Recognition: Mastering the New FASB Requirements	Dallas
July 31	Preparation, Compilation and Review Annual Update and Review	San Antonio
July 31-August 2	Galveston Cluster	Galveston



TSCPA's 2016-2017

Year in Review

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By DeLynn Deakins, *Today's CPA* Managing Editor

oving forward into a new fiscal year provides a good opportunity to look back at the last 12 months and highlight some of the exciting activities and accomplishments of 2016-2017. As an organization, TSCPA is committed to being your valued partner and protector of your professional interests. More than ever before, the Society remains dedicated to your success by offering what's important to you: access to education, experts, information and an extensive professional community.

Following is a glimpse into the past year. Our team of outstanding volunteers have made great things happen.

Protecting Your Profession and CPA Certificate

TSCPA has a proven track record of advocating on behalf of the accounting profession to regulatory and governmental bodies. It's clear that the collective voice of 27,000 members can be tremendously more impactful than a single voice.

The 85th session of the Texas Legislature began on Tuesday, Jan. 10, 2017. Before each session, TSCPA's Legislative Advisory Committee (LAC) recommends an agenda to the Executive Board. As part of this process, the State Taxation Committee makes recommendations to the LAC for changes in state tax law that might improve simplicity, consistency and technical efficacy.

For the 2017 Texas legislative session, TSCPA's agenda includes the following items:

- seek repeal of Chapter 2266 of the Texas Government Code relating to the acceptable financial accounting and reporting standards for use by state and local governmental entities; Sen. **Charles Perry**, CPA, filed Senate Bill 753 and Rep. **John Frullo**, CPA, filed HB 1930; the bills require state and local governments to follow GAAP;
- seek to obtain an exemption from the insurance services sales and use tax for licensed CPAs who work in a licensed CPA firm; Senate Bill 1083 and House Bill 2381 were filed to provide a limited exemption for CPAs from the insurance services tax;
- continue opposition to any attempt to tax professional services;
- stay alert to all franchise tax legislation hoping to provide reliable input to legislators interested in franchise tax reform and provide recommendations developed by the TSCPA State Taxation Committee for improving the franchise tax.

Please see the Capitol Interest article in this issue of *Today's CPA* for the latest updates on the legislative session and TSCPA's agenda. To kick off TSCPA's advocacy efforts for the 2017 legislative session, the Society hosted Advocacy Day in Austin on January 31, in connection with the Midyear Board of Directors Meeting. This served as an opportunity for members to advocate for the profession and visit with legislators to discuss TSCPA's agenda. During Advocacy Day, attendees heard from a variety of speakers on

topics ranging from what would likely happen in the 2017 session to how to effectively communicate and establish relationships with legislators. Rep. **Angie Chen Button**, Rep. **John Frullo** and Sen. **Charles Perry**, all CPAs, served on a panel moderated by former Rep. **John Otto**, CPA, who is now a TSCPA lobbyist, to discuss a variety of topics.

On Advocacy Day, we asked members to share photos and updates on social media using the hashtag #ADAYTSCPA. Throughout the day, more than 45 posts were shared across Facebook, Twitter and Instagram, making this one of our most successful social media campaigns of 2016-2017.

TSCPA's CPA-Political Action Committee



The CPA-Political Action Committee (CPA-PAC) gives TSCPA a voice in Texas legislative and political affairs. The CPA-PAC is directed by the TSCPA PAC

Committee. Members of this committee work closely with local chapters and their public affairs committees to determine the policymakers who should receive contributions. To learn more about the CPA-PAC and make a donation, please visit TSCPA's website at www.txcpapac.org.

TSCPA's Federal Tax Policy Committee was recognized in the National Taxpayer Advocate's 2017 Objectives Report to Congress and 2016 Annual Report to Congress.

Also during the session, TSCPA is keeping an eye on the thousands of proposed bills to watch for any that affect your profession. TSCPA thanks all the members who are part of the grassroots program.

TSCPA's Federal Tax Policy Committee (FTP) serves as a representative voice for Texas CPAs to the IRS, U.S. Congress and Department of the Treasury on U.S. tax matters. In August, 2016, members of the FTP testified at the National Taxpayer Advocate's Public Forum on the IRS' future state plan. The forum was hosted by National Taxpayer Advocate **Nina E. Olson** and U.S. Rep. **Lloyd Doggett** (D-Texas) in San Antonio. They were seeking input from congressional and community representatives and the public about what they needed from the IRS to comply with their tax obligations.

TSCPA's Chairman-elect **Jim Oliver**, CPA-San Antonio, and members **Jim Smith**, CPA-Dallas and **Jaime Vasquez**, JD, CPA-San Antonio, served on a panel. Oliver and Smith also provided testimony on behalf of the FTP, TSCPA and the San Antonio Chapter.

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Advocacy Efforts

In the 2017 legislative session:

6801 total bills have been filed.
TSCPA is tracking **171** of them.

248 property tax bills have been filed.
TSCPA is tracking 45 of them.

64 franchise tax bills have been filed.
TSCPA is tracking 28 of them.

In the 2015 legislative session,
6715 total bills were filed.
TSCPA tracked **245** of them.

In 2016, TSCPA members contributed a total of
\$144,135 to the CPA-PAC.

Since June 1, 2014, the Federal Tax Policy Committee has issued:

14 comment or concern letters to the IRS
1 joint letter with the Relations with the IRS Committee to Congress
1 joint letter to the IRS
1 joint letter with the Business Valuations, Forensic and Litigation Services Committee to the IRS
1 joint letter with the Texas State Bar Tax Section's Committee on Government Submissions to the IRS
Assisted with 2 letters from TSCPA to the IRS
Assisted with 11 letters from TSCPA to Congress

In the 2016-2017 year, TSCPA's Professional Standards Committee has responded with:
3 letters to PCAOB
3 letters to GASB
1 letter to AICPA's Professional Ethics Executive Committee
1 letter to FASB

The FTP and Business Valuations, Forensic and Litigation Services Committee issued a joint comment letter to the IRS and U.S. Department of the Treasury in November on proposed REG-163113-02 with respect to Section 2704 family-owned entity valuation discounts. The broad-sweeping provisions of this proposal would dramatically restrict, if not eliminate, valuation discounts on intra-family transfers of certain family-owned entity interests. In the comment letter, the committees asked the Treasury Department to withdraw or significantly revise the proposed regulations. TSCPA member **Carol Warley**, CPA-Houston, testified on behalf of the two committees at an IRS public hearing in Washington, D.C., on December 1.

In January 2017, the FTP and Texas State Bar Tax Section's Committee on Governmental Submissions issued a joint letter to IRS Commissioner **John Koskinen** to express concerns about the shift in policy pertaining to in-person appeals conferences. In March, the California Society of CPAs' Committee on Taxation sent a letter to the IRS acknowledging and supporting the joint letter.

Other activities by the FTP included issuing several other comment letters to the IRS. For updates on the FTP's activities, please see your weekly electronic *Viewpoint* newsletter and visit the Federal Tax Policy area and blog on the TSCPA website.

TSCPA's Professional Standards Committee (PSC) responds to exposure drafts issued by accounting and auditing standard-setting bodies that have an impact on the practice of accountancy. In the 2016-2017 year, the PSC submitted comment letters to the Financial Accounting Standards Board's exposure draft titled *Intangibles-Goodwill and Other (Topic 350)* and three Governmental Accounting Standards Board exposure drafts.

The PSC also responded to the Public Company Accounting Oversight Board on three exposure drafts. To view the proposals and read the PSC's letters of comment, please go to TSCPA's



TSCPA Receives Two Awards for New Website

TSCPA's newly redesigned website was honored with two awards that recognize excellence in website design on both a national and international level:

The Interactive Media Council's Outstanding Achievement Award
The bronze-level Horizon Interactive Award in the banking/finance category

website at tscpa.org, click on Advocacy, and scroll down and select Professional Standards.

In other advocacy efforts, TSCPA's Peer Review Committee issued a letter in response to an AICPA exposure draft. It was titled *Proposed Changes to the AICPA Standards for Performing and Reporting on Peer Reviews, Allowing Non-AICPA Members to Enroll in the AICPA Peer Review Program*.

"Without the tireless efforts of our volunteers, TSCPA would not be able to effectively represent and advocate for the profession's interests."

Kathryn W. Kapka, CPA, CGMA
2016-2017 TSCPA Chairman

High-Quality CPE to Meet Your Needs

For convenience, value, choices and an extensive schedule of high-quality continuing professional education (CPE) on hot topics and the most recent updates, look no further than TSCPA. The TSCPA CPE Foundation offers a wide variety of CPE programs in flexible formats. With hundreds of options from live programming to web-based delivery, you can choose when, where and how to take your CPE.

TSCPA offered 17 conferences this year. They included two new conferences – Auditing Employee Benefit Plans and the first virtual-only Accounting in Agriculture conference. Members were encouraged to take advantage of early bird discounts to save on the registration fee and six of the conferences were also available via webcast to give attendees the benefit of completing the program from their office, home or other location.

Educational clusters were again a popular option for members looking to enjoy a vacation destination while additionally scheduling and earning up to 24 hours of CPE over three days. Held in Galveston, San Antonio and South Padre, the clusters provided the opportunity for attendees to choose courses on topics that were most relevant to them and then have some leisure time at the end of the day and evenings.

The free, two-hour professional issues webcasts were also in demand this year. The speakers included TSCPA Chairman **Kathy Kapka**, CPA-East Texas; **Jason Freeman**, CPA-Dallas; **Bill Schneider**, CPA-Dallas, CGMA; **Debra Seefeld**, CPA-Houston, CFE; and **John Sharbaugh**, CAE, TSCPA's previous executive director/CEO. They discussed the latest issues affecting the profession.

Every CPA licensee in Texas must complete a four-hour ethics course approved by the Texas State Board of Public Accountancy. TSCPA continued to offer 30-plus live programs and other formats to meet the ethics requirement.

For a listing of selected courses and links to register online, be sure to see the weekly CPE calendar that TSCPA sends to members via email. Members can also use the catalog on the newly redesigned website at tscpa.org to review the courses available and register online. For assistance, please call the TSCPA staff at 800-428-0272 (972-687-8500 in Dallas).

Your Professional Community

As the premiere professional association for CPAs in Texas, TSCPA provides you with an extensive community and relevant networking opportunities to support you throughout your career. There are also special community service activities available. If you aren't taking advantage of what professional communities have to offer in terms of engagement, mentorship, advice and guidance, then you're missing out.

In the 2016-2017 year, hundreds of volunteers participated in TSCPA's statewide CPA Month of Service last November. This effort represented the profession's commitment to serving local communities where members live and work. For more information about TSCPA's statewide CPA Month of Service, please see the Chapters column in this *Today's CPA* issue.

In 2016, TSCPA marked the fifth year of the Rising Stars Program. Over those years, more than 80 rising stars have been recognized. The program distinguishes CPA members 40 years old and younger who have demonstrated exceptional leadership skills and active involvement in the Society, the profession and/or their communities. After receiving nearly 50 nominations in 2015-2016, a task force made up of TSCPA Executive Board members selected 14 up-and-coming CPAs. They were featured in the September/October 2016 issue of *Today's CPA* magazine.

As of April 1, 2017, TSCPA has 1,649 student and candidate members.

Since CPAs who work in business and industry (B&I) have different professional needs than public practitioners and with CPAs choosing or switching to B&I careers in increasing numbers, TSCPA has programs and efforts that focus on this segment of the membership. This past year, TSCPA created the new B&I award. The award recognizes the professional accomplishments of CPAs who have spent their careers in B&I, have recruited others to the accounting profession and have made significant contributions. In April, 2017, the recipient of the first-ever B&I award was announced. She is **Carolyn (Carol) Severyn**, CPA-San Antonio, who works at Frost Bank. Please see the Take Note section in this issue of *Today's CPA* magazine to learn more about Severyn and her award.

April was again designated as B&I month. During the month, the Society hosted networking and CPE events in the Austin, Dallas, Fort Worth, Houston and San Antonio chapters. Other efforts for B&I members included sending them a brochure that promoted TSCPA's value, resources and upcoming education, as well as behind-the-scenes events that included presentations from financial professionals.

TSCPA's chapters also provide a variety of opportunities to connect with CPAs in your local community or service projects. Be sure to contact your chapter for activities in your area.

Insights on Membership

For the third year, TSCPA's free membership program provided complimentary membership to new licensees. With the pending retirement of so many professionals in the baby boomer generation, it's important for TSCPA to connect with the new generation of CPAs and establish relationships with them early in their careers. TSCPA and the chapters worked hard to communicate with these new members to keep them engaged in a range of activities and to reinforce the many benefits of membership. Through the program, the Society was able to reach new licensees from diverse backgrounds.

TSCPA also continued to offer a single invoice renewal option for organizations with more than one member on staff, allowing annual dues for multiple members to be renewed in one easy process. With this invoicing alternative, organizations can eliminate burdensome reimbursements internally. As of press time, 240 organizations had expressed interest in participating in this renewal option and if all

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of these organizations complete the process and pay for their entire rosters, it was estimated that nearly 50 new CPA members would be added.

Student membership initiatives continued to be a focus. Through the Campus and Faculty Rep Programs, TSCPA worked with Texas students and educators to serve as representatives on college and university campuses. For more information about these programs, please visit the website at www.txcpa2b.com and go to the TSCPA Membership tab at the top of the page.

The Accounting Career Education (ACE) program gives members from across Texas an opportunity to share their knowledge about accounting careers with students. TSCPA hosted a panel presentation for students at Texas Southern University in Houston. This event gave students more information about the career options for CPAs and the steps required for certification. ACE program volunteers are always needed. Please contact your chapter if you are interested in serving as a volunteer.

Connection Through Communications

To keep you informed throughout the year, TSCPA continued to use e-newsletters, social media, blogs, a print publication, video, the website and more. During the fall of 2016, TSCPA launched a new and improved website at www.tscpa.org. The redesigned, mobile-friendly site gives members a quick and easy way to access a variety of professional resources and benefits, with CPE search filters, improved site search capabilities and access on mobile devices.

For the latest news, professional updates and information on TSCPA activities, be sure to read the weekly electronic *Viewpoint* newsletter. *Today's CPA* magazine, a bi-monthly publication, is an excellent source of news and information. TSCPA also has specialized communications and areas of the website dedicated to the various segments of the membership.

TSCPA is active on the social media outlets Facebook, Twitter, LinkedIn and, most recently, Instagram. All outlets are updated several times per week with professional news and articles, event

photos, member news, infographs, blog posts and other helpful information for members.

TSCPA also has a Twitter account, @TXCPA2B, exclusively for student and candidate members that provides student-oriented information, including exam updates, accounting news and career

Social Media

In the past year, TSCPA has gained more than:

150 new Twitter followers

140 new Facebook followers

55 Instagram followers

30 new LinkedIn members.

For the first time, Twitter surpassed LinkedIn as our most popular social media channel with more than **2,575** followers.

TSCPA blogs include:

- TSCPA at the Capitol at tscpaatthecapitol.com;
- Federal Tax Policy Committee at tscpafederal.typepad.com/blog;
- TXCPA2B blog, written by accounting students or soon-to-be Texas CPAs, at www.txcpa2b.com; and
- Business and Industry blog at industryissues.wordpress.com, which features posts written by TSCPA member Bill Schneider and guest bloggers from TSCPA's chapters.

advice. Throughout the past year, TSCPA has used this Twitter account to share resources, tips and information on the new CPA Exam that was released on April 1, 2017. In addition to these efforts, several TSCPA chapters have their own Facebook, Twitter and LinkedIn pages to share local events, member news and photos.



To increase social media engagement, TSCPA continued live-tweeting from CPE conferences using the hashtag #TXCPE2016 and, if available, the speaker's username and/or the username of his/her company. TSCPA's Managing Director of Governmental Affairs John Sharbaugh also created his own Twitter account to share news and information from the 2017 Texas legislative session in Austin.

Financial Literacy Guidance for Every Stage of Life

With the importance of educating consumers on personal finance and sound money management skills, the 360 Degrees of Financial Literacy program was continued this year. TSCPA's consumer finance website offers free personal finance resources, FAQs, articles, tax tips and other helpful information. The site is available at ValueYourMoney.org. The following activities supported the program:

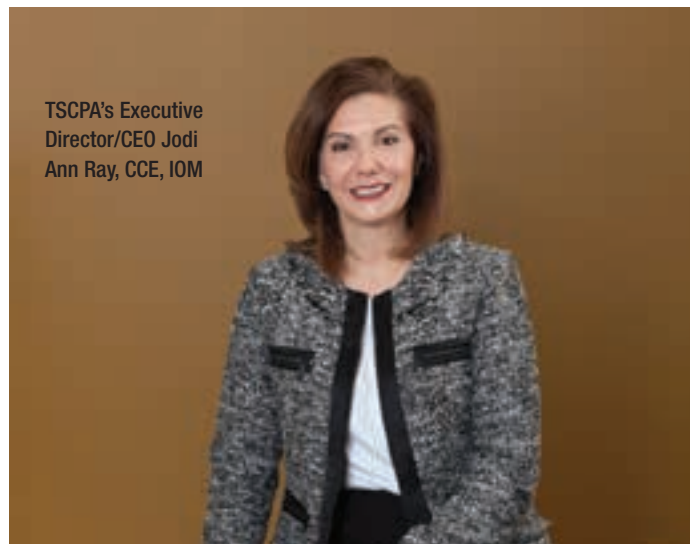
- maintained the Tax Talk section for the 2017 tax season with resources and tools to assist Texas taxpayers;
- developed materials and promoted 2017 Financial Literacy month in April;
- updated content for life stages on ValueYourMoney.org;
- continued the workplace financial education initiative to inform Texas employees about the program and other workplace financial literacy resources;
- distributed TSCPA's free, bi-monthly personal finance e-newsletter, *Take Off!* which features articles and advice on saving, budgeting, tax planning and more;
- updated ValueYourMoney.org's Facebook and Twitter accounts with personal finance articles, resources and helpful tips, especially during tax season; and
- promoted our members as expert resources for media outlets during tax season, and throughout the year.

Encourage your colleagues, family and friends to check out all the resources available on the site at ValueYourMoney.org, and to follow [ValueYourMoney](http://ValueYourMoney.org) on Facebook and Twitter.

Looking Ahead to 2017-2018

In the upcoming year, TSCPA will be developing a new strategic plan to guide the organization into the future. Look for more information to come in *Today's CPA* magazine about the new plan.

The July/August 2017 issue of *Today's CPA* will feature an article on TSCPA's incoming Chairman **Jim Oliver**, CPA-San Antonio. He'll be discussing the Society's plans and goals for next year. ■

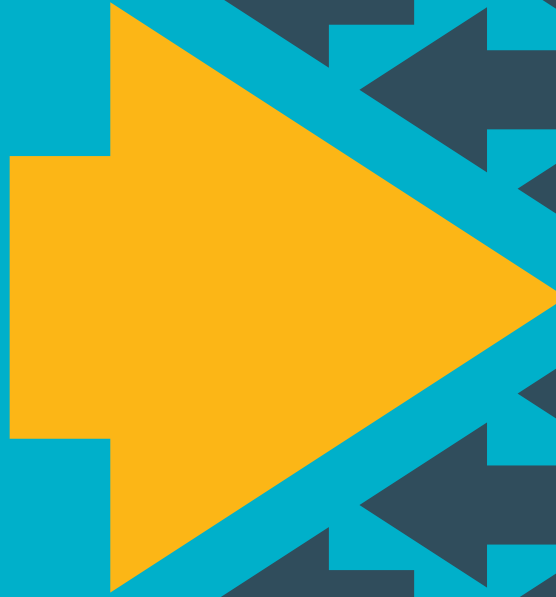


TSCPA's Executive
Director/CEO Jodi
Ann Ray, CCE, IOM

TSCPA's New Executive Director/CEO

At the end of 2016, TSCPA's longtime Executive Director/CEO John Sharbaugh, CAE, retired and we welcomed incoming Executive Director/CEO Jodi Ann Ray, CCE, IOM. The two worked together throughout last fall to help ensure a smooth transition. Ray has 24 years of association management experience, most recently working at Meeting Professionals International (MPI) where she was the vice president of membership and volunteer experience. Prior to joining MPI, she served as the CEO for chambers of commerce in Connecticut, North Carolina and Texas.

Managing Engagement Creep: Boundaries Can Be a Good Thing



By Sarah Beckett Ference, CPA

We are taught at an early age that order, routines and standardization are good. We are encouraged to color within the lines, follow instructions, execute tasks in a specified manner and even follow specified color schemes. (Remember paint by number?) However, in today's world, individuality and uniqueness are embraced and even encouraged. After all, great thinking and great innovation generally do not arise without challenging the status quo.

Encouraging innovation and finding new ways to deliver services more efficiently and effectively is certainly part of a CPA's responsibilities. The commitment to continuous improvement and continuous learning is how we as a profession continue to deliver superior client service. That said, there is an area of a CPA firm's responsibilities that benefits from order, routine and standardization: the management of engagement scope. Done properly, effective scope management can not only result in financial rewards for the firm, but also help mitigate professional liability risk.

Expanding or modifying the scope of an engagement to respond to the needs of the client and to meet the engagement objectives is a good thing and is expected of the CPA. When such modifications are not properly managed, defending a

professional liability claim related to the underlying services can be challenging. Consider these examples based on real claims reported to the American Institute of CPAs (AICPA) Professional Liability Insurance Program.

A CPA firm provided investment advisory services and was engaged to advise a client on whether to make a debt or equity investment in an entity. The potential investment was an internet start-up company with a good business plan, but little in the way of past performance. The CPA recommended a debt investment and made such recommendation in writing to the client, indicating that the investment decision was ultimately their responsibility. During a conversation with the client, the CPA was asked about the company's financial performance. The CPA calculated some financial statement ratios and provided these as well as some verbal comments on the company's financial statements to the client. The client ultimately made an equity investment and the company went bankrupt a few years thereafter. The client lost its entire investment and brought a claim against the CPA for failing to provide sound investment advice.

Despite the fact that the CPA had written evidence of the advice provided, which included telling the client that the final decision rested with them, the client asserted he had relied upon the additional financial statement analysis performed by the CPA in arriving at the investment decision. This additional work proved problematic in defense of the claim and the firm's defense that the written advice was the sole deliverable was disregarded.

A large accounting firm performed audit and non-audit services for a publicly traded client. As required by professional standards and Securities and Exchange Commission (SEC) regulations, the scope of the nonaudit services was reviewed by the lead audit partner to ensure they did not violate independence rules and were approved by the client's audit committee prior to proceeding with the nonaudit services. During the course of engagement performance, the once permissible nonaudit service was found to have deviated from its intended and approved scope and caused the firm's independence to be impaired. The firm had to resign from the audit engagement and the client terminated the nonaudit services. The client then brought a claim against the CPA firm to recover fees previously paid to the firm for both engagements and additional fees incurred to select and hire a new auditor. Not surprisingly, the firm's reputation was also damaged.

A CPA firm provided tax return preparation to a small business client for many years. An engagement letter was executed at the beginning of the client relationship, but not updated annually. Every year, the client's books and records were messy and unorganized. The firm routinely made adjusting journal entries, reconciled bank accounts and performed other activities to "clean up" the client's financial records in order to prepare the tax return. Several years into the relationship, the client discovered that one of its employees had embezzled funds. The client brought a claim against the CPA firm, alleging the CPA should have detected the theft. The client's claim was, in large part, based on the CPA firm's involvement with the client's books and records. During trial, the plaintiff attorney argued that, because of the CPA's familiarity and long-standing relationship with the client, its bank reconciliation and "clean up" activities, the firm should have identified red flags and unusual bank account activity and alerted the client.

A high net worth couple hired a midsize CPA firm to prepare their tax return. The couple had numerous investments, making for a very complicated annual tax return. To help facilitate the work performed by the firm and because the clients were very busy and did not attend to details like "paperwork," the client had all of their investment statements sent directly to the CPA firm. As a result of the housing bubble burst and the subsequent financial crisis, the couple lost millions. Turns out, they were heavily invested in residential mortgage-backed securities and commercial real estate investment trusts that invested in once "can't lose" real estate markets like Arizona and Florida. The client brought suit against the firm in an attempt to mitigate some of their losses. They asserted that, by receiving their investment statements, the CPA firm should have advised against the concentration in the real estate industry and brought the investment losses to their attention in a timely manner so the client would have had the opportunity to minimize their losses.

In defense, the CPA firm pointed to their engagement letter, which limited the firm's responsibilities to tax return preparation only and noted that receipt of the statements was to facilitate tax services only. However, the couple felt personally wronged and had the financial wherewithal to pursue the matter to trial. While the claim was ultimately dismissed, the CPA firm spent

significant time and money defending the matter.

In each of these scenarios, proper management of the engagement scope could have limited the likelihood of a claim. Regardless of whether it is termed scope creep or engagement creep, as noted by the scenarios above, staying within the boundaries of an agreed-upon scope is not always easy when delivering client services.

What's the Big Deal?

Professional liability concerns. A significant number of claims asserted against CPA firms in the AICPA Professional Liability Insurance Program include allegations related to a disputed engagement scope. Even if a scope dispute is not expressly alleged, defending a claim can be challenging if the firm's activities were not in line with the scope described in the engagement letter (if an engagement letter even existed).

Often, the scope of service is inadvertently expanded by a well-intentioned CPA trying to deliver good client service. Perhaps the client asked the CPA to "quickly look into something" or wanted to "bounce something off" the CPA. Or, during the performance of services, the CPA realized that additional services, such as bank reconciliation cleanup or the preparation of an additional state tax return, were needed. Acting on these good intentions may place additional obligations on the CPA, which may be challenged by a plaintiff attorney in the event of a professional liability claim.

Financial concerns. Often a CPA completes an engagement, reviews the client's unbilled fee balance and wonders how the balance got so high. If this has ever happened to you, it is likely that additional work was performed in an effort to deliver superior service. The CPA profession has established a great service culture. However, this culture can become a double-edged sword and should not be to the financial detriment of the CPA firm. Time is money. If not managed appropriately, supplemental activities outside the original engagement's scope may not only increase professional liability risk, but may also result in write-offs if the client refuses to pay for the additional work.

Other "costs" firms often overlook when dealing with scope disputes include lost time spent debating with the client, the aggravation caused by these misunderstandings and potential reputational damage that may be caused by an unhappy client. These hidden costs exist even if a claim is not asserted.

Risk Management Tips

To help stay in bounds, consider the following tips.

Be mindful of the type of clients with whom you choose to do business. Perform a client acceptance evaluation on all new clients and all new engagements for existing clients. Take on only those clients and engagements that are a fit with the firm's capabilities, risk tolerance and strategy. Be sure to evaluate all potential new clients and engagements, including those who seek out the firm's services or are sourced from an acquired firm or practice.

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GREAT THINKING AND GREAT INNOVATION GENERALLY DO NOT ARISE WITHOUT CHALLENGING THE STATUS QUO.

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Have a plan. Use an engagement letter for all services. The scope section of an engagement letter is critical when a professional liability claim arises and lack of an engagement letter is problematic in the defense of a claim. Did you know that nearly half of all claims reported to the AICPA Professional Liability Insurance Program in 2016 did not have an engagement letter related to the underlying service in place? The scope of work outlined in the engagement letter should be clear and the boundaries of the service to be performed should be well defined.

Clarify any limitations of the services. Examples of limitations for a non-audit engagement would be that the firm is not auditing or verifying any information provided by the client or that the services to be provided are not intended to detect theft or fraud. Identify aspects that will not be included, if appropriate. Include a statement indicating that if additional services are needed, written client approval will be required and additional fees will be charged.

Ensure everyone understands the plan. Communicate the scope to all client service team members, particularly those who perform services on-site at the client's location, to ensure everyone knows the boundaries of the services. Consider providing a refresher to teams on long-term engagements. Encourage upward communication from every level of the engagement team relating to potential deviations from the engagement scope.

Mind the expectation gap. Clarify the client's understanding of what is included in the scope of services. Take the time to review the engagement letter with them. This is critical to help ensure expectations are aligned. Strengthening client communications will not only help build a sound client relationship, but also helps mitigate the risk of unintended scope creep.

Stick to the plan. Deliver services in accordance with the scope outlined in the engagement letter and document work performed in engagement workpapers. Well-documented workpapers provide evidence of services delivered and assist in the defense of claims related to scope disputes. In addition, billing

records, particularly the narrative included on client invoices, should align with the services described in the engagement letter. Consider attaching a copy of the engagement letter to invoices.

Adjust the plan, if needed. Circumstances may change, additional work may be needed to proceed or the CPA may identify additional service opportunities. All of these items require the CPA firm to pause and consider a new course of action. Work with the client to adjust the engagement scope. Document the revised scope and fee impact in a communication with the client. Depending on the extent of the revision, the client communication could be a simple email, an engagement letter amendment or a new engagement letter.

Know when to say goodbye. While evaluating the risk of new clients and new engagements is important, scope creep is likely to happen more often with existing clients. A client who consistently asks for “quick favors,” balks at engagement letters or additional fees, or pushes the boundaries of the engagement's scope might be taking advantage of the firm's commitment to client service. Not only does this type of client increase the firm's professional liability risk, it is likely to result in poor realization for the firm. Consider terminating this client relationship.

Managing Engagements Appropriately

Imagine what would have happened if Jackson Pollock or Pablo Picasso always colored in the lines? Or where we would be if George Washington and the other Founding Fathers always followed Great Britain's rules? Would technology have evolved so rapidly if Steve Jobs or Bill Gates always completed their tasks in a specified manner? Deviating from established boundaries and norms is not always a bad thing. However, all these figures deviated from the norm in a managed and deliberate manner, which resulted not in chaos but greatness.

Take a lesson from these greats and manage the risk of engagement scope changes appropriately. Doing so may help you avoid the turmoil of a professional liability claim. ■

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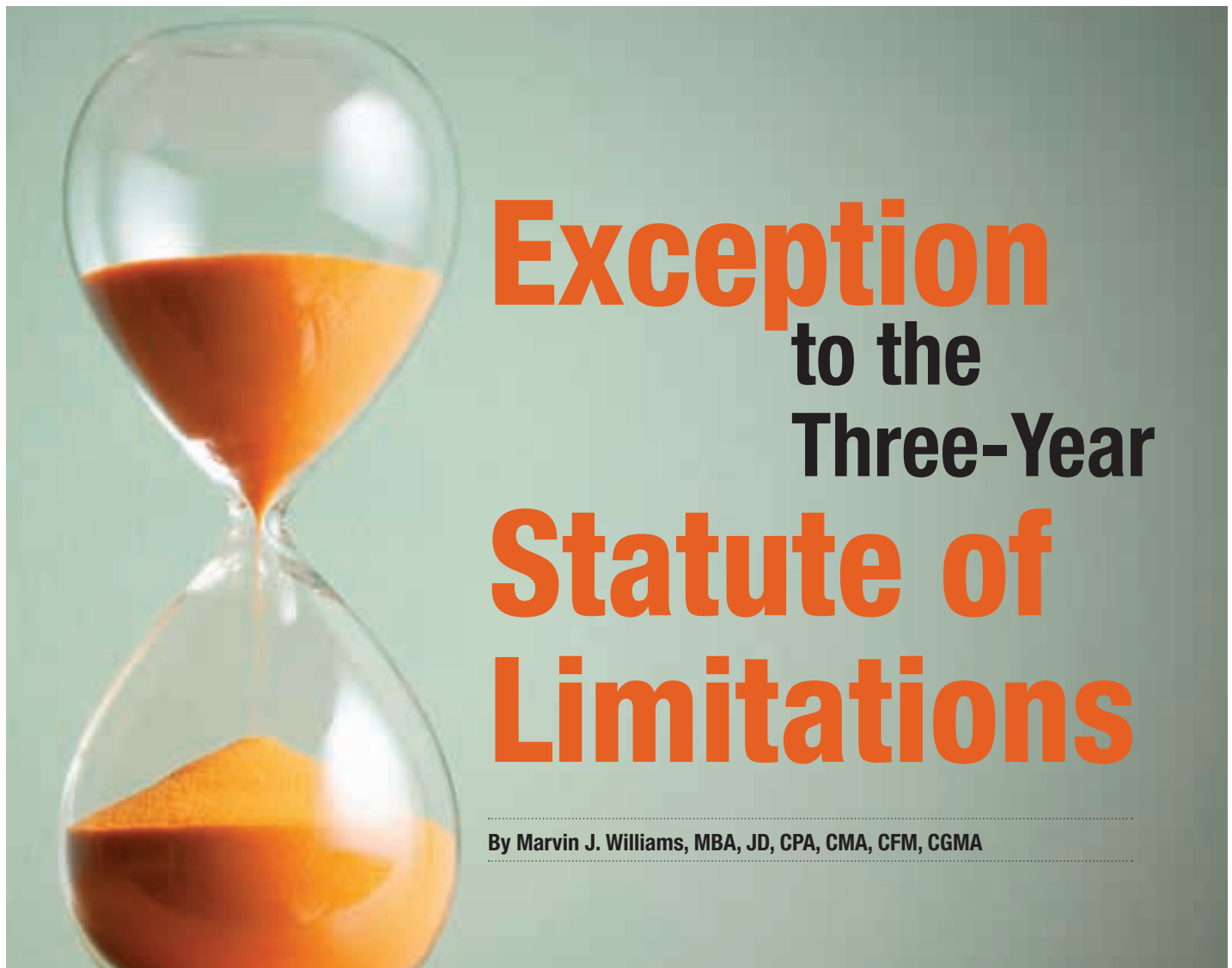
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Exception to the Three-Year Statute of Limitations

By Marvin J. Williams, MBA, JD, CPA, CMA, CFM, CGMA

Curriculum: Tax

Level: Intermediate

Designed For: Tax practitioners (primarily) and public practice

Objectives: Discuss a recent Internal Revenue Treasury regulation (final regulation) regarding a specific exception to the general three-year statute of limitation

Key Topics: Statute of limitations, three-year general rule, listed transactions, reportable transactions and financially disabled taxpayers

Prerequisites: Basic understanding of federal taxation

Advanced Preparation: Tax seminar or study of the federal taxation statute of limitations rules

Statutes of limitations are provisions of law that require for actions to be initiated for prior events within a certain maximum prescribed time period. Therefore, if an action is to be brought or pursued for a prior event, it typically must be initiated before the specified maximum prescribed time period expires. The purpose of statutes of limitations is to enable for the best evidence that is available to be presented in the pursuit of the action. As time expires, evidence may become lost or otherwise unavailable, witnesses may no longer be available, etc. As such, prosecuting such untimely actions and defending them becomes very difficult.

Accordingly, statutes of limitations are designed to compel actions for prior events be initiated before important evidence becomes unavailable. Failure to initiate such action within this specified maximum prescribed time period is a valid defense and precludes the pursuit of the action.

Statutes of limitations apply for federal income tax matters, as well as other legal matters, civil and criminal. The Internal Revenue Code prescribes specific provisions for when prior tax matters may be pursued by either the IRS (on behalf of the U.S. government) or the taxpayer. The specific provisions vary depending on whether additional assessment of tax is sought by the IRS or a claim for refund is sought by the taxpayer.

The primary focus of this article is to discuss a recent Internal Revenue Treasury regulation (final regulation) regarding a specific exception to the general three-year statute of limitation. In addition, a brief discussion will be devoted to a related clarification provided by the IRS to the general three-year statute of limitation.

Statute of Limitations – Generally

As stated above, the Internal Revenue Code prescribes specific provisions for when prior tax matters may be pursued by either the IRS (on behalf of the U.S. government) or the taxpayer. The provisions vary depending on whether additional assessment of tax is sought by the IRS or a claim for refund is sought by the taxpayer. Sections 6501 through 6504 of the Internal Revenue Code contain limitation provisions for additional assessments imposed by the IRS and Sections 6511 through 6515 contain limitations for claim for refund by taxpayers.

Assessments

Assessments pertain to how long the IRS may impose additional tax on a taxpayer. The general rule for imposing additional tax is three years from the date the tax return was filed or the due date of the tax return (usually April 15 of the following year for a calendar-year taxpayer or the next day following a Saturday, Sunday or legal holiday if April 15 is a Saturday, Sunday or legal holiday) whichever is later. Thus, if a tax return is filed before April 15 of the following year, the three-year period begins to run on April 15 of that following year. However, if the tax return is filed after the normal due date for the tax return, the three-year period begins to run on the date the tax return is filed.

As with any general rule, there are exceptions. There are two important exceptions from the general rule for assessments. The first exception applies to the substantial omission of income. In the case of substantial omission of income, the statute of limitation for the general rule described above is extended to six years. For this exception to apply, substantial omission of income is defined as more than 25 percent of the gross income reported on the tax return that is omitted from the tax return.

Thus, for example, if the gross income reported on the tax return is \$100,000, the failure to report an additional \$26,000 of gross income that should have been reported that was omitted from the tax return will trigger this six-year statute of limitation. However, if only \$24,000 of gross income that should have been reported was omitted from the tax return, the three-year statute of limitation of the general rule will still apply, as the six-year statute of limitation is not triggered in this case. However, see the second exception (fraud exception) described below. It is also noteworthy to recognize that the six-year statute of limitation applies only to the substantial omission of income and not other items, such as claiming excessive deductions, etc.

A second exception to the general rule for assessments applies to fraud (or willful intent to evade tax) or tax returns not filed at all (for whatever reason). In either of these cases, there is no statute of limitations, as there is no time limit for the IRS to assess additional tax or initiate a court action without assessment. The burden of proof generally remains with the IRS in cases of fraudulent tax returns or tax returns not filed.

Claims for Refund

A claim for refund pertains to how long a taxpayer may claim a refund for the overpayment of tax. A claim for refund must be made within three years from the date the tax return was filed (the due date of the tax return if filed early, usually April 15 of the following year for a calendar-year taxpayer) or two years from the date the tax was paid, whichever is later.

If no tax return was filed, the claim for refund must be made within two years from the date the tax was paid. Any tax deducted and withheld from the wages of a taxpayer is treated as paid on the 15th day of the fourth month following the close of the tax year for which the tax is allowed as a tax credit. Form 1040X (Amended Return) is normally filed to request a refund, although in certain cases Form

continued on next page

1045 (Application for Tentative Refund) may be used. If a claim for refund relates to the deductibility of bad debts or worthless securities, the statute of limitations becomes seven years.

Treasury Regulation on Specific Exception

In addition to the exceptions to the general rule shown above, Section 6501(c)(10) contains a specific exception to the three-year statute of limitation period. Under Section 6501(c)(10) of the Internal Revenue Code, an exception to the three-year statute of limitation is defined as follows:

“(c) Exceptions

(10) Listed transactions. If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in Section 6707A(c)(2)) which is required under Section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is one year after the earlier of –

(A)

the date on which the Secretary is furnished the information so required, or

(B)

the date that a material advisor meets the requirements of Section 6112 with respect to a request by the Secretary under Section 6112(b) relating to such transaction with respect to such taxpayer.”

(The term material advisor is defined in Section 301.6111-3(b) of the Internal Revenue Code.)

Section 6501(c)(10) was enacted in 2004 and applies to assessment in which the period of statute of limitations had not expired before Oct. 22, 2004. Thus, under this provision, if the taxpayer or the material advisor provides the required information, the period of the statute of limitations on assessment will continue to be open and the tax with respect to the listed transaction may be assessed at any time, provided that the period of the statute of limitations on assessment did not expire prior to Oct. 22, 2004.

To clarify the application of this specific exception to the three-year statute of limitation, the Treasury Department recently issued a final regulation on this exception.

As stated in the statute cited above, the general rule of the three-year statute of limitation is expanded for listed transactions that fail to include information required under Section 6011 of the Internal Revenue Code. Listed transactions as defined under 6707A(c)(2) for which information is required under Section 6011 of the Internal Revenue Code are as follows:

“(2) Listed transaction

The term “listed transaction” means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.”

Section 6707A(c)(1) defines reportable transaction for purposes of a listed transaction as follows:

“(1) Reportable transaction

The term “reportable transaction” means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed



A CLAIM FOR A REFUND PERTAINS TO HOW LONG A TAXPAYER MAY CLAIM A REFUND FOR THE OVERPAYMENT OF TAX.



under Section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”

In its final regulation (T.D. 9718 – Effective March 31, 2015), the Treasury Department requires taxpayers who must report listed transactions pursuant to Section 6011 of the Internal Revenue Code to complete and file a disclosure statement in accordance with such section. This disclosure requires that Form 8886, “Reportable Transaction Disclosure Statement” (or successor form) be used as the disclosure statement and be completed in accordance with the instructions to the form. Form 8886 (or successor form) should generally be attached to the taxpayer’s original tax return, or amended tax return, for each taxable year for which a taxpayer is part of a listed transaction. Moreover, any loss from a listed transaction that is carried back to a prior tax year requires Form 8886 (or successor form) to be attached to the taxpayer’s request for a tentative refund, or amended tax return, for the prior tax year. Also, a copy of Form 8886 (or successor form) must be sent to the IRS Office of Tax Shelter Analysis (OTSA) when the disclosure statement is initially filed for a listed transaction.

In addition, if a taxpayer is subsequently determined to be part of a transaction that is identified as a listed transaction after the date the taxpayer files a tax return, or an amended tax return, for a taxable year reflecting that the taxpayer was part of the listed transaction and before the statute of limitation period for assessment has expired, the taxpayer must file Form 8886 (or successor form) with the IRS OTSA within 90 days after the date the transaction became a listed transaction.

Failure to disclose participation in a listed transaction extends the general rule three-year statute of limitation for assessment of tax as described above under Section 6501(c)(10). Revenue Procedure 2005-26 (2005-1 CB 965) describes the manner in which taxpayers

and material advisors are to disclose listed transactions that were not properly disclosed under Section 6011 for purposes of commencing the one-year period for the extension of the statute of limitation under Section 6501(c)(10) for statute of limitation periods that expired no later than March 31, 2015. This extended statute of limitation applies only if the general rule three-year statute of limitation period has expired before the end of extended limitation period under Section 6501(c)(10). Otherwise, the general rule three-year statute of limitation period still applies.

Special Period of Limitation for Net Operating Loss or Capital Loss Carrybacks

In consideration of a related statute of limitation issue, the IRS has provided clarity to an issue regarding suspending the general rule three-year statute of limitation period for “financially disabled” taxpayers. Under Section 6511(d)(2)(A) of the Internal Revenue Code, a claim for credit or refund that relates to an overpayment of tax due to a net operating loss carryback or a capital loss carryback, the general rule three-year statute of limitation does not apply, but an extended statute of limitation period applies for the taxable year of the net operating loss or net capital loss. Moreover, Section 6511(h) of the Internal Revenue Code states that the statute of limitation period is suspended during periods that a taxpayer (individual) is financially disabled.

Confusion was raised over whether this suspension of the statute of limitation period applies to the net operating loss carryback or capital loss carryback under Section 6511(d)(2)(A). In a Chief Counsel Advice (CCA Number 201515019), the IRS answered this issue

in the negative. The Chief Counsel Advice Memorandum pointed out that the language of Section 6511(h) specifically listed certain subsections of Section 6511 in regards to the suspension of the statute of limitation period and subsection (d) of Section 6511 was not one of the explicitly listed subsections. The memorandum also pointed out that Section 6511(d)(2)(A) makes no reference to Section 6511(h). Accordingly, the Chief Counsel Advice Memorandum concludes that the suspension of the statute of limitation period of Section 6511(h) of the Internal Revenue Code does not apply to net operating loss carrybacks or capital loss carrybacks as described in Section 6511(d)(2).

Easier to Comply

This article illustrates clarity brought about in the area of federal taxation by the IRS through the issuance of Treasury regulations and other pronouncements. These steps by the IRS provide important guidance to taxpayers and tax professionals on the appropriate or accepted means for presenting information on tax returns. These measures greatly help in compliance with federal taxation laws. ■

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1. Internal Revenue Code of 1986.
2. Treasury regulations: Treas. Reg. Section 301-6501(c)-1, 80 F.R. 16973 (March 31, 2015) (T.D. 9718).
3. Chief Counsel Notice 2015-15019 (April 10, 2015).

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Exception to the Three-year Statute of Limitations

- 1 The statute of limitations period under the general rule for assessments to impose additional tax by the IRS is:
 - A. One year
 - B. Three years
 - C. Six years
 - D. Unlimited
- 2 The statute of limitations period under the substantial omission of income exception for assessments to impose additional tax by the IRS is:
 - A. One year
 - B. Three years
 - C. Six years
 - D. Unlimited
- 3 The statute of limitations period in the case of fraud for assessments to impose additional tax by the IRS is:
 - A. One year
 - B. Three years
 - C. Six years
 - D. Unlimited
- 4 If no tax return was filed, the claim for refund must be made within:
 - A. One year from the date the tax was paid
 - B. Two years from the date the tax was paid
 - C. Three years from the date the tax was paid
 - D. Four years from the date the tax was paid
- 5 Section 6501(c)(10) of the Internal Revenue Code contains an exception to the general rule for the statute of limitations for what type of matters?
 - A. Reportable transactions
 - B. Limited transactions
 - C. Regulated transactions
 - D. Listed transactions
- 6 The required information for a listed transaction may be provided to the IRS by the taxpayer or a:
 - A. Material advisor
 - B. Registered agent
 - C. Revenue agent
 - D. Regulation agent
- 7 The extended statute of limitation period under Section 6501(c)(10) applies to assessment in which the period of statute of limitations had not expired before:
 - A. January 1, 2001
 - B. July 10, 2002
 - C. October 22, 2004
 - D. December 31, 2005
- 8 Taxpayers who are required to report listed transactions are to complete and file a disclosure statement using which form?
 - A. Form 8886
 - B. Form 6011
 - C. Form 6501
 - D. Form 9718
- 9 The time period for a taxpayer to file the required form with the IRS Office of Tax Shelter Analysis (OTSA) after the date a transaction became a listed transaction is:
 - A. 30 days
 - B. 60 days
 - C. 90 days
 - D. 120 days
- 10 An extended statute of limitation period that applies for the taxable year of a net operating loss or net capital loss is suspended under Section 6511(h) of the Internal Revenue Code during periods that a taxpayer (individual) is:
 - A. Unwilling to pay the tax
 - B. A first-time filer
 - C. No longer in business
 - D. Financially disabled

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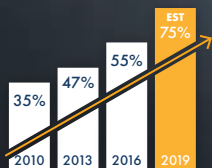
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