

# DEBITS AND CREDITS

VOLUME 65 – ISSUE 5 October November 2014



**Published By**

Independent Accountants Association of Illinois  
*Affiliate of the National Society of Accountants*

## IAAI FALL TAX UPDATE SEMINARS

GROUP LIVE 14 CPE TAXES 2 ETHICS



**October 29-30**

### 1040 Tax Update Seminar



Decatur Conference Center  
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**December 15-16**

### 1040 Tax Update Seminar



DoubleTree by Hilton  
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**November 6-7**

### 1040 Tax Update Seminar



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Palatine, IL 60074  
Hotel Reservations 847.934.4900

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**IAAI Scholarship Foundation  
awards scholarships to accounting students  
for the 2014-2015 academic year.**



Ed Lohman, State Director, Chapter 17,  
Megan Ward, a Senior attending Quincy University,  
Recipient of a \$1,000 Scholarship



Brenda Sanchez (left), President, Chapter 14, and  
Paul Bowman (right), Treasurer, Chapter 14  
Angela Martin (center), a Senior  
attending Western Illinois University  
Recipient of a \$1,000 Scholarship



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## Message from the President

### WHY does IAAI have such an emphasis on Lifelong Learning?

We learned in last month's discussion that the State of Illinois is taking a fresh look at the preparation of tax professionals. The legislature amended the Public Accounting Act (HB4381 Tax Return Preparation Task Force) and this will be a major "watch" item for us for the next couple of years. Credentialing and continuing education are having an impact on many professions; including, Medicine, Insurance, Accounting, etc.

Why do you need to continue your education? Should lifelong learning be one of your objectives? As you know, the need for tax professionals to expand their professional competencies and knowledge has never been greater. Changes in tax administration and technology continue at a rapid pace, and the expertise and skills needed to respond appropriately to the resulting challenges are not easily obtained. To engage fully in professional development activities, tax professionals should:

- Undertake periodic self-assessment that involves taking stock of one's career in terms of individual professional strengths and weaknesses and specific competencies needed for current and future responsibilities.
- Embrace and master new information, new skills and emerging technologies to enhance professional performance.
- Attend face-to-face education offerings, which provide the richest environment for gaining insight from and sharing knowledge with experts and peers. Face-to-face education should also be supplemented with other learning formats including distance-learning opportunities. (Opportunities for both formats are available at [www.illinoisaccountants.com](http://www.illinoisaccountants.com).)
- Regularly, review journals, books and other resources such as relevant social media that provide insight into trends, issues and challenges affecting tax professionals.
- Keep up to date on any relevant certifications and licensure requirements. Maintain ACAT credentials by meeting specific education responsibilities.
- Engage in active networking that includes both one-on-one interaction with peers and professional society and trade association involvement.
- Mentor others to learn and grow as a tax professional

Speaking of mentoring, when did you last take an interest in an associate: (mentors do not have to be older than the mentee). who needed assistance? By sharing their wisdom, insights and experiences, mentors can give back to the profession while deriving the personal satisfaction that comes from helping others realize their potential. For IAAI and your practice, mentorships can lead to more satisfied associates and the generation of new ideas and programs. How do you become a mentor? By being proactive:

- Offer assistance by recruiting, interviewing and working with qualified students.
- Volunteer to serve as a guest lecturer at your chapter or civic organization.
- Offer an internship in your practice.
- Provide meaningful first-job opportunities to promising graduates and counsel them along the way.

Life-long learning and mentoring will assist all of us in exhibiting and maintaining the skills necessary to fulfill our duty and responsibilities to our profession and the tax-paying public, who we serve.

Raymond W. Heinen  
President



## State Director's Message

BOO!!!!!!!!!!!!!!!!!!!!

October is here and wonder where has the year gone. We have survived the Corporate extension time and we are readying ourselves for the October 15<sup>th</sup> deadline. In our years of practice these returns usually are Not your run of the mill. The late returns have more questions than answers.

When the need arises for answers to these conundrums one turns to Tax Answer Central. That is correct. NSA offers to its members three venues to obtain the needed direction to complete those pesky extension laden returns. For a quick shot I would recommend "TaxTalk". Tax talk gives the questioner answers from contemporaries that may have had similar concerns. Second would be using the CCH Tax Research Library. Being a member this excellent tool is at your fingertips 24/7. When sleep is not forthwith and the issue makes one toss and turn, never fear, CCH Tax Research Library is here.

Now the return of the ages is almost complete. A road block has been placed right smack in front of your research. What do you do? NSA to the rescue. Members have the luxury of five, YES FIVE, detailed tax research questions. The results are documented with a detailed explanation giving the solid footing on the position being taken. This is NSA. These are just three of the member benefits that YOUR membership gives.

NSA has been and will continue to be the go to organization for the tax professional in tandem with the respective ASO. Utilize the benefits that NSA & IAAI have to offer. Fretting and guessing not using the benefits is like having a one of a kind sports car and not ever drive.

Looking forward to seeing all of you at the upcoming seminars across the state.

Till later!

Robert L Thoma  
NSA Illinois State Director

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PLAN NOW TO ATTEND

## ILLINOIS FED/STATE UPDATE SEMINARS

Plan to attend the 2014 Illinois Fed/State Update Seminars. Representatives from the Internal Revenue Service Small Business/Self-Employed Stakeholder Liaison office, the Illinois Department of Revenue, and the Independent Accountants Association of Illinois (IAAI) will provide information on:

- **IRS Fall Tax Update**
- **IRS Affordable Care Act**
- **IRS Criminal Investigation/Identity Theft/Virtual Currency**
- **IDoR Individual Income Tax, Sales Tax & Withholding Update**
- **IDoR Taxpayer Assistance**

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All Other Locations: \$35 (Box Lunch INCLUDED)**

**Pre-Registration is required for all locations. Program materials available online ONLY beginning Nov. 3.  
Class size is limited....Reserve your spot today!**

### SEMINAR SCHEDULE

#### **Tuesday, November 18**

**Edwardsville, IL**  
SIU Edwardsville  
Morris University Center  
2nd Floor Conference Center

#### **Thursday, November 20**

**Carbondale, IL (NEW)**  
Research Park's Dunn-Richmond  
Economic Development Center  
1740 Innovation Drive  
\*IRS will present remotely

#### **Tuesday, December 2**

**Aurora, IL**  
Waubensee Community College  
18 S. River Street  
Room 160 - Multi-purpose Room

#### **Wednesday, December 3**

**Springfield, IL**  
LLCC Capital City Training Center  
130 W. Mason St.  
Lower Level Meeting Room

#### **Thursday, December 11**

**Chicago, IL**  
James R. Thompson Center  
100 W. Randolph  
Assembly Hall Concourse Level

**REGISTER ONLINE AT: [www.illinoisaccountants.com](http://www.illinoisaccountants.com)**

**For More Information call 1-800-222-2270**



# Calendar of Events

## 2014

**October 22 6:30 pm**  
*Chapter 5 Meeting Realities of Obama Health Care: Good, Bad and Ugly*  
*Speaker: Jim Panagiotis*  
Al's Steak House  
1990 W Jefferson Street, Joliet, IL 60477  
RSVP Mary Ann Egger (814) 744-5500  
or MaryAnnEgger@sbcglobal.net

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**October 23 6 pm Cash Bar 6:15 Dinner**  
*Chapter 16 Meeting*  
*Affordable Health Care Act & HSA's*  
The Ashford House (708) 733-7600  
7959 W 159<sup>th</sup> S, Tinley Park, IL 60477  
Call Mike Dobrzynski for information (219) 440-7915

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**October 29-30 8:30 am – 4:30 pm**  
*"Cardinals" 1040 Tax Update Seminar*  
*Chris Bird – 14 CPE Tax, 2 CPE Ethics*  
Decatur Conference Center & Hotel  
4191 US Highway 36 West, Decatur, IL 62522  
Hotel Reservations: (217) 422-8800

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**October 31 9 am**  
*Board of Directors Meeting*  
Decatur Conference Center & Hotel  
4191 US Highway 36 West, Decatur, IL 62522  
Hotel Reservations: (217) 422-8800

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**November 6-7 8 am – 4 pm**  
*"Cubs" 1040 Tax Update Seminar*  
*Jennings Seminars - 14 CPE Tax, 2 CPE Ethics*  
Holiday Inn Express  
1550 E Dundee Road, Palatine, IL 60074

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**November 13**  
*Chapters 13 & 18 Illinois Tax Seminar*  
Holiday Inn Express  
1550 E Dundee Road, Palatine, IL 60074  
Call Ray Sherretz (630) 964-9858

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**November 17**  
*Chapter 2 Meeting*  
*Looking Ahead to 2015*  
Radisson Chicago O'Hare Hotel  
Touhy & Route 45, Des Plaines, IL 60018  
Contact Richard Allen (708) 448-0420

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**November 18 9 am – 3 pm**  
*Fed/State Update Seminar*  
SIU Morris University Center  
2<sup>nd</sup> Floor Conference Center  
Edwardsville, IL 62026

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**November 19 6:30 pm**  
*Chapter 5 Meeting State of Illinois Update*  
*Speaker: Terry Lindsey*  
Al's Steak House (708) 733-7600  
1990 W Jefferson Street, Joliet, IL 60477  
RSVP Mary Ann Egger (814) 744-5500  
or MaryAnnEgger@sbcglobal.net

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**November 20 6 pm Cash Bar 6:15 Dinner**  
*Chapter 16 Meeting*  
*Annual Fee Survey*  
*& Ordinance for Chicago Tax Preparers*  
The Ashford House (708) 733-7600  
7959 W 159<sup>th</sup> S, Tinley Park, IL 60477  
Call Mike Dobrzynski for information (219) 440-7915

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**November 20 9 am – 3 pm**  
*Fed/State Update Seminar*  
Research Park's Dunn-Richmond  
Economic Development Center  
1740 Innovation Drive  
Carbondale, IL 62901

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**December 2 8:30 am – 5:00 pm (sign in 8 am)**  
*Chapter 4*  
*Chris Bird Tax Seminar*  
Elgin Community College (847) 697-1000  
1700 Spartan Drive, Elgin, IL 60123  
Contact Pat Anderson for information (815) 784-3355

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**December 2 9 am – 3 pm**  
*Fed/State Update Seminar*  
Waubensee Community College  
18 S River Street  
Room 160 – Multi-purpose Room  
Aurora, IL 60506

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**December 3 9am – 3 pm**  
*Fed/State Update Seminar*  
LLC Capital City Training Center  
130 W Mason Street  
Springfield, IL 62702

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**December 4 10 am**  
*Board of Directors Meeting*  
Eastland Suites & Conference Center  
1801 Eastland Drive, Bloomington, IL 61704  
Hotel Reservations: (309) 662-0000

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**December 4**  
*Chapter 16 Christmas Party*  
Location to be Announced

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**December 11 9 am – 3 pm**  
*Fed/State Update Seminar*  
James R. Thompson Center  
100 W Randolph  
Assembly Hall Concourse Level  
Chicago, IL 60601

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**December 12 8:30 am**  
*Chapter 2 Seminar IRS Ethics Seminar*  
*& Basic & Mid-Level Individual Tax Prep*  
Radisson Chicago O'Hare Hotel  
Touhy & Route 45, Des Plaines, IL 60018  
Contact Richard Allen (708) 448-0420

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December 15-16 8 am – 4 pm  
"White Sox" 1040 Tax Update Seminar  
Jennings Seminars - 14 CPE Tax, 2 CPE Ethics  
Double Tree by Hilton  
5000 W 127<sup>th</sup> Street, Alsip, IL 60803  
Hotel Reservations (708) 371-7300

December 17 6:30 pm  
*Chapter 5 Holiday Party*  
Al's Steak House (708) 733-7600  
1990 W Jefferson Street, Joliet, IL 60477  
RSVP Mary Ann Egger (814) 744-5500  
or email [MaryAnnEgger@sbcglobal.net](mailto:MaryAnnEgger@sbcglobal.net)

January 10 8:30 am – 3:00 pm  
Chapter 16  
Annual Last Minute Tax Workshop  
Speakers: Larry Odelson & Ed Fatla "The TaxBook"  
St. Xavier University, Orland Park Campus  
18230 Orland Parkway, Orland Park, Illinois 60467

January 17  
Chapter 2 Seminar  
Annual Tax Practitioner's Tricks Traps & Pitfalls  
Speaker: George Smith  
Radisson Chicago O'Hare Hotel  
Touhy & Route 45, Des Plaines, IL 60018

## 2015

January 7 8:30 am – 4:30 pm  
Chapter 14  
Western Illinois Area Chris Bird Forms Seminar  
Best Western Prairie Inn (309) 343-7151  
I-74 & East Main Street (Exit 48), Galesburg, IL 61401  
Contact: Paul Bowman (309) 786-4439

Please submit your chapter meetings and events for the IAAI calendar, and articles for Debits & Credits by the 15<sup>th</sup> of the month prior to publication.  
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## IAAI @ the Rail

### Legislation Committee News for IAAI Members

Submitted by: Daniel E. Setters, EA,ABA,ATA,ATP,ARA: IAAI Past President: 1993-1994 & 2012-2013;

NSA Past President: 2003-2004, ACAT Past President: 2009-2011

Legislation Committee, Chair: 1996-2012 & 2013-Present, East Central Chapter Treasurer: 1998-Present

In cooperation with the IAAI Legislation Committee

*The die is cast* for the next two *or more* years in Illinois and beyond. As I draft my notes the election is a matter of days away but by the time you read this it will most likely have passed and the attention will be on how those elected will govern and not who will those persons be to make the decisions impacting our financial, social and run-of-the-day thoughts. Were the pundits right in their predictions regarding the outcome? Did the sun fail to rise the day after the elections were made formal? How much of an impact upon your life will those elected make as you go forward with your wants, wishes and dreams? What voting decision did you make during this election cycle – vote, not vote, or ignore the hoopla since your input is only one vote. A decision not to vote indicates a willingness to accept status quo or to enable change without your participation, your involvement, your vote.

Leading up to the final day for extensions my office was blessed with the most unwelcomed event of the year, we upgraded to a new Microsoft platform on which our future work would be handled – from XP to Windows 7. If you haven't experienced this transition then you are truly ignoring the worldwide message that technology waits for no man (or woman). We must do what the programmers find best for the market and adapt and change. Not something accountants find pleasing in any venue. As in many offices the upgrade wasn't for just one to experience we have five *happy* workstations to modify and each has had its individual set of challenges to overcome, more than one time (each), during the phase in. Unfortunately my little gray cells don't stretch as rapidly nor easily as they did during Y2K so I may have added to the change resistance a little too willingly. But, we are almost there and no one has lost their cool nor their job in the process; but, for one individual this change may be the final straw regarding adapting and change if such persists. If you haven't upgraded then you are pushing an ever closing window to future software capabilities that will not function in the Win7 environment. Many software programs are not Windows 7 compatible, such as my Super Shot 5, Proventure and my forever loved LOTUS (*that may have been the worst straw of them all – UGH! Does anyone know of a workaround*).

Now that we have finally put tax year 2013 to bed, as if that will ever be the case for those that are still running 2009 returns, we can begin to focus upon the upcoming filing season. Talk about change not being welcomed into our offices, get ready for some really frustrating returns related to the Affordable Care Act after-the-fact procedures. Missing documents, unaware tax filers, unintended consequences of failing to notify someone of a serious change in the household, finding the entry fields on the tax forms and answering those CP2000s that *inform* the filer of an inaccuracy when doing those Self Prepared submissions on their own. If you have not grasped the concepts ingrained in the Act then *you* should run for Congress...

Just in case you may have missed some recent publication articles the 2014 tax changes are on hold and may not receive full attention until after the congressional Winter break (once known as Christmas). So if you plan to be away the first few weeks of January, 2015 might work out for you since the projected filing start date may be pushed back once again to very late January or early February. However, you may be filling the time getting W-2s and 1099s ready for early February filing if what we read is accurate – to enable better real time electronic matching of 1040s and the earned income amounts. Keep watching for those due date changes in 2015 if the back room watchers are reading the right tea leaves.

Additionally, a recently formed Tax Return Preparation Task Force will be reviewing the issues related to how does a tax return preparer become qualified to become a tax preparer, what qualifications are or should be in place and how are Illinois taxpayers protected from unscrupulous preparers. The results of the Task Force are due out in December 2015 and may have an impact upon our offices, our employees and us. Stay tuned for further updates. Rest assured IAAI is monitoring this activity as closely as possible for all Illinois tax preparers. I look forward to seeing you at one of IAAI's education or seminar events over the coming weeks and months. Stay informed and keep current so you can be a truly valuable Personal Tax Advisor.



## Welcome to the IAAI Membership Corner.....

### Meet Ed Lohman, State Director, Chapter 17

Submitted by Barbara R. Sternitzke



Ed Lohman IAAI Past President was generous with his time. He shared the importance of Core Values. There is value in continuing professional education. IAAI provides opportunities to network with other members. IAAI continues to remain diligent to protect the Illinois Accountant's right to practice. Ed chose accounting. Ed knows the value of IAAI membership and continues to contact prospective members. Ed's grandfather Les Lohman was an IAAI Past President. Ed's father Bob Lohman is an IAAI Past President.

## Congratulations Joan LeValley.....

### Recipient of 2014 Alumni Honor Award

The Alumni Honor Award presented to Joan LeValley, IAAI Past President, is the highest recognition the Alumni Association can bestow on a living graduate of Manchester University, North Manchester, Indiana.

Since graduating from Manchester, Joan LeValley has served as an accountant, a tax preparer and an IRS representative. In 2006, she testified before Congress regarding a bill concerning tax preparer reforms. She has been on the list of the top 50 IRS Representation Practitioners in the U.S., named Person of the year by the Independent Accountants Association of Illinois three times and was named Accountant of the Year by the National Society of Accountants. LeValley was also awarded the Excellence in Partnering with the IRS Small Business/Self-Employed Division as owner of JCL & Company.



## Welcome New Members to IAAI.....

### Chapter 2

Amy Havis, South Holland, Illinois

### Chapter 16

Edgardo C. Quiso, Streamwood, Illinois

*Sponsored by Richard Allen*

## In Memory of.....

C.R. Ron Alexander, longtime IAAI member, who passed away on April 16, 2014. We extend our condolences to his wife and family. His sister, Barbara Mann, is a member of IAAI Chapter 14.



## 65 NEW MEMBERS IN THE 65<sup>th</sup> YEAR



# Presents the 2014 Super Seminar Series

	Non-Member	Member Fee	Amount
<b>Small Firm Accounting Seminar</b> <b>Bill Leonard – 8 CPE ACCOUNTING</b> <b>August 4, Eastland Suites</b> 1801 Eastland Drive, Bloomington, IL 61704 Hotel Reservations (309) 662-0000	\$245.00	\$220.00	<input style="width: 50px; height: 20px;" type="text"/>
<b>Affordable Care Act Seminar</b> <b>Bill Leonard – 8 CPE TAX</b> <b>August 5, Eastland Suites</b> 1801 Eastland Drive, Bloomington, IL 61704 Hotel Reservations (309) 662-0000	\$245.00	\$220.00	<input style="width: 50px; height: 20px;" type="text"/>
<b>Business Tax Update Seminar</b> <b>Jennings Seminars – 16 CPE TAX</b> <b>September 29-30, Eastland Suites</b> 1801 Eastland Drive, Bloomington, IL 61704 Hotel Reservations (309) 662-0000	\$400.00	\$350.00	<input style="width: 50px; height: 20px;" type="text"/>
<b>“Cardinals” 1040 Tax Update Seminar</b> <b>Chris Bird – 14 CPE TAX &amp; 2 CPE ETHICS*</b> <b>October 29-30, Decatur Conference Center</b> 4191 US Highway 36 West, Decatur, IL 62522 Hotel Reservations (217) 422-8800	\$365.00	\$315.00	<input style="width: 50px; height: 20px;" type="text"/>
<b>“Cubs” 1040 Tax Update Seminar</b> <b>Jennings Seminars – 14 CPE TAX &amp; 2 CPE ETHICS*</b> <b>November 6-7, Holiday Inn Express</b> 1550 E Dundee Road, Palatine, IL 60074 Hotel Reservations (847) 934-4900	\$365.00	\$315.00	<input style="width: 50px; height: 20px;" type="text"/>
<b>“White Sox” 1040 Tax Update Seminar</b> <b>Jennings Seminars – 14 CPE TAX &amp; 2 CPE ETHICS*</b> <b>December 15-16, DoubleTree by Hilton</b> 5000 W 127 <sup>th</sup> Street, Alsip, IL 60803 Hotel Reservations (708) 371-7300	\$365.00	\$315.00	<input style="width: 50px; height: 20px;" type="text"/>

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**EDUCATION CORNER**

Thanksgiving is just around the corner, so what are you thankful for? I am thankful for the many educational opportunities IAAI has to offer. There is literally something for everyone in all parts of the state. Some of the remaining 2014 seminars include 3 different 1040 updates, which are featured on the cover. IAAI is also proud to once again co-sponsor the Fed-State Update seminars, which are sure to bring you valuable information straight from the IRS and Illinois Department of Revenue. They are highlighted on page 5. I am also thankful that IAAI is welcoming to all accountants and tax preparers regardless of credential or stature. All IAAI education events are open to anyone and are a great place to strengthen your knowledge of multiple subject matters whether or not you are required to do so. In addition to a wealth of knowledge and amazing speakers, IAAI events are the perfect place to network with your fellow associates. The friendships and contacts that develop from these seminars are invaluable and for that, I will forever be grateful!

Heather Johnson, Education Chair



***IAAI Mission Statement***

**We will provide accounting and tax professionals with the very best in education, representation, legislative alertness, cutting edge technology, and opportunities to interact with other professionals.**

**WESTERN ILLINOIS AREA CHRIS BIRD 2014 FORMS SEMINAR  
PRESENTED BY WESTERN CHAPTER #14**

**Wednesday, January 7, 2015 8:30 am – 4:30 pm**

**Best Western Prairie Inn (Formerly Jumers) (309) 343-7151**

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The “Affordable Care Act” is here in full force for 2014. Who will be taxed to help pay for it and who will get a tax credit to reimburse for the premiums the taxpayer has paid. Be prepared to assist your clients in getting the dependents information together to complete the parents F-1040. New F-1095A and F-8962. How to deal with them? How much more work will be involved in helping our clients returns be processed the first time through the E-File system. What could our congress “extend” as far as expired deductions and credits? Extender bills have been presented but most likely much will not be final until after the election and until the last moment December 2014. Get in on the latest needed to be ready whenever the IRS is ready.

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# Planning for a Shareholder's Personal Goodwill to Prevent Double Taxation

Prepared by Richard M. Dale, Esq. & Sandra D. Mertens, Esq., Dale & Gensburg, P.C.,  
200 West Adams Street, Suite 2425, Chicago, IL 60606 Phone: (312) 263-2200

## BACKGROUND:

In a recent case, the Internal Revenue Service ("IRS") contended in *Bross Trucking, Inc. ("BTInc") et al., v. Commissioner of Internal Revenue*, 7710-1121182-1121199-1121230-11, June 5, 2014, T. C. Memo, 2014-107, that BTInc., a "C" Corporation, which was one of several Bross family businesses: (a) made a taxable distribution of intangible assets (i.e., goodwill) to BFTI's sole shareholder, Chester Bross ("Chester"), the patriarch of the Bross family, and that (b) Chester, in turn, then made a gift of those (appreciated) intangibles to his three sons (who organized a new trucking company, LWK Trucking Co., Inc. ("LWKInc")).

## STATUTORY CONSTRUCT:

The IRS relied on Internal Revenue Code ("IRC") Section 311(b)(1), which generally provides that if a corporation distributes appreciated assets to a shareholder, the Corporation recognizes gain as if the property were sold to the shareholder at its fair market value. Gain is recognized by the corporation to the extent that the property's fair market value exceeds the corporation's adjusted basis. The shareholder is also subject to income tax on the distributions.

IRC Section 311(b) has two specific requirements that must both be met before a corporation must recognize any gain. First, a corporation must distribute property to a shareholder in a distribution controlled by subpart A-Sections 301 through 307, see Sec. 311(b)(1)(A). Second, the fair market value of the distributed property must exceed its adjusted basis in the hands of the distributing corporation, see Section 311(b)(1)(B).

## TAX COURT FINDINGS:

The Tax Court noted that "a business can distribute only corporate assets and cannot distribute assets that it does not own. See *Martin Ice Cream Co. v. Commissioner*, 110 T.C. 189, 209 (1998). Specifically, a corporation cannot distribute intangible assets that are individually owned by its shareholders..."

The Tax Court observed that the cases suggest there are two regimes of goodwill: (1) BTInc's related goodwill developed and owned by shareholders; and (2) corporate goodwill developed and owned by the company. The Court then concluded that BTInc's goodwill was primarily owned by Chester personally, and the company could **not** transfer any corporate goodwill to Chester in tax year 2004. This, of course, was a wonderful result for the taxpayer.

In addition, the Court observed that:

1. Nearly all the goodwill used by BTInc was part of Chester's personal assets. The remaining attributes assigned to BTInc's goodwill all stem from Chester's personal relationships. BTInc's established revenue stream, its developed customer base, and the transparency of continuing operations were all spawned from Chester's work in the road construction industry;
2. issues, and the taxpayers BTInc's Goodwill was limited to a workforce in place;
3. BTInc had serious licensure and financial issues, diminishing the IRS argument that BTInc had much, if any, goodwill in any event;
4. Chester did not transfer any goodwill to BTInc through an employment contract/or non-corporate agreement; and
5. BTInc did not transfer any assets to LWKInc. Indeed, "LWKInc did not benefit from any of BTInc's assets or relationships." LWKInc was formed, in large part, because of BTInc's regulatory made every conceivable effort to segregate/keep its activities and licenses separate from BTInc, although they did have customers in common.

**CONCLUSION:** Any time you have a prospective sale of corporate assets, consider whether some of the assets are actually owned by the shareholders, and can be "carved out" of a transaction to avoid double taxation at the corporate and shareholder levels. A careful reading of the BTInc decision emphasizes the need for a thorough review of the particular facts and circumstances that apply, thorough documentation, and obtainment of a valuation/appraisal of the assets involved by an outside appraiser.



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"THE TAXBOOK" REVIEW**

**SATURDAY, JANUARY 10TH 2015**

**SPEAKER: LARRY ODELSON, CPA**

**EDWARD FATLA, ENROLLED AGENT**

*LARRY ODELSON IS A PROFESSOR EMERITUS FROM MORAIN VALLEY COMM. COLLEGE AND WILL PRESENT AN INDEPTH REVIEW OF CURRENT TAX LAW WITH ED FATLA JOINING HIM TO COVER BUSINESS ISSUES FOR THE UPCOMING TAX SEASON. WE ARE USING "THE TAXBOOK DELUXE EDITION PLUS" AGAIN THIS YEAR AND ITS COST IS INCLUDED IN THE SEMINAR FEE. THE DELUXE EDITION PROVIDES IN-DEPTH COVERAGE OF BOTH 1040 & BUSINESS ISSUES SO WE WILL BE COVERING BOTH AREAS AT THIS YEARS' WORKSHOP. AS ALWAYS WE WILL REVIEW THE "LAST MINUTE" LAW CHANGES FOR BOTH THE FEDERAL & ILLINOIS TAX.*

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# Illinois Companies Should be Aware of a New Initiative by the Illinois Department of Employment Security (IDES): FRAUD PENALTIES!

by Nancy E. Joerg, Esq., Managing Shareholder – St. Charles Office  
Wessels Sherman Joerg Liszka Laverty Seneczko P.C., St. Charles, Illinois (630) 377-1554  
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The Illinois Department of Employment Security (IDES) has had available (for many years) the legal ability to hit an Illinois company under IDES audit with a **fraud** penalty. This is nothing new.

**SECTION 1402 DETAILS FRAUD PENALTY:** This fraud penalty, as described in **Section 1402** of the Illinois Unemployment Insurance Act, can be as high as **60% of the contributions owed** by the company under audit by the IDES. However, in past years, the IDES auditors have not imposed this **fraud** penalty against the Illinois companies they are auditing. **Unfortunately, this is changing, and it is a scary situation.**

Along with the newly enforced **fraud** penalty, there is also the uncertainty of which companies will be hit with the **fraud** penalty by the IDES auditor and for what reason.

In the 25 years in which I have defended clients before the IDES on all sorts of legal matters, including hundreds of IDES audits and hearings, I have never – not even once – had a client company hit with an IDES **fraud** penalty. Sadly, I can no longer say that.

**SUPPLEMENTAL DETERMINATION & ASSESSMENT INDICATES FRAUD PENALTY:** Just one week ago, one of my clients received a “Supplemental Determination and Assessment.” In reviewing the “Supplemental Determination and Assessment,” it clearly indicated this was a **fraud** penalty (money now owed to the IDES) and added to the Determination and Assessment (money owed to the IDES as a result of the audit) the client had already received.

This “Supplemental Determination and Assessment” was very unexpected because the IDES had already audited the client for two years, and the client had already received a Notice of Determination and Assessment in the mail from the IDES. The client had already timely protested the Determination and Assessment – and has been waiting patiently for a Notice of Hearing so that it could defend itself in an IDES hearing and hopefully have the Determination and Assessment cancelled. **The last thing the client (or I) was expecting to come in the mail was a “Supplemental Determination and Assessment” adding a substantial fraud penalty to the original Determination and Assessment it was already protesting.**

**NO INDICATION AS TO WHY COMPANY IS BEING HIT WITH FRAUD PENALTY:** The Supplemental Determination and Assessment **did not indicate WHY** the client was being hit with a **fraud** penalty. There was no explanation by the IDES whatsoever on the “Supplemental Determination and Assessment”. The client (and I), at this early stage, can only guess why the auditor and the auditor’s supervisor decided to hit this particular client with a **fraud** penalty. One possible reason that this client was selected for a **fraud** penalty is that the client had previously, years ago, experienced another IDES audit on the issue of worker misclassification.

Once we receive the Notice of Hearing, then we can inspect the client’s audit file and read over the auditor’s notes and Report from the audit. Then, hopefully we will understand the auditor’s rationale for the **fraud** penalty in this case. One can only assume that the **fraud** penalty is there because the auditor or the auditor’s supervisor believes there was intentional wrongdoing by the client (probably concerning the issue of independent contractor status and alleged intentional misclassification).

**IDES IS NOW MORE AGGRESSIVE:** I am concerned that this is the beginning of a new era in IDES audits. Not only is the IDES more aggressive during this past year in terms of **multi-year audits**, but the IDES is now



increasing the pain (for those Illinois companies audited) with the imposition of **fraud** penalties which, by law, can be substantial (up to 60% of the contributions owed as a result of the IDES audit).

Because of this very grave situation, Illinois companies that are audited by the IDES and still wish to continue using independent contractors (even after going through an unsuccessful audit or hearing on this issue), should consult an attorney about **how to restructure and strengthen their independent contractor relationship**. Independent contractor agreements should be reviewed and websites should be scrutinized by an experienced attorney. **Clearly, the stakes are now much higher in using independent contractors in Illinois.**

**FREE COPY OF REGULATIONS PERTAINING TO SECTION 1402 FRAUD PENALTY:** If any readers of this article want a copy of the Illinois Unemployment Insurance Act as it pertains to **fraud** penalties (Section 1402) or wishes a free copy of the Regulations pertaining to the fraud penalty law, please contact my legal assistant Tammy Nelson (630-377-1554 or [tanelson@wesselssherman.com](mailto:tanelson@wesselssherman.com)). I will continue to keep my readers updated as more becomes known about this new and developing situation concerning fraud penalties.

For assistance with IDES audits, hearings, and independent contractor agreements (or for consultations on limiting your liability in the use of independent contractors), contact Attorney Nancy E. Joerg, who enjoys a nationwide reputation in working with companies who use Independent Contractors of all types. Nancy Joerg can be reached at Wessels Sherman's St. Charles, Illinois office: 630-377-1554 or email her at [najoerg@wesselssherman.com](mailto:najoerg@wesselssherman.com).

**Areas of Practice:** Nancy Joerg represents employers in administrative actions, hearings, and audits before the Illinois Department of Human Rights, the Equal Employment Opportunity Commission, the Cook County Commission on Human Rights, the Illinois Department of Employment Security, the Illinois Department of Labor, and the U.S. Department of Labor.

She represents employers in all types of unemployment insurance (IDES) audits and hearings, independent contractor matters, discrimination charges, Employee Classification Act complaints, employee termination issues, and wage & hour issues (including exempt/non-exempt status for overtime, deductions from wages, and state and federal wage claims). Nancy Joerg effectively counsels and advises clients concerning preventive efforts such as the preparation and review of severance and release agreements, independent contractor owner-operator agreements, independent contractor-based manuals and websites, employee handbooks and personnel policies, anti-harassment training, sex harassment investigations, and the development of strategies to help ensure exemptions from overtime.

*Nancy Joerg has been honored, year after year, by her peers as a "Leading Lawyer," a distinction earned by fewer than five percent of lawyers who are licensed to practice in the State of Illinois. She has also been recognized in the National Law Journal for "excellence and achievements by the legal community." She was honored as one of "Chicago's Top Attorneys of 2012."*

*Nancy Joerg was selected (by other lawyers in Illinois) as **Top Lawyer** in labor and employment law in the Western Suburbs of Chicago as featured in the March/April 2013 issue of West Suburban Living Magazine in conjunction with Leading Lawyers Network Advisory Board.*

*Nancy Joerg has been recognized in 2013 and 2014 in The Legal Network as a **Top Lawyer** in Illinois for the highest in ethical standards and professional excellence.*

*In June 2014, Nancy Joerg was honored by Legal Leaders as a "Top Rated Lawyer in Labor and Employment Law" based on her standing as an AV preeminent attorney.*

*In April 2014, Nancy Joerg was named as one of the Top Ten Women Attorneys in Kane, Kendall & DeKalb counties, as published in Law & Lawyers magazine.*

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Total Quantity of All Items	<b>A</b>	Total Cost	<b>B</b>
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**STEP 3 Calculate Quantity Discount (Total Quantity × Quantity Discount Per Item)**

Total Quantity of All Items (from STEP 2)	Quantity Discount Per Item						Quantity Discount
	1 Item	2 Items	3-5 Items	6-10 Items	11-20 Items	21+ Items	
	\$0.00	\$3.00	\$4.00	\$5.00	\$6.00	\$7.00	
<b>A</b> (items) ×	per item	per item	per item	per item	per item	per item	= \$ <b>C</b>

**STEP 4 Calculate Shipping & Handling Charge (Total Quantity × S&H Charge Per Item)**

Total Quantity of All Items (from STEP 2)	Shipping & Handling (S&H) Charge Per Item						Shipping & Handling Charge*
	1 Item	2 Items	3-5 Items	6-10 Items	11-20 Items	21+ Items	
	\$6.95	\$5.95	\$5.45	\$4.95	\$4.45	\$3.45	
<b>A</b> (items) ×	per item	per item	per item	per item	per item	per item	= \$ <b>D</b>

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**STEP 5 Calculate Order Cost (Total Cost - Quantity Discount + S&H Charge)**

Total Cost (from STEP 2)	-	Quantity Discount (from STEP 3)	+	Shipping & Handling Charge (from STEP 4)	=	Order Cost
<b>B</b>		<b>C</b>		<b>D</b>		= \$

**STEP 6 Finalize Your Order**

Sales Tax	MN residents add 7.275% (Order Cost from STEP 5 × 0.07275)	= \$
Order Total	Order Cost (from STEP 5) + Sales Tax	= \$

**2014 ORDER FORM**

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**3 6 3**

Customer # \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_  
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City, State, Zip \_\_\_\_\_

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## Learn the Latest ACA Updates and More

The annual IRS/Tax Practitioners Symposium is a unique event that brings together the IRS Stakeholder Liaisons and practitioners in an interactive case-study learning experience showcasing best practices for collaboration.

This symposium will provide a forum to discuss ways to improve practices and communication between tax professionals and the IRS.

### Top Reasons to Attend:

- Affordable Care Act (ACA) Updates
- OPR Referrals & Criminal Investigations on Tax Preparers
- Exam & Collections Best Practices
- Illinois Department of Revenue: Amnesty Double Interest



### Symposium Details:

**Date:** Tuesday, October 21, 2014

**Location:** Donald E. Stephens Convention Center, Rosemont, IL

**Course Code:** C41762

**Early Bird Registration through Sept. 30th:** \$205 members | \$205 non-members

**Regular Conference Registration:** \$230 members | \$230 non-members

**Time:** 8:15am - 4:45pm

**CPE:** 8 hours

**Field of Study:** 6 Taxation, 1.5 Regulatory Ethics, and 0.5 Specialized Knowledge & Applications

**CLE:** 6.5 hours

**EA:** 8 hours

NOTE: Any fees charged by the Illinois CPA Society are exclusive of the Internal Revenue Service. There is no charge by the IRS for this event.

### Special Thanks to our Symposium Sponsor:



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