

# Federal Taxation

The newsletter of the Illinois State Bar Association's Section on Federal Taxation

## Notes from the Chair

BY NANCY FRANKS-STRAUS

### More Power of Attorney / IRS Agent Tales of Woe

In the last newsletter, I expressed my personal frustration at the difficulties in dealing with the IRS via telephone – the long wait times, the less than courteous agents, and the refusal of an agent to honor a Form 2848 that listed an LLC manager's title as "manager" rather than "partner."

My frustration with the IRS over their refusal to accept a validly drafted and executed Form 2848 (also referred to herein as a "Power") continues. Recently I telephoned the IRS to resolve a client matter, and faxed the Form 2848 to the agent. Of the three representatives designated on the Power, two had signed and dated the form. I was one of the

signatures. The agent I initially spoke with accepted the Power, but indicated that she could not assist me and would need to transfer my call to different division of the IRS. The second agent rejected the Power as invalid because it was not signed by all three named representatives. She was quite adamant about the Power's invalidity even though I advised her that, pursuant to Section 4.11.55.1.4.1.3, paragraph 2 of the Internal Revenue Manual, the IRS deems the Power to be valid as to any representative who has executed the Power. As set forth in the IRM, "if more than one representative is shown, but only one representative signed the declaration, the power of attorney is valid only for the

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## Tax scams hit home

BY KATHRYN GARLOW, CPA, JD, CSEP

My sister called and asked me for my advice, "Kathy, someone from the IRS called and left a message. They want me to call them back. I'm worried." I replied with the same answer I have given clients who receive a similar call, "This is a fake phone call. The IRS doesn't contact you by telephone, only through written correspondence." The false calls are becoming more frequent. I even received a voice mail message on my cell phone from

a Washington DC number claiming that he was an IRS officer and I was guilty of tax evasion. He told me not to disregard this message and I needed to call back right away before I was arrested. At least the gentleman concluded his message with a friendly wish to have a nice day.

The IRS warns that these con-artists sound very convincing. The callers want consumers to share their personal

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signing representative.” In spite of citing this authority, the agent insisted that the Power was invalid and refused to assist me. I asked to speak to her supervisor, but was mysteriously disconnected...after logging in close to two hours of my time on this most unproductive call to the IRS.

Word to the wise – to avoid this result, all representatives should legibly sign and date the Power prior to its submission to the IRS, as reliance on the Internal Revenue Manual is unwise.

A second problem encountered by practitioners is that of the IRS agent refusing to honor a Power if any information contained therein is blurred, difficult to read, or otherwise not clearly legible. Since forms are usually scanned or faxed to practitioners, and then faxed yet again to the IRS, the Powers are understandably somewhat blurred. In my office a colleague recently had a Power rejected by an IRS agent who stated that it was invalid as the date the taxpayer signed the document was illegible. Another colleague had a Power rejected because the representative’s CAF number was illegible

and the agent could not “verify” the identity of the representative.

I now review each Power carefully to ascertain that a taxpayer’s title is as required by the IRS (I cannot say “correct,” for reasons discussed in our December newsletter), that all dates and signatures are complete, and that the form is legible. I also recognize that, each time I contact the IRS to address a matter, I may get nowhere if the agent deems the Power to be invalid for yet another new reason.

Many members of the Federal Tax Council report that they are also experiencing rejections of Powers that, in the past, have been routinely accepted by the IRS. The Council has discussed what, if anything, we can do to resolve this growing problem with the IRS. Our IRS Liaison will bring this up at the next IRS/practitioner teleconference, and perhaps find a way to raise it when we meet with members of the IRS in Washington during our annual visit in the spring. We welcome any ideas and input that that our members have to work towards a resolution of this growing problem. ■

## Tax scams hit home

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information, enabling the scammers to use the stolen identities to file fraudulent tax returns or compel taxpayers to wire money they do not owe. The callers claim to be employees of the IRS and use fake names and identification badge numbers. Victims are told to pay their balance due through a pre-loaded debit card or wire transfer. The callers can become hostile and insulting as they threaten to arrest or deport the victim.

On the IRS website there is a list of five tell-tale signs of a scam where scammers request information. Note that the IRS works differently from these scams, as

follows:

1. The IRS will only ask for payment with a written, mailed bill. They will not ask for payment over the telephone.
2. In the written correspondence, the IRS will give you the opportunity to question or appeal the amount due.
3. The IRS does not require taxpayers to pay only by a prepaid debit card.
4. The IRS will not ask for credit or debit card numbers over the phone.
5. The IRS will not threaten to bring in law-enforcement groups to have you arrested for not paying the amount due.

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In addition to not making phone calls, the IRS also does not use unsolicited emails, text messages or any social media to discuss the taxpayer's personal tax issue.

If a taxpayer wants to contact the IRS to find out about their tax return, they should call the IRS at 1-800-829-1040. If a taxpayer has been contacted in one of these scams, they can report the incident to the Treasury Inspector General for Tax administration at 1-800-366-4484 or at the website, <[www.tigta.gov](http://www.tigta.gov)>.

In addition to the telephone scams, there is also a rise in identity theft. Thieves file false tax returns under stolen social security numbers to claim and collect false refunds. They also use stolen Federal Employer Identification Numbers of businesses to create false Forms W-2 to further the fraud of stolen refunds. The IRS is aware of these issues and according to their website they are "working hard to prevent and detect identity theft as well as reduce the time to resolve these issues."

The IRS has been sending out notices to notify taxpayers that there are issues with processing their tax return or that more information is needed to accurately process the return. The IRS is finding that multiple returns are filed under the same social security number and returns are filed with false W-2 withholding information to claim

refunds. The IRS is holding the returns from further processing until the taxpayer contacts them.

Once it is determined that the social security number has been compromised, that taxpayer needs to do the following:

- Respond immediately to the IRS tax notice
- Complete IRS Form 14039, Identity Theft Affidavit
- File a report with law enforcement
- Report identity theft at [www.ftc.gov](http://www.ftc.gov)
- Contact one of the three major credit bureaus (Equifax, Experian, TransUnion) to place a fraud alert on their credit records.
- Contact their financial institutions to see if any accounts have been breached.

The IRS will respond to the taxpayer by assigning an identification number (ITIN) that the taxpayer will then use to file his next tax return. This number will only be good for one tax year. The IRS will automatically reassign a new ITIN each year. This system is meant to prevent taxpayers from being victimized by identity thieves a second time after the IRS has closed their case.

The IRS is allocating more resources to the issues of the fraudulent calling schemes and identity theft. They understand that

they need to revamp their fraud detection system to catch new schemes as they emerge. Meanwhile, the IRS suggests protecting yourself, as follows:

- Don't carry your Social Security Card or any documents that contain your Social Security number (SSN) or Individual Taxpayer Identification Number (ITIN)
- Don't freely give out your SSN or ITIN; only give it out when required
- Protect your financial information
- Check your credit report every 12 months
- Review your Social Security Administration earning statement annually
- Secure personal information in your home
- Protect your personal computer by using firewalls and anti-spam/virus software.
- Change your passwords on Internet accounts
- Don't give out personal information over the phone, through the mail or Internet unless you have initiated the contact or you are sure you know who you are dealing with

Taxpayers need to be alert and take precautions. ■

## ***Estate of Stuller v. United States: Some lessons for horse-breeding farms***

BY COLIN WALSH

**At first glance**, *Estate of Stuller v. United States*, No. 14-1545, Case No. 3:11-CV-3080-RM-TSH (January 26, 2016), looks like a standard hobby-loss case. In short, the Seventh Circuit affirmed the District Court's ruling that, based upon the application of the nine factors established in section 1.183-2(b), a horse-breeding farm was not an activity engaged in for profit. A closer reading of the case, however, uncovers some important insight regarding the need to

consult with experts and who qualifies as such.

The petitioners operated a horse-breeding farm from 1994 through 2009. In all but one year during that period, the farm reported significant losses that ranged from \$130,000 to \$190,000. Upon Exam, the IRS determined that the horse-breeding farm was not an activity engaged in for profit, and therefore, disallowed the farm's losses. The Seventh Circuit affirmed the District

Court's holding that eight of the nine factors indicated the farm did not operate with a profit motive. For instance, the petitioners did not maintain records, the farm failed to change its operations despite years of losses, and the petitioners derived great pleasure from horse-breeding. The only factor that indicated a profit motive was the reasonable expectation that the land on which the farm was located would appreciate in value.

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In totality, the factors indicated that the petitioners had no profit motive.

The petitioners appealed to the Seventh Circuit, in part, because the District Court excluded certain testimony from the farm's horse trainer. More specifically, the District Court granted the government's motion to preclude the horse trainer's testimony regarding whether the horse-breeding farm was operated with a profit motive. The Seventh Circuit agreed with the District Court that the horse trainer was not an expert on how to run a horse-breeding business. The horse trainer had no knowledge of the farm's finances and had never attempted to breed or race horses for profit. The Seventh Circuit referred to the horse trainer as "at most a lay witness to the operations of the farm." For these reasons, the horse trainer's expert testimony was limited to items such as the hard work required to breed and train horses and he could not opine on the petitioners' profit

motive.

The determination of whether an activity is operated with a profit motive is subjective. Taxpayers who operate a business that could be recharacterized as a hobby should be mindful of the nine factors established in section 1.183-2(b). For instance, taxpayers should maintain records in a business-like manner, adopt a formal business plan, and review that plan at least annually. *Estate of Stuller* stands for the proposition that taxpayers should also consider consultation with individuals who have experience operating a similar business. Had the petitioners in *Estate of Stuller* consulted with professionals with knowledge of the section 183 requirements, the farm's losses may have been sustained at Exam or IRS Appeals. Once again, we see that taxpayers who desire to enter high-risk activities, such as horse-breeding or auto racing, must consult with business as well as industry experts. ■

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