



# The Bulletin



East Bay Association of Enrolled Agents  
*To Enhance and Protect the Professional, Economic, and  
Educational Interests of all Enrolled Agents*

April 2009

NEXT MEETING Wed, **May 20**, 2009

Place: **DUBLIN Radisson Hotel**

(go to [http://www.radissondestinationguide.com/location/Map.process/OID\\_EB39EA2D/?hotelCode=CADUBLIN](http://www.radissondestinationguide.com/location/Map.process/OID_EB39EA2D/?hotelCode=CADUBLIN))

4:30 Board Meeting

6:15 Networking

6:45 Dinner Buffet

7:15 Program: **"1031 Replacement Properties"**

Cost: \$35.00 with reservation by Friday May 15  
\$45.00 with reservation after deadline

Sign up online at:

<https://www.123signup.com/calendar?Org=ebaea>

(please print out your confirmation to ensure that you clicked all the right buttons to register) Questions: email [ebaean@ebaean.org](mailto:ebaean@ebaean.org) (preferred) or call 800-617-1040.

## **May Topic: "1031 Replacements"**

**Speaker:** Robert Meyer

*by Cherry Comstock, EA, Program Chair*

May's topic is going to focus on Tenant-In-Common (TICs) investment alternatives. More and more clients are shying away from "being landlords." There is an alternative investment known as Tenant-In-Common arrangements. Robert Meyer of Welton Street Investments will join us to help us navigate the 1031 Exchange and understand the Tenant-In-Common alternative.

Mr. Meyer has 25 years of broad-based corporate, institutional and investor experience in the areas of real estate investment strategy, acquisitions, management, leasing and sales. As an advisor to private investors, Mr. Meyer works closely with clients and their associated professionals (CPAs, Realtors, and Attorneys) in meeting their time sensitive 1031 replacement property requirements and achieving their investment success. His approach is focused on gaining a clear understanding of each client's individualized needs,

translating these requirements into achievable solutions, and implementing these plans in accomplishing each investor's financial goals.

***Remember – NO MEETING IN APRIL***

### **PRESIDENT'S MESSAGE**

*by Peggy Hall, EA*

Many thanks to the nearly 100 people who attended the March dinner meeting! We had a wonderful turnout, with just a few minor glitches; the hotel was just as surprised with the size of our group, and was caught off guard with the number of attendees who came. However, matters were quickly resolved and, all things considered, the event was a great success once again!

The topics presented by the speakers were quite educational to the majority of us. In fact, the meeting was so informative to our group that we went into 'overtime', as no one appeared to want to leave. The topics that were addressed provoked many great questions amongst our members and lots of great follow-up discussion. Naturally, since we are in the midst of tax season, we all had many things that we needed answered, and the speakers were generous enough to stay and respond to every last question. It was a great time of education and networking. We hope to continue this atmosphere with every future dinner meeting.

That being said, our upcoming June and July dinner meetings will move to Francesco's Italian Restaurant, at 8520 Pardee Drive, near the Oakland airport. It has delicious food and easy parking. We are moving the meeting location for two reasons. First, the Radisson is now in the process of remodeling, and, in addition, we are striving to accommodate all our Members by moving to other areas within our geographical vicinity. If getting there is a problem for any of you, please let the Chapter office know, and we will work to coordinate carpools or rides for you.

Back to taxes. Have a good and productive season!

Peggy Hall, EA

## **NEXT YEAR'S BOARD SLATE ANNOUNCED**

*by Tom Johnston, EA, Nominating Chair*

Per the requirements of the Bylaws, the Nominating Committee has proposed the following slate of candidates for our 2009-2010 fiscal year:

President:	Peggy Hall EA
1st Vice President:	Tom Johnston EA
2nd Vice President:	Cherry Comstock EA
Secretary:	
Treasurer:	Tim Hintzoglou EA
Director 2009-2010:	Chris Christopherson EA
Director 2009-2010:	Don Wayne EA
Director 2009-2010:	Bob Olsen EA
Director 2009-2011:	Patty Pringle EA
Director 2009-2011:	Margie Hines EA
Director 2009-2011:	Andy Rogers EA

The election for these positions will be held at the May Annual Meeting. Per the Bylaws, eligible Members can run from the floor with no advance notice. However, as a courtesy to those planning the meeting (which is already under a very tight timetable), it is requested that any floor candidate provide advance notice to the Nominating Committee through its Chair, Tom Johnston at (925) 828-4500.

## **REPORT OF THE BYLAWS COMMITTEE**

*By Sal Romo Jr., EA, Chair*

The following changes to EBAEA's Bylaws have been recommended by the Board of Directors. The members will vote on the proposed changes at the Annual Meeting in May, 2009

### **To amend Article 4.02 of EBAEA's Bylaws by striking the last two sentences.**

Explanation: At its annual meeting in June, 2008 CSEA amended its bylaws such that chapters with more than 200 members are no longer authorized a second director. That action rendered EBAEA Bylaws Article 4.02 inconsistent with CSEA Bylaws. EBAEA's Affiliation Agreement with CSEA requires that EBAEA's Bylaws not be in conflict with CSEA's Bylaws. The following illustrates the results of this recommendation:

4.02 Composition. The Board consists of 12 persons: President, First-Vice President, Second-Vice President, Secretary, Treasurer, the Immediate Past President, and six member elected from the membership at large, all of whom must be active members in good standing of the Association. ~~Two members of the Board of Directors shall also be CSEA directors, and shall be so designated by the nominating committee. CSEA directors can be either an officer or director of the board and shall serve a term of one year, with no more than four consecutive terms.~~

## **ARE YOU GETTING IRS ALERTS?**

Most e-filers already subscribe to IRS QuickAlerts to receive valuable and timely information that impacts you, your clients and your in-house e-filing program. If you are not enrolled in this free service, you may want to consider registering at

<http://www.envoyprofiles.com/QuickAlerts/>

For more information, visit IRS.gov at [http://www.irs.gov/taxpros/providers/article/0,,id=97623\\_00.html](http://www.irs.gov/taxpros/providers/article/0,,id=97623_00.html)

## **2009 IRS PRIORITY TELEPHONE LINES**

Practitioner Priority Service	(866) 860-4259
IRS Individual Tax Help Line	(800) 829-1040
Business & Specialty Tax Line	(800) 829-4933
e-Help (Practitioners only)	(866) 255-0654
Refund Hotline	(800) 829-1954
Forms & Publications	(800) 829-3676
National Taxpayer Advocate	(877) 777-4778
EFTPS	(800) 555-4477
TeleTax Topics & Refund Status	(800) 829-4477
Forms 706 & 709 Help Line	(866) 699-4083
Employer Identification Number	(800) 829-4933
Excise Tax & Form 2290	(866) 699-4096
Information Return Reporting	(866) 455-7438
Disaster or Combat Zone Hotline	(866) 562-5227

More IRS info at [www.irs.gov](http://www.irs.gov) 2009 FTB Directory:

<http://www.ftb.ca.gov/forms/misc/1240.pdf>

## **BULLETIN ADVERTISING POLICY**

*by Duncan Sandiland, Bulletin Editor*

To encourage more Members to use the Bulletin to fill their needs, we present the Bulletin advertising policy:

- 1) All Bulletin notices are run for a maximum of three months. If you wish to run a notice for a longer period, you must resubmit it.
- 2) Maximum notice size is 1.5 column inches. This equals a space one and one-half inches high by one column (3.5 inches) wide. The standard Bulletin font is Times New Roman 11 point.
- 3) The Bulletin Editor reserves the right to edit any notice for style, content and length.
- 4) All notices must be submitted (and payment received) by the 25<sup>th</sup> of the month prior to initial publication. Send the desired text to: [bulletin@ebaea.org](mailto:bulletin@ebaea.org)
- 5) Member notices seeking or offering employment, clients or EA-practice-related matters are run at no charge as a Member benefit. This includes an ad run by a firm which employs a Member. Member notices offering other services or products, and all non-Member notices are run at the standard fee of \$150 for the three-month insertion. The Bulletin Editor reserves the right to modify or reject any notice which, in the sole opinion of the Editor, violates any of the principles of EBAEA.

## **MARK YOUR CALENDAR - Tax Talk 2009**

This year The East Bay Association of Enrolled Agents annual Tax Talk Seminar will be held on November 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup>, at the Radisson Hotel in Dublin. Three days of quality education and updates at an excellent value.

We are featuring exceptional speakers, including Vicki Mulak, Bob McKenzie, Twila Slesnick, Tom Daley and Gary McBride. Joe Calderaro, IRS Technical Coordinator will return to do Tax Talk After Hours, an open discussion Q & A session on IRS issues.

We'll keep you posted on additional information in upcoming issues of the EBAEA Monthly Bulletin.

## **SPECIAL ENROLLMENT EXAM CLASS**

Once again, we are offering the SEE prep class for all prospective EAs. The class will be offered in three parts, corresponding with the three parts of the exam. Classes will start July 11th and continue through September 19th on Saturdays at the Chapter Office in Hayward. Instructors are Pat Golden, EA; Tom Johnston, EA; Peter Lingane, EA; Sal Romo, EA; and Bart Rugo, EA. The class qualifies for CTEC continuing education credit. Scholarships are available through CSEA and NAEA. More information is available on the web at [ebaea.org](http://ebaea.org) or by contacting Tom Johnston at 925-828-4500 or [taxtomea@comcast.net](mailto:taxtomea@comcast.net).

## **CALENDAR OF EVENTS**

### **April 2009**

*No April meeting – get some rest!*

### **May 2009**

- 18-20** CSEA SuperSeminar Las Vegas "A"  
@ Flamingo Hotel, Las Vegas
- 20** EBAEA Dinner Meeting and Annual Corporate Meeting: "1031 Replacement Properties"  
@ Radisson Hotel, Regional St, Dublin
- 21-23** CSEA SuperSeminar Las Vegas "B"  
@ Flamingo Hotel, Las Vegas
- 26-27** CSEA Board/Committee Meeting  
@ Reno Grand Sierra Resort, Reno
- 28-30** CSEA SuperSeminar Reno  
@ Reno Grand Sierra Resort, Reno

### **June 2009**

- 17** EBAEA Dinner Meeting: "Foreclosure"  
@ Radisson Hotel, Regional St, Dublin
- 23-26** CSEA Annual Meeting + 18 hours CPE  
@ Doubletree Hotel, Torrance, CA
- 27-28** CSEA Board/Committee Meeting  
@ Doubletree Hotel, Torrance, CA

## **Small Group Tax Meetings**

**Antioch /Brentwood** Fridays 8:00am  
Brentwood Café, 8500 Brentwood Blvd, Brentwood  
**Ken Seamann EA** (925) 634-8297

**Danville Area** 4<sup>th</sup> Tue 9:30am  
Pascals French Oven, 155 Railroad Ave, Danville  
**Michael Power EA** (510) 366-8836

**Livermore Area** Fridays 8:45am  
Rock House Café on Portola Ave, Livermore  
**Richard Goudreau EA** (925) 606-6672

**Castro Valley** 3<sup>rd</sup> Tue 8:00am  
Carrow's, 2723 Castro Valley Blvd @ Lake Chabot, CV  
**Dagmar Bedard EA** (510) 537-3883

**South Alameda County** 1<sup>st</sup> Wed 9:30am  
Dino's, 1 block W of I-880 on Industrial Blvd, Hayward  
**Sal Romo EA or Walt Thomas EA** (510) 487-1691

**Email-only Group** as needed  
Send an email to [halloftaxes@hotmail.com](mailto:halloftaxes@hotmail.com)  
**Peggy Hall EA** (925) 388-1040  
Want a group in your area? Contact any of the above leaders for advice and assistance.

## **HMMMM...**

Only 5 (AR, MT, ND, WV, WY) of the 50 US states are projecting a balanced budget for the current 2009 fiscal year and for next year's 2010 fiscal year. (Tax Foundation)

Before 1960, the Social Security Administration would not approve disability benefits for any individual younger than age 50. The average age today of the 7.1 million disabled American workers receiving disability benefits from SSA is 52.4 years of age. (SSA)

The number of new and existing homes that were sold in the USA in 1990 was 3.4 million, essentially the same as the 3.5 million homes that were sold in 1980. By 2005, the number of new and existing homes sold during a single year had more than doubled to 7.5 million. (Joint Center for Housing Studies)

"In a time of drastic change it is the learners who inherit the future. The learned usually find themselves equipped to live in a world that no longer exists."  
– Eric Hoffer

The cost of the most-commonly used prescription drugs by US seniors has increased 6.7% annually over the five years from 2003-2007 compared to a 3.0% increase for the CPI. The most widely purchased drug by US seniors is for ulcers/acid reflux. (AARP, DoL)

## HUMOR

A certain tax attorney took on a very complex case of tax evasion for a rather mysterious client. He devoted over a year to the case, familiarizing himself with every loophole and angle of current legislation, and made a brilliant argument before the court. His client was called out of town when the jury returned with its verdict, a sweeping victory for his client on every count. Flushed with victory, the lawyer exuberantly cabled his client, "Justice has triumphed!" A realistic fellow, the client immediately wired back, "Appeal at once!"

A recent divorcee was talking with another man about his divorce. The divorcee remarked that "When my ex-wife and I got divorced, she got our house and I got our car, dog and boat." The second person asked "What about your money?" The divorcee replied "It was shared between our attorneys."

As the lawyer slowly came out of the anesthesia after surgery, he said, "Why are all the blinds drawn, doctor?" "There's a big fire across the street," the doctor replied. "We didn't want you to think the operation was a failure."

### A Poem

To err is human, but this you should learn.  
Do not be human on your tax return.

Called in for an audit, Mr. Briggs was confronted by a surly IRS agent. "It says here, Mr. Briggs, that you are a bachelor; yet you claim a dependent son. Surely this must be a mistake."

Looking him straight in the eye, Mr. Briggs replied, "Yup, it surely was."

The average man now lives thirty-one years longer than he did in 1850. He has to in order to get his taxes paid.

## 2008 - 2009 Board of Directors and Committee Chairs

Web Page <http://www.ebaea.org>

President: Peggy Hall EA	925-388-1040	Disaster Services: Janet Bridges EA	510-505-0818
1st VP: Walter Nygaard EA, etc	510-547-0440		
2nd VP: Don Wayne EA	925-472-0990	<b>Education Committee, (1<sup>st</sup> VP)</b>	
Treasurer: Tim Hintzoglou EA	925-930-7737	<b>Chair:</b> Walter Nygaard EA, etc	510-547-0440
Secretary: Gail Nanbu EA	925-943-3993	Tax Talk: Patty Pringle EA	510-912-1682
Immed Past Pres: Thomas Johnston EA	925-828-4500	Program: Cherry Comstock EA	925-778-0281
Director 2008-2009:		Bob Olsen EA	925-837-8329
Lonnie Gary EA, USTCP	650-559-5124	Scholarship: Pam Bayer	925-356-5645
Patty Pringle EA	510-912-1682	Continuing Ed: Joanne Anderson EA	925-938-9086
Ravi Sundarraj EA	925-984-1219	Town Hall: Ravi Sundarraj EA	925-984-1219
Director 2008-2010:		SEE Class: Thomas Johnston EA	925-828-4500
Chris Christopherson EA	925-786-7660	Mini Seminar Team:	
Cherry Comstock EA	925-778-0281	VITA Team: Brian Pon EA, etc	510-849-4667
Bob Olsen EA	925-837-8329		
CSEA Directors: Walter Nygaard EA, etc	510-547-0440	<b>Administration Committee (IPP)</b>	
Don Wayne EA	925-472-0990	<b>Chair:</b> Thomas Johnston EA	925-828-4500
IRS Practitioner Panel: Phil Fiegler EA	510-530-1174	Financial Review: Dick Goudreau EA	925-606-6672
		Bylaws/SOP: Sal Romo EA	510-487-1691
		Budget & Finance: Walt Thomas EA	510-487-1691
<b>Communication Committee, (2<sup>nd</sup> VP)</b>		Chapter Office: Lonnie Gary EA, USTCP	650-559-5124
<b>Chair:</b> Don Wayne EA	925-472-0990	Legislative: Chris Christopherson EA	925-786-7660
Membership: Pam Bayer	925-356-5645	Nominating: Thomas Johnston EA	925-828-4500
Membership: Clare Flores EA	510-785-8356	Strategic Advisory:	
Membership: Marjorie Jones EA	510-785-8356	Bulletin: Duncan Sandiland EA, etc	925-691-1040
Outreach: Casper Chiang EA	925-202-8149	Tax Agency Liaison:	
Public Affairs: Don Wayne EA	925-472-0990	Volunteer Coordinator: Patty Pringle EA	510-912-1682
Social Affairs: Patricia Gilchrist EA	925-833-8822		
Practice Preservation: Linda Fox EA	925-846-5913		

## EAST BAY ASSOCIATION OF ENROLLED AGENTS

30100 Mission Blvd, Suite 6  
Hayward CA 94544

(800) 617-1040 or (510) 487-2063 fax (510) 487-1501

email: [ebaean@ebaean.org](mailto:ebaean@ebaean.org)

# 2009 SPECIAL ENROLLMENT EXAM PREPARATION CLASSES

Presented By  
**EAST BAY ASSOCIATION OF ENROLLED AGENTS**

**Part 1** – Individuals **Dates: July 11, 18, 25** CPE 18 hrs\*

**Part 2** – Businesses **Dates: Aug 1, 8, 15, 22, 29** CPE 30 hrs\*

**Part 3** -- Representation, Practice, Procedures **Dates: Sep 12, 19**  
CPE 12 hrs\* *You must attend all classes in part for credit \*See pg 2 for CPE*

Time: **Saturdays 9:00 AM to 4:00 PM** (Lunch is on your own)

Location: **Peach Tree Plaza**, 30100 Mission Blvd, Hayward CA 94544  
Conference room near Suite 6

Instructors: Pat Golden, EA; Tom Johnston, EA; Peter Lingane, EA; Sal Romo, EA; and Bart Rugo, EA

Prerequisite: Basic knowledge in tax preparation of Form 1040

## Class Fees:

All three parts - \$835  
Early bird discount by June 20 - \$785  
Separately - Part 1 \$285, Part 2 \$485, Part 3 \$210

**Text Books are included in class fee**

**Register online at:** [www.123signup.com/calendar?Org=ebaea](http://www.123signup.com/calendar?Org=ebaea)

**Information:** Tom Johnston at 925-828-4500 or [taxtomea@comcast.net](mailto:taxtomea@comcast.net)

**Scholarships:** See CSEA and NAEA Websites for information.

**To apply for Enrollment:** [www.irs.gov/taxpros/agents](http://www.irs.gov/taxpros/agents)

**To schedule exam:** [www.prometric.com/irs](http://www.prometric.com/irs)

EBAEA March 18, 2009 IRS Panel dinner meeting with Sharon Kreider, Joe Calderero and Karen Brosi. Heartfelt thanks for the panelists willing to sit in the hot-box. (Transcribed by Michael Power)

### 1) 1099 Q

**How do we report the distribution information from a Form 1099-Q (529 plan)? How does this interface with the information provided on a Form 1098-T (tuition and scholarships paid/received)?**

1040 Line 21, Other income with statement attached to return.

Then subtract out the value, as it is non taxable, and line 21 zeros out.

Any amount paid from 529 plan is not available for tuition deductions (1098-T)

### 2) 1099 A

**Is the issuance of a 1099A a reportable event?**

**Here are the specifics.**

**Client walked away from a rental property in Arizona in 2008. 1099A was issued, no 1099C has been issued. Client not bankrupt nor insolvent.**

**1099A specifics-box 1-07/07/08**

**box 2-\$202k**

**box 4-\$217k**

**box 5-yes**

**box 6-address**

**Also, how would the panel recommend addressing a FMV (box 4) that is clearly overstated. Recall box 4 is \$217k, tax bills from county records has property plus improvements valued at \$196k for 2008 (as of 1-1-08) and \$152k for 2009 (as of 1-1-09).**

Yes it is reportable event, as is a 1099-C.

Much panel discussion on 1099 A and C issue. Not in complete agreement. (ed.note - might be liability issue here so be careful. I will try and round out panel discussion with some notes. Some of this info derived from article in EA Journal Jan - Feb 2009)

A = Abandonment (or foreclosure), C = Cancellation.

If lender forecloses, you should get an A. If lender cancels, you get a C. If lender forecloses (or you abandon yourself) AND lender forgives debt, you may get an A and a C, or just a C. If A and C are issued, C should have blanks in boxes 5 and 7. If A and C both have occurred, and only C filed, then boxes 5 and 7 should be filled in. Be aware that the descriptions of the box numbers DIFFER between A and C's.

FMV is box 4 on A's and Box 7 on C's.

Non recourse debt in CA will be ALL original mortgages (as per KB). About half of other states also have original mortgages being non recourse. [[www.mortgagereliefformula.com/recourse](http://www.mortgagereliefformula.com/recourse)] Non recourse means bank can only take the house and cannot go after borrower. Non recourse = sales price is full value of loan regardless of the FMV of property. Can you spell non COD!

Recourse means lender CAN go after borrower, so COD is a very real possibility. Most refinancings are recourse loans.

Realize you have two potential reportable transactions. Abandonment is considered a sale of the property, subject to cap gains/losses. Schedule D item. Forgiveness of debt is ordinary income - line 21 item, if personal in nature (your home). Or it might be business income (Schedule E rental or Schedule C)

Bankruptcy (BK) and insolvency are two ways around taxable income in cases of COD. BK does not mean zero income, as the court may allow client to keep some assets and usually does. Also of great value, are the new rules re: primary home COD. Not taxable. See Form 982 question 1 options.

P Fiegler in conjunction with the panel mentioned that the FMV is from 3 Broker Price Opinions (BPO's). This would seem to indicate a real FMV, as opposed to the client stated FMV which the client wants to convince you is correct.

If two loans, and 1099 C on the first, but bank is going after the borrower on the second, it is not COD on second loan until the bank gives up.

You can have a 1099A in year one, and report the sale, but have 1099C in year 2.

### **3) CP2000**

**This is not a question for the IRS panel but a comment to Joe on what I see as a programming flaw in the IRS computer system. On two separate occasions I have received CP 2000's from clients where the only change is rounding. Specifically, my client had a dividend of \$459.97. I rounded to \$460. IRS sent a CP2000 for \$459 designating the same brokerage statement and charged \$109 in additional tax. For what should have been a dollar discrepancy, IRS charged on the entire amount. While this is a stupid error it requires either me or my client to write a letter and someone at the IRS to read it. This seems like a waste of taxpayer dollars.**

**I had the same thing happen with a pension 1099R. The computer matched \$4530 to \$ 4529 and my poor pensioners got a \$1000 shock! Can't something be done to incorporate a reasonableness test into the system to prevent this? Wasting my time is one thing. Wasting IRS manpower, paper, and my tax dollars on frivolous notices makes my blood boil!**

This needs to be reported to Issue Management Resolution (IMR) as it is a systemic problem.

### **4) Timing of amending return pre 4/15**

**I efiled client. I need to amend for Sch A changes. How soon can I do that? I heard once (Lonnie?) that the \*last\* return that is received before the due is the filed return. This can't be true if they send refund before due date on \*first\* efiled return.**

If you file amended return **before** the 15<sup>th</sup>, the amended return does become the originally filed return. Go ahead and paper file the amended returns, as it takes forever for them to get processed, meanwhile the first return will get processed timely. If you paper filed the first return, you may want to wait until April 15<sup>th</sup> to paper file the amended return.

### **5) Childs advance efilng exemption**

**Child filed in advance of parent's and claimed exemption. I assume I can amend child's return and give exemption back to parents? Again, timeline issue. Probably paper file the child's 1040X 540x, then paper file parents? (Exemption for child already filed will probably prevent an efile of parents now.)**

Common problem. Amend and file child's return. Paper file parents return. (Parent's will efile reject as exemption for SSN is already used on child's return.)

#### **6) Lease option tax attributes**

**Pub 527 says lease-option money received as part of the rental agreement for residential real estate is generally reported as additional rental income. Under what scenarios is it NOT reported as rental income? Specifically, under what scenarios can it be reported as short term capital gain and netted to capital losses like money received when you sell a stock option?**

Lease option = lease payments.

Not rent? Are you kidding? It's rental income.

A true lease option might be contractor paying 10k for land purchase a year in the future, and then does not execute on the option. This would be an example of cap gains reportable when option is executed or expires next year.

You could stop the lease option, and move to an installment agreement. But up to that point, you would have rental income still.

#### **7) Adoption Credit**

**In 2007, taxpayer paid \$17000 to adopt a foreign child. Adoption was final in 2007, and taxpayer claimed the maximum \$11,000 credit on her 2007 return. In 2008, her employer reimbursed her \$1000 for adoption expenses, and reported it as such (code T) in Box 14 of her W-2. Per Code, taxpayer is only allowed to receive IRS/employer benefits up to a maximum combined level of the credit amount, so she has to reduce the amount of credit by any employer benefits. So far, so good. Adoption credits are reported on Form 8839. The 2008 (and 2007) Form 8839 has a worksheet for including nonqualified Code T payments into wage income, but there is apparently no worksheet or line entry for recapturing excess credit which was paid in a prior year when the adoption was final.**

**Software vendor was no help, and neither was Practitioner Priority Line. PPL referred me to a specialist unit, but they were also confused by the situation and they eventually decided that there was no way to recapture the credit. The best we could do was include the 2008 \$1000 in 2008 taxable income, so that's what we did.**

**Is there any better solution to this, except for telling all our clients to have their employers reimburse any adoption expenses in the year following adoption?**

Problem is you must amend 2007 return. Law says credit is the year **after** foreign adoption is final.

The good news is that you get the \$1000 reimbursement and it does not diminish the adoption credit. SK has adopted granddaughter and is quite sure of this.

#### **8) First Time Homebuyers Credit**

**Taxpayer purchased the house on Jan 09 and already filed tax return and claimed the credit of \$7,500. Can the taxpayer amend the return for the new credit of \$8000 under Obama new rule?**

Yes.

#### **9) Homebuyers credit co signers?**

**New home buyers credit? Co signers, other people putting up the money (parents) OK?**

Yes. New rule in Jan this year you can divide credit any way you want if you are not married.

#### **10) Least depreciation options**

**If I want to take the "least" amount of depreciation possible for rental property, what are my options? Can I do 40 year straight-line?**

40 year straight is your option under ADS, so that would work fine, but all new property of that class purchased in that year must make the same election.

**11) 1099 R with box 7 G status**

**Another question, for you or the panel, all of those 1099's coded with G. Do we have to report them?**

Yes.

**12) AMT ISO 8801 changes**

**Please review the new AMT ISO tax laws- specifically, the 20% to 50% change, and the unbelievable tax scofflaw changes that allow penalties and interest to be abated without review! for unpaid ISO AMT pre Oct 08. What congressman was bought out for that?**

Old law was a 20% per year credit on the return of ISO AMT credit carryforward that was three years old, subject to AGI limits. Now, you get 50% back (or remaining balance) of three year old AMT with no AGI limits, and you get interest and penalties abated effective 8/3/08.

**13) HRA and sub S**

**Health Reimbursement Account (HRA). Sub S Corp. reimburses more than 2% shareholder for his medical expenses. Shareholder includes this reimbursement in Box 1 of his W-2 from subject corporation & notes it in Box 14 of the W-2. Medical exp. consists of health, dental & long term care insurance plus RX, co-pays for doctors/dentists & medical mileage. Question: Where does Shareholder deduct this on his Form 1040? It is my understanding the insurance reimb. is an AGI deduction but not sure where the other amts. are deducted.**

Reported above the line 1040 Line 29 and flows there from a correctly prepared K-1 from box 17 Code T. Copays, medicals miles, deductibles etc. go to Schedule A, not above the line.

**14) AMT and your spacious motor homes!**

**TP has interest exp from a motor home but is in an AMT position. Is this interest a preference adjustment on Form 6251 Part I, line 4?**

Yes, it is a preference adjustment as Motor Homes are excluded under code section 56. Deductible on Sch. A but not on 6251.

Client's situation was first home, motor home and moms home. Approach might be to use first home and moms home as first and second homes, leave off motor home. Must use same properties for both regular tax and AMT – can't choose different properties for each.

**15) Public Safety Officers (Fireman).**

**Is there a \$3000 adjustment to income allowed for these taxpayers who are retired & use pension funds to pay for medical insurance? I understand there is something under the Pension Protection Act of 2006!**

Under PPA '06, yes up to \$43,000 can be excluded. This should already be netted out on 1099R though so be careful.

CA does conform to this as we adopted code sections 401-424.

#### **16) Home Office**

**Is it mandatory to claim depreciation on home office use? Do the allowed or allowable rules come into play? If depreciation is claimed & the home is sold at a LOSS is there is any depreciation recapture problem?**

Yes allowed or allowable come into play. But with the use of Form 3115 you can pick up the depreciation in one year. No recapture if sold at a loss. Also, new rules, (sorta' new), no splitting (OK Karen, no BIFURCATION) is necessary for the business gain percentage for the home office. This business gain can be tucked into the 250k/per person 121 exclusion.

#### **17) CD production costs for musician**

**My client is a musician that has incurred substantial production costs in making a CD. So far his sales are minimal. He wants to write off as much of the costs as soon as possible. What method would you recommend?**

Joe nailed this one. Rev Ruling 89-72. You must use the income forecast method for production, but not for expense of making the item. Example to clarify - You rent a studio to make a CD, pay someone to slide the slides, etc. This is expensed the year it is incurred. When you go into production, and duplicate 5000 of these for sale, you must use forecast method and run that cost out over several years. Same with a book - Actual printing of all the books for sale are forecasted, but the costs associated with the writing of first book is expensed.

#### **18) Foreclosure and titling**

**Couple, not married, purchased a home jointly (both names on deed and mortgage). Home lost to foreclosure. Both received 1099A in their name/SSN listing full amounts for "balance of principal outstanding" and "FMV of property."**

**Report 1/2 on each individual's return noted as 50% owner? Or just report 100% (per form) on each return since home sale was a loss and entire debt is cancelled under Mortgage Forgiveness Debt Relief Act? Does it make any difference which way to report?**

Report it all on both returns, then split it in half and magically nominee out 1/2 into the ether.

#### **19) Mortgage foreclosure revisited**

**Mother co-signed with daughter so daughter could qualify for mortgage. Mother lived elsewhere in her own home. Daughter lived in new home and paid (as best she could) the mortgage. Daughter's home foreclosed. Both received Form 1099-A under each name/SSN showing 100% of loan balance and FMV.**

**Similar situation. (A) Since it was daughter's home and loan, should she report 100% and have debt forgiven under new Relief Act.**

No, 50% each. Someone got some bad advice upon purchase.

**(B) As mother co-signed loan, must she report this information or can she say it was reported on daughter's return. Could she get stuck with cancellation of debt income as the foreclosed home was not her principal residence? If yes, any way out?**

As described above, mom is stuck. She signed.

## **20) Foreign Per Diem**

**Can a Schedule C musician use the foreign per diem rates published by the U.S. Department of State in lieu of receipts?**

Yes for Meals and Incidental Expenses (M&IE), not lodging. Use OCONUS tables

## **21) Exempt Organizations**

**An exempt organization discovers that it has been preparing Form 990 incorrectly for a number of years. It has been answering the question concerning gross unrelated business income in the negative even though the organization receives advertising income unrelated to its exempt purpose. Do the Forms 990 need to be amended and, if so, for what years do the forms need to be amended? For what years do Forms 990-T need to be filed? The federal tax liability is uncertain but it is probably \$1,000 - \$2,000 annually. Since the statute of limitations does not run for nonfilers, my question really relates to whether there is IRS policy or guidelines for the number of back returns that a nonfiling exempt organization must file.**

As per the question, the org is not a nonfiler, as stated, but just filed incorrectly.

File open years, currently 05, 06, 07, 08. Advise TP that they are required to amend. Advise client that after 4/15/09 statute of limitations has run on 05 amendment, but that legally they are supposed to get that year amended.

## **22) Exempt org revisited**

**An exempt organization receives an allocation of the membership dues paid to the parent organization and “voluntary” dues paid by about one half of the local membership. Membership benefits are not affected by whether voluntary local dues are paid. For purposes of determining the allowed deductions with respect to unrelated business income (advertising in a professional periodical), are the voluntary dues considered membership fee income? If not membership fee income, how should the voluntary dues be reported on the Form 990? Might voluntary dues be considered charitable contributions, for example? The voluntary dues have been reported as membership fee income on the Form 990. Can the voluntary dues be treated as something else when completing the Form 990-T or must the Forms 990 be amended?**

Panel passed on this question.

## **23) Tax Treaties**

**We all “know” that the US taxes its citizens on world wide income. However, paragraph 4 of the US-UK income tax treaty residency clause places a relatively low priority on citizenship for purposes of resolving dual tax residency’. Also, IRS Reg. §1.144 1-6(b)(4) allows US citizens residing in a treaty country to claim a reduced rate of tax on certain income.**

**Can a US citizen who is a bone fide UK resident under Article 4, paragraph 4(a) of the US-UK treaty claim an exemption from all US income tax under this treaty’s residency clause? If not, why not? With attached data definitions - not provided here.**

Very technical. Panel recommends tax pro who specializes in this area.

Jim Allen, EA in San Jose is one such person.

2570 N 1st St # 200

San Jose, CA 95131

(408) 571-0694

#### 24) Intestate issues

Question passed by panel - personal review.

#### 25) Homebuyers credit:

**TP and spouse are about to buy a home. Spouse already owns a home, they are going to rent that and move into the new one. TP has not been a homeowner before. Is it possible for an MFJ couple to receive the credit or a partial credit if one TP was not a homeowner?**

No.

#### 26) Residential Energy Credit

**In 2007 there was a Residential Energy Credit that gave a credit for installing insulation, double glazed windows and other items that would reduce heat gain/loss. But in 2008 I do not see this wording for those types of items in the instructions for form 5695. It looks like there is only credit for larger installations such as wind, solar and geothermal. Please clarify if insulation and windows are allowed, and where on form 5695 they might be listed.**

No credit in TY08. Was \$500 in TY07, and arrives again in TY 09 at \$1500.  
(Ed note - geothermal heat pumps now excluded from qualified property)

#### 27) SCH D Itemization

**Regarding entering lots of stock transactions on Schedule D, the IRS has said we do not have to enter each sale, only the sums of the sales as long as we include the complete list of transactions with the tax return. Last year Joe said the IRS did not have time to process all those figures and ended up shredding them. What is happening this year? Do we still have to send those pages of transactions with the tax return, or can we save our paper and the IRS' time by leaving them off, figuring if the IRS has any questions, they can contact the client.**

Same as past year. You can send the 8453 with itemized transactions attached to Austin Texas c/o shipping and receiving. As KB says, the largest shredder in the world!

OR

Import into your software via Excel spreadsheet. Most if not all pro programs do this now.

(Ed personal note - EAs have told me they have tried Austin TX route and got CP2000 anyway, and they have tried single line items, short term and long term gain loss) and also gotten CP2000 notices. Only sure way to not have off season work is typing.

#### 28) Registered Domestic Partner (RDP)

**2 individuals filing single for Fed (CA MFJ RDP's) are JT owners on investment account. 30K loss. Each can take 3K loss for Fed. What to do about state?**

Any reasonable method. Try:

A) All on one CA return, then nominee out 1/2 the loss to other SSN.

B) On 2<sup>nd</sup> account, nominee IN the 3K loss.

You can make your own elections for the return. For example, this is done on 83(b) elections, if you deal with ISO stocks.

#### 29) 1099 A

**Sample of 1099A was given with the following data:**

**Date 11/7/08**

**Outstanding balance = 291,000**

**FMV of prop = 324,000**

**Was borrower liable for repayment? NO box checked.**

Put it on the return, 291K sale, 291K cost basis, zero gain, and you're done.

Not taxable income.

### **30) RDP's again**

**How do we calculate on single 1040 return ea RDP the 07 refund from RDP's?**

Any reasonable method.

KB suggests:

A) Com. Prop. state so split 50/50

B) Prorate the refund as "if" they filed separately who would get refund

### **31) Worthless Investments**

**When is an investment truly worthless, so it can be claimed on a tax return?**

**Facts: 3 yrs ago made 38K investment in startup. Corp not dissolved, but sold no products nor received any revenue. Ice cream test market closed and been no marketing activities. Corp owes creditors 40K and have \$530 in corp bank acct. Patent app rejected. Recent shareholder letter stated revitalization "very remote" even though they "have occasional conversations with potential investors. Do we get write off at this point?**

No. It is hard to prove worthless security. Sell it in an arms length agreement to anybody for a dollar, then you have a sell price. Then report the loss.

### **32) Multiple residences**

**Residence one - Title and mortgage help by both TP and spouse. 2 loans. Foreclosure in 2007. 1<sup>st</sup> loan 1099C debt 238K, FMV 240K**

**2<sup>nd</sup> loan - according to TP, this loan charged off, but no tax forms issued.**

**Residence two - title and mortgage in spouse name only. Property abandoned in 2008. 1st loan 1099A issued. Ack of abandonment 9/12/08. Balance 543K. FMV 440K. Borrower personally liable? Yes.**

**2<sup>nd</sup> loan - Transferred to new bank on 8/19/08. 134k balance, no tax forms issued.**

**Both properties used as residences. At some point Spouse in house 1, TP in second. After foreclosure on the first, both lived in second house. Separated for all of 08. Want to file separately.**

**What do I request from TP? How do I determine which one is THE residence? Does married filing separately make ANY sense (except to the spouse that can file HOH and maybe get a larger refund)?**

Residence 1, loan 1 - 2007 issue. 238K COD, 238K FMV. No taxable income.

Loan 2 - charged off - Cool! No issues.

Residence 2, loan 1 and 2. Now the new home, thus the primary residence.

Residence probably not sold yet by bank. So you must report abandonment.

Some disagreement from panel. KB feels no 1099C issued, then no COD. Bank still has the option of going after the borrower and can sue. After they have given up, and formally issue 1099C, then you can have COD.

**Several other question son page two of this question not apparently seen by panel.**

**33) Another lost property! BK this time**

**Personal residence purchased Aug 2001 for 373K. Refi in 04. loan 1 463K, HELOC 127K. In 06 became rental and new home bought also in 06. Bank sells home Mar 09, Client files bankruptcy (BK) in 08 and done in Nov 08 with BK. Attorney did not include first mortgage in the BK but did include the equity line. No 1099A or C received. Attorney says did not include 1<sup>st</sup> loan in BK because the bank just takes over the house. I'm thinking my client might be in trouble.**

We agree client might be in trouble. Hope for an exception on Form 982. (Ed. note - Perhaps 1b or 1e.) Also advisable to determine if 1099's were issued and just not received due to change of address. Recall that ignorance of the law... errrr... lack of receiving proper docs from an institution ... is not excuse to the agencies. It is your clients responsibility if 1099 is expected to make sure bank has their address and can get it to them.

**34) to 1099 or not to 1099. That is the question?**

**In the instance of a 1099A what is done if the property was sold in 08 no 1099C issued?**

Already covered.

**35) When we deduct prop tax on Sch A, we are allowed to take only the ad valorem part of the tax, the part that is a direct tax against the value of the property. And for Sch E, office in the home, and other business uses, we can take the entire tax. But what is the position of the IRS on the extra \$500 of prop tax that can be added to the standard deduction for 2008. If the total tax paid was, say \$700, but the ad valorem part was only \$400, do we use the \$400 and increase the std ded by only \$400, or enter \$700 and get the \$500 extra addition to std ded?**

Yes, take \$700 (limited to \$500).

**36) Basis step-up at death of spouse**

**Husband dies, wife inherits rentals. Please review when and if wife gets step-up for fed and state. Also, depending on how title was held, assuming both were on title, would there always be a step up for wife?**

Comm Prop with rights of survivor ship (CPWROS) = full step-up in basis.

CP - 1/2 step-up for husbands half, no step-up for wife's half.

JT (this is actually JTWROS) - full step-up.

If held in standard revocable trust at death, trust determines how it is held. Might say for example that it is held as JT for convenience, but it is CPWROS in actuality.

(Ed note - It is my experience that lawyers can and routinely go to court and fix these issues.) Rev Rul 87-98 Codicil can state JT is actually being held that way for convenience as well.)

**37) Interest tracing**

**If I took a 200K HELOC and invest in partnership is that investment interest?**

General Partner (GP) and material participation - trade or business interest.

Passive activity - passive interest.

If investment, investment interest. Standard interest tracing rules.

**38) Minister housing allowance**

**Can a minister deduct principal payments on the home he owns from his housing allowance?**

Principal is never a deduction. But he can take the interest and taxes.  
He also still gets his housing allowance.

**39) Expense or capitalize list**

**How long do you depreciate the list below for residential real estate?**

Granite counter top - probably 5 years  
Garage Door - expense it (it is a repair)  
Alarm system - expense  
Curtains - expense  
Carpet - 5 years  
Tile floor - linoleum 5 years, ceramic tile 27.5 years  
Water heater - expense  
Central A/C - new system 27.5, if a replacement system expense it

**40) Principle residence foreclosure - efilng**

**TP received 1099 w/a recourse note. Debt forgiveness of 76K reportable on 982. Can this be efiled?**

Yes. Reportable on 982.

**41) BK info?**

**Where do you find out if a company has filed for BK? No statement and disconnected phone number.**

US Bankruptcy Court.

**42) COD**

Panel passed on this question since it has been heavily covered tonight.

**43) COBRA**

**Will the 65% COBRA rule for employers allowing employees to pay only 35% apply to contract workers who have a limited contract of 3 months still be eligible? They are paid on W-2.**

Probably not.

\*\*\*\*\*

**PONZI SCHEME INFO RE: JOE**

**Rev Ruling 2009 - 9**

**IRS capitulated. The Ponzi scheme losses can be claimed as a theft loss. You cannot amend your tax returns to reclassify dividends and interest that was reported in prior years though. If you claim this as a theft loss - 75%, and you later have a recovery, you claim the recovery on future tax return. If you do not take the position it is a theft loss, since you're not adopting the new IRS position, it seems you can go back and amend open years for dividends and interest. Read the ruling for details.**

\*\*\*\*\*

My apologies to those of you who submitted questions after the request date but before the time I left for the meeting, as some of those questions did not all make it into the queue. My thanks for those of you who did submit well in advance as it saves me a ton of typing!