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TAX BOARD BULLETIN

VOLUME 35, ISSUE 2

NOVEMBER 2011

Message From the Board Chair

~ Dorothy Hudson ~

It has been a busy six months on the Board! Since the last newsletter the Board has met four times. We have had two “normal” (is there such a thing?) meetings, the Instructors Workshop, and the Outreach Luncheon. Both the Instructors Workshop and the Luncheon were very successful. Thanks to all those who attended and to those who worked hard in the planning.

The really “hot” issue of discussion lately has been the “Mobile License.” The Board appreciates all of the comments, suggestions, and questions that we have received from licensees. It was decided at the November Board meeting that additional rules and licensing might not be necessary. In discussing this issue we felt that the rules to govern this were already in place. What might be necessary to accomplish our goals would be some education to be certain that licensees were aware of the necessary procedures in this situation.

There appeared to be some confusion regarding what was currently allowed. Some of the concerns that were voiced were: Could we go to the home of a disabled or elderly client without being in violation of the rules? Did this visit constitute a “branch” office? Could a preparer make this visit? What about service at a retirement home? Does delivering a completed tax return, and doing my exit interview, at my neighbor’s house violate current law? This issue really got our preparer community excited! We have had more comments and responses from this issue than any other, with the exception of national licensing, during my time of service on the Board. And I thought

you guys were all asleep out there! To sum up our decision on this matter:

1. There will be no current changes to the licensing law;
2. In the interest of consumer protection, the Exam & Education Committee will prepare a informational checklist for preparers listing the requirements of working outside the office;
3. The “mobile license” issue will continue to be followed through compliance and may be discussed in the future if there appears to be harm to the consumer.

Remember, the purpose of the Board is to protect the consumer through licensing and monitoring of our profession. It is important for the Board to take the necessary steps to make sure that this happens. You are a vital part of this procedure. Together we can be certain that those in our profession are doing their best for the taxpayers. Keep us informed of not only problems, but successes also, that you see in your community. Watch for the “Mobility Checklist,” scheduled to be sent to all licensees in December.

As usual my closing request is for each of you to stay informed. Everyone is welcome to attend Board meetings. If you aren’t able to attend, you can read the minutes online. Be sure to continue to give us your ideas and to voice any concerns you may have. I hope to see you at a Board meeting soon. Have a great holiday season—enjoy your family and friends, and take time for yourself. Tax season is just around the corner!

Board of Tax Practitioners

3218 SE Pringle Road #120, Salem, Oregon 97302

2011/2012 Annual Calendar

All meetings are open to the public unless otherwise stated. The Tax Board encourages interested licensees to attend any public meeting. Your input is appreciated!

Meeting notices and agendas are located on the Tax Board Web site at www.oregon.gov/OBTP approximately two weeks prior to the scheduled meeting date. A map and directions to the Board of Tax Practitioners office, which is located in the Morrow Crane Building, is available via our Web site. If notices and agendas have not been posted, please e-mail the Board office at tax.bd@state.or.us to find out when they will be posted.

Pursuant to ORS 192.660(1), Executive Sessions are closed to members of the public.

Month / Time	Topic	Location	Comments
2011			
January 6 th 9:00 a.m.	Board Meeting	Salem Morrow Crane Building	Public Welcome
May 10 th & 11 th 9:00 a.m.	Exam Work Sessions	Salem Morrow Crane Building	Exam Work Sessions Executive Session
May 12 th 9:00 a.m.	Board Meeting	Salem Morrow Crane Building	Public Welcome
July 12 th & 13 th 9:00 a.m.	Exam Work Sessions	Salem Morrow Crane Building	Exam Work Sessions Executive Session
July 14 th 9:00 a.m.	Board Meeting	Salem Morrow Crane Building	Public Welcome
August 9 th 9:00 a.m.	Instructor Workshop	Holiday Inn Express Portland South	Public Welcome
September 29 th OUTREACH MEETING	Board Meeting	Shilo Inn Newport	Public Welcome
September 29 th OUTREACH MEETING	Licensee Luncheon	Shilo Inn Newport	Licensee Luncheon
November 10 th 9:00 a.m.	Board Meeting	Salem Morrow Crane Building	Public Welcome
December 10 th 9:30 a.m.	Board Administered Examination	Winema Place NW Center Building 50 4061 Winema Place NE Salem, Oregon	Space availability is 275 candidates. Application deadline: November 10, 2011
2012			
January 5 th 9:00 a.m.	Board Meeting	Salem Morrow Crane Building	Public Welcome

- **Meeting times and locations are subject to change. Please refer to the following URL for up-to-date information:** http://www.oregon.gov/OBTP/public_meetings.shtml
- **Committee meeting dates, times and locations will be scheduled as needed.**

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Message From the Executive Director

~ Ron Wagner ~

Teamwork

We all know what teamwork is, but indulge me as I provide the definition from Webster's Ninth New Collegiate Dictionary.

Teamwork: def. Work done by several associates with each doing a part but all subordinating personal prominence to the efficiency of the whole.

I personally love the definition. Teamwork means that many individuals participated. Each one contributed to the end product. All recognition goes to the group rather than to any individual.

If you think about it, we probably are more involved in teamwork activity than we are individual activity. Even though we all have work or tasks that we must perform, all of our work eventually contributes to a bigger goal or project.

Teamwork is important at the Board. It is important that the staff work together. It is important that we work together with the Board members. And even more important we must work together with all of you, our licensees. Monica's article talks about how you are the eyes and the ears for the Board and provide the majority of the leads on unlicensed activity. Jane has a note thanking all those who volunteered to serve on

various committees during this past year. Board Chair, Dorothy Hudson, talks about the teamwork that came together as the Board looked at the issue of mobile licenses. In the end we came to the conclusion that the Board does not need to create or add any new rules or requirements. Our existing laws and rules should cover licensees' activities and business practices outside their offices as well as at the brick and mortar offices. But the process was necessary. Teamwork was needed. Those who took the time and provided comments about mobile licensure acted as teammates and helped the Board arrive at a decision that was the right decision. It was the right decision for the Board office; the right decision for the licensees; and I believe most importantly was the right decision for the public who we are ultimately responsible to protect.

So to you, our teammates, I offer a big thank you. Thank you for working with the Board. Thanks to all of you teammates who volunteered to serve on the item writing committees, as an exam taker, on the Rules Advisory Committee, as a Board member, those who provided information to the Board to help us keep the profession strong and honest, and to those who provided comments on mobile licensure.

Keep your eyes open for future opportunities to be a teammate. Together we can accomplish much.

BOARD MEMBER POSITION OPEN

The Board has one open Board Member position. More information will be sent to all licensees at the first of the month. Please consider your involvement with the Board.

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Message From the Compliance Specialist/Investigator

~ *Monica J. Walker* ~

Can you believe Christmas is around the corner again! Where does the time go? They always told me that the older one gets – the faster the years go by. Now I believe them.

Recently, I came across the following quote that I would like to share with you:

“Never doubt that a small group of thoughtful committed citizens can change the world. Indeed it is the only thing that ever has.” Margaret Mead

There is a lot of truth to this statement, and it is the inspiration behind my message to you this month. I’m sure all of you have heard a member of the Board, the Executive Director, or a staff member say, “Our licensees are our eyes and ears.” Licensees who can alert us to possible compliance issues are absolutely crucial to the Board’s effectiveness and mission to protect consumers by ensuring that tax practitioners are competent and ethical in their activities. First and foremost we want to ensure that all tax practitioners are licensed to provide tax preparation services.

Our ability to take action is most effective when licensees contact the Board office *as soon as* they become aware of someone who is preparing, advising or assisting in the preparation of personal income taxes for valuable consideration without being licensed. Along with a timely notification, we need the following information to proceed with an investigation and to have a ‘shot’ at establishing a solid case to take action against individuals who are not licensed to provide personal income tax services:

- 1) Proof of at least one of the following:
 - a. A personal income tax return was prepared by the unlicensed individual, e.g., a copy of a tax return with the preparer’s signature in the signature block
 - b. An advertisement notifying Oregon citizens that personal income tax preparation services are provided
- 2) Verification that valuable consideration was received for personal income tax preparation services, e.g., a cancelled check or receipt for services rendered, or an affidavit from the taxpayer stating that Mr(s). XXXXXXXXX prepared their 20XX tax return for \$XXX.

The “burden of proof” falls on the Board to ensure a solid case has been established prior to taking action against an individual. Alerting the Board of compliance issues is very much appreciated and encouraged. Please contact the Board office if you suspect any unlicensed activity in your area.

As tax season is quickly approaching, I would like to leave you with a helpful checklist and some additional information.

Is the business registration current and posted in public view?
OAR 800-025-0029
Are all practitioner licenses current and posted in public view?
OAR 800-020-0065

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Compliance ~ (Continued from page 4)

If advertising a discount, do I have a basic fee schedule posted in public view?

OAR 800-010-0050(5)

Have any business registration changes taken place?

Have they been submitted to the Board office?

OAR 800-025-0023

Do all practitioners have their current information on file with the Board?

OAR 800-010-0041

Do you have information readily available to protect yourself, clients and the business from identity theft? Refer to: http://www.oregon.gov/OTPB/news/092805_IdentityTheft.pdf

Are you aware of what tasks unlicensed staff can do?

Answer: Office staff may perform data entry as long as the information does not come from source documents or directly from the consumer's personal income tax return. They may verify the accuracy of the math on the returns. They can also check that the amounts listed on a document for withholdings, property taxes and other information have been transferred correctly. If there is a discrepancy with data on any document (original or copy), unlicensed staff is NOT allowed to make any changes. Unlicensed staff should give the document/data to a licensee to make the correction(s).

Are all Designated/Resident Consultant and supervision requirements adhered to? Review and become familiar with the following Oregon Administrative Rules:

Designated Consultants

OAR 800-025-0040.

Consultant in Residence

OAR 800-025-0060.

Management and Supervision of a Tax Preparation Business

OAR 800-025-0050.

Is there a review process in place for review of all tax returns?

OAR 800-025-0050(1)

Do staff know where client records are to be stored?

How long must client records be retained?

Am I familiar with 'Keeping of Records' requirements?

OAR 800-025-0070

Is all staff familiar with the Board's signature requirements for tax returns?

OAR 800-010-0040

Wishing each and every one of you a great tax season. Should you have any questions or concerns regarding compliance issues, don't hesitate to telephone me at (503) 378-4860 or e-mail me at monica.j.walker@state.or.us. I'm looking forward to seeing and working with you this season.

NEWSLETTER SCHEDULE

Newsletters will be prepared and released on the following dates: July 31st and November 15th. If you would like to see articles concerning certain topics or updates included within our newsletters, please contact the Board office at (503) 378-4034.

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2011 Instructors Workshop

~ *Jane Billings* ~

The Oregon Board of Tax Practitioners hosted the 2011 Instructor's Workshop on August 9, 2011 at the Holiday Inn Express in Lake Oswego.

The featured speaker this year was Robin Roach Gilley. Robin serves as chair for the Chemeketa Community College Curriculum Committee and was awarded the Outstanding Educator Award in 2005 from the Northwest Association of Developmental Educators.

Robin presented in an informed, educated and entertaining way, engaging her audience and providing them with valuable tools and strategies for effective teaching.

The final segment of the Workshop included a very informational panel discussion by members of the Board, allowing participants to interact with the Board, ask questions, and discuss issues of concern.

Instructor Workshops sponsored by the Oregon Board of Tax Practitioners are held every other year. If you have suggestions for future workshops please contact Jane Billings, Exam and Education Coordinator at (503) 373-1691. If you are interested in attending the 2013 Instructor Workshop, check out the Board's Web site for future announcements.

"It is the supreme art of the teacher to awaken joy in creative expression and knowledge."

Albert Einstein

Can You Use More Business During the 2012 Tax Season?

~ *Toni Ellsworth* ~

The strongest marketing campaign that a tax preparation business can prosper from is word of mouth based on you as a Licensee in the State of Oregon. When someone needs an attorney they hesitate to accept advice from a paralegal. The same is true in the medical arena. Everyone listens to the registered nurse or nurse practitioner but ultimately they want to see the doctor!

Your license from the Oregon Board of Tax Practitioners represents consumer safeguards. You will gain more "market share" in your community by using the educational approach in

your marketing materials. Tell the public that you passed the test and you are in good standing with a state agency that actively monitors the quality of tax preparation service in Oregon.

Most consumers and 1040 clients, are not aware that Oregon is the ONLY state that requires a license to prepare personal income taxes. Structure your advertising to ask "why" is the State of Oregon concerned about consumer safety when it comes to tax return preparation. The answer is the same whether you're a doctor, a veterinarian, or any other profession that requires knowledge and

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More Business ~ (Continued from page 6)

confidentiality, as well as honesty.

Explain your service business as if it were a reliable and necessary consumer product such as a car, a refrigerator or a computer loaded with software. How do you decide which manufacturer to choose? How do you find the best and the worst products on the market? Can you trust the dealer or store that's selling the product? These decisions overwhelm most consumers and they often end up buying because a savvy salesperson sounded good

or because an online Web site posted favorable "customer reviews."

You have the ability to influence the public's awareness about avoiding unlicensed businesses in your community. Everyone can claim to be a qualified and secure resource, but only you, an Oregon licensee, can prove it. Post your license in a highly visible location and announce your professional service by promoting your qualifications as proven by this license.

Thank you and a big round of applause to all of the volunteers

who contributed to the Preparer and Consultant Item Writing Committee workshops and volunteer test takers that were willing to come in and take versions of the new exams prior to their release. The Board would also like to thank everyone that participated on the Rules Advisory Committee this past year. The Board relies heavily on the willingness of individuals like you to give your time and expertise to accomplish the goals these committees are tasked with.

The Consultant Item Writing Committee workshop held on April 20-21, 2011 and the Preparer Item Writing Committee workshop held on June 2-3, 2011 were both successful and productive. The volunteers spent two demanding days reviewing each and every examination question in the item bank: updating existing questions, checking and updating references, creating new questions, and making recommendations for the Board's final consideration. Exam test takers bravely accepted the challenge to take the newest versions of the exams. They shared any discrepancies they found with the Board's exam consultant prior to current exams' release.

The Rules Advisory Committee met on September 15, 2011 to review the current administrative rules.

This process is done annually and included review of newly proposed rules. The Committee included both consultants and preparers sharing their valuable input and expertise.

Thanks to the following individuals for their contributions:

Diana Ackerman, Judy Armstrong, Laurie Apker, Catherine Bartmess, John Bell, Gerry Bogan-Morgan, Glenn Branfield, Henrietta Browning, Sharon Bush, Mamie Carter, Nancy Corr, Janet Cranston, Beverly Diercks, MaeLynne Doersch, Jennifer Farm, M. Carole Fittro, Kathleen Franklin, Susan Gallagher-Smith, Jane Gamble-Hall, Maddy Gairan, Neil Gibson, Robert A. Goetz, Jack Goldberg, Paula Graville, Julie Hamilton, Sandra Hanks, Melissa Hanson, Donna Hines, Eileen Slifman-Hines, Sheila Howe, Nancy Hubbard, Barbara Jenkins, Shigeyo Kikuchi, Kari Lasswell, Kay M. Lee, YuQing Leland, Sharon Lezin, Mary Ann Matlock, Alice McCullough, Debra McKinney, Stockton Miller-Jones, Laurie Mills, Patti Millspaugh, Candace Morris, Dawn Paris, Vona Pease, Donna Peck, Stephanie Pinniger, Randy Rasmussen, Robin Roach-Gilley, Anita Robinson, Annette Saarinen, Heather Search, Randy Shimek, David Smith, Judith Smith, Danny Stanfield, Daniel Stearns, Janet Sugrue, Ruby Tollefson, Scott Weinert, Steve Westfall, and Alan Westhaver.

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**2011 Instructors Workshop
held at the Holiday Inn
Express Wilsonville.**



**Rules Advisory Committee
at the Board of
Tax Practitioners office.**

**2011 Outreach Licensee
Luncheon held at the
Shilo Inn Newport.**



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Advertising and Solicitation

~ Jess Gutierrez ~

The Oregon Board of Tax Practitioners has been in existence in one form or another for more than thirty years. Our mission is to offer aid and protection to the general public. How can this essential mission be accomplished if the general public is not fully aware of our existence? A rule will go into effect July 1, 2012 which should help the public understand there is a State Board to aid them if needed. The new rule is designed to inform the public that a state issued licensed is required to assist or prepare personnel income tax returns in the state of Oregon. The goal is to be as well known as some of the other Boards such as the Construction Contractors, Accountancy, Insurance, etc.

OAR 800-010-0050 Advertising and Solicitation's major change is: (6) All business advertising must include the Board issued registration number of the firm (written as "OBTP#") or the firm's Designated Licensed Tax Consultant (written as "LTC#"). (7) All individual advertising must include the licensee's Board issued license number (written as "LTC#" or "LTP#"). Advertise and advertising means any form of printed, broadcast or electronic material that makes known professional income tax services. This includes, but is not limited to, business cards and stationery, and all Web and e-commerce advertising of an individual or tax preparation business.

First, let's look at printed material. The small printed material such as business cards and stationery are printed by order, so it should not be much of a burden to make the change. Mailers, fliers, and hand-outs are done in much the same way. If you can include your telephone number and address on any of these printed materials, you

can certainly include the firm's or the Designated Consultant's Board issued license number on them.

Broadcast advertising is done in much the same way. I have a lot of experience as what can be done with TV advertising. It does not matter where a TV ad is produced, they all end up at the local TV station where a telephone number, or address, or other special information is added to the commercial. For the TV station, these changes are done every day, and in some cases the changes are made hourly (the age of the computer). Radio is similar to TV when it comes to small changes in content. Web-based advertising must also include the Board issued license numbers. These changes should be an easy fix as most Web sites are updated often (at least they should be—right!).

The big question is what about large exterior signage? The Board has agreed not to make everyone replace their big exterior sign to comply with the new rule. Adding a license number to a sign is more involved and costly. These signs last a lot longer than printed material and are viewed as more of a locator than strictly advertising.

The new rules go into effect July 1, 2012. Unless you buy your consumable advertising material in very large quantities lasting decades, the changes should not be overly burdensome. If there are any questions as the new rule goes into effect, do not hesitate to ask. The adjustment we are asking everyone to make is for the good of the public and industry. When the Oregon Board of Tax Practitioners is as well known as the Construction Contractors Board we will have achieved great strides in public awareness and fulfilling our mission of consumer protection.

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Oregon Tie with Federal Licensing Regulations

~ Jan Salisbury ~

Since we in Oregon already have a unique consumer protection and professionally supportive program we want to tie with the new federal tax practitioner certification regulations rather than duplicate. If nothing else this program will only enhance the profession in general. Over the past few years we, as a Board, have considered the many aspects of these changes, revisited our own Oregon rules, and sought ways to achieve this dovetailing process.

In trying to determine which way the federal winds will blow we have made some changes. Considering the costs to the new applicant, the initial Licensed Tax Preparer's license fee has been lowered from \$80 to \$50 as of July 1, 2011. The Board supports the need for continuing education, thus the hours accepted by the federal registration program will be accepted by Oregon as long as the Oregon continuing education requirements are met. This allows us to accept classes certified by the federal program unless the subject matter does not contribute directly to the expertise of the individual in the preparation of income tax returns.

One area of concern has been federal indecisiveness as to who is responsible for signing the actual tax return. It appears that, currently, this decision is being left up to the policies of the tax preparation firm itself. This issue leads us to PTINs. By this time we all should know that a PTIN is required by all who need to be registered as a tax return preparer with IRS, including supervised preparers who are not signing the returns. The Board has an Oregon Revised Statute that goes in to effect January 1, 2012 stating that

an applicant for an Oregon practitioner license must possess a PTIN issued by IRS. Currently, this would be for all licensees. However, the Board is exploring some questions that have arisen actually affecting only a very few. Generally, a PTIN will be required for licensee applications and renewals beginning the first of the year.

The final concern has been the exam required for application. We have a bit more guidance as to the possibilities of the IRS exam and who will be required to take it. But we are still weighing the need to change the Oregon licensee exams so as to not duplicate the endeavor. There is definitely a need for more information on this before final changes can be made.

The Board has finalized changes in advertising, management and supervision of a tax preparation business, consultant in residence, continuing education, and requirements for application for the consultant exam; but none of these were precipitated by IRS changes. On the other hand, and even more so than in the past, the guidance for the industry and for all of us in the industry is IRS Circular 230.

For further information, review Oregon Administrative Rules, Chapter 800; Oregon Revised Statutes 673.605 through 673.740; and the IRS Web site under Tax Professionals. If you have any concerns or questions as to how Oregon may be changing, if at all, in order to tie with the new IRS tax preparer regulations, contact the Board or any of the Board members and review updates at the IRS Web site.

Issues Surrounding Tax Planning for Divorce

~ *Dea Williams* ~

After attending conferences this spring and considering the new ethical concerns that are incorporated in the new release of Circular 230, I thought it would be timely to discuss the practitioner concerns and due diligence requirements when a long time client comes to your office and informs you they are getting a divorce.

You have an ethical dilemma right from the start because there is a conflict of interest in representing both clients during this crisis. There are some of the same issues you must consider when taking on a new client that is divorcing as well. Your clients going through a divorce do not think about the tax issues that arise as a result of the breakup. They both probably have an established relationship with you and your firm. Can you represent both clients during this process? What advice can you give without being considered in an ethical violation under the new Circular 230 rules? There was an ethics discussion about this topic at the OrSEA Convention held in May. Even advising clients who are going through a divorce about the proper filing status could be interpreted as an ethical violation under Circular 230. It is apparent that the practitioner's discovery and interview process must be carefully crafted before entering into this type of engagement.

Some tax planning for divorce issues for the next tax return include structuring a property settlement, choosing how to split up retirement savings, and yes, even figuring out what the filing status will be after the couple part ways.

The following are some tax planning issues that would be pertinent to this type of consultation:

Filing Status

The clients still maintain the married filing jointly option until the divorce decree is final. The marital status at December 31 controls the filing status. If the couple can't file jointly for the year and there is a dependent living with one or the other, that taxpayer may be able to file as Head of Household which gives a bigger deduction and a gentler tax bracket. This status, of course, maintains its qualifications for use. The dependent must be living with the parent for more than half the year and that parent must be paying for more than half of the upkeep for the home.

Exemptions for Dependents

The custodial parent named in the divorce decree may continue to claim the children as dependents. If the divorce decree is silent regarding this point, then the parent that the children live with for the majority of the time during the year is considered the custodial parent. The custodial parent may sign a waiver pledging that he/she won't claim the exemption and allow the noncustodial parent to claim the exemption. The parent who claims the exemption is also the one who has the right to claim the child credit or the American Opportunity or Lifetime Learning college credit. This is so even if the parent does not pay the college bills.

Medical Expenses

The parent that pays a child's medical bills after a divorce is allowed to include those payments in the Schedule A medical expense deduction on his/her return, even though the other parent is the custodial parent and gets to claim the dependency exemption.

Tax Credits

The child care credit for work-related expenses the

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Tax Planning for Divorce ~ (Continued from page 11)

parent incurs to care for the child under 13, if this parent has custody, may be claimed even if the other parent is claiming the dependency exemption. Only the parent who claims the dependency exemption may claim the child tax credit.

Alimony and Child Support Payments

The spouse paying court ordered alimony may take an above the line tax deduction for the payments. The IRS won't accept the alimony deduction unless it is spelled out in the divorce agreement. The spouse receiving the alimony must claim it as income. The payer of the alimony must put the ex-spouse's social security number on the return to be able to take this deduction. Child support payments are just the opposite in treatment. The paying spouse cannot take a deduction and the receiving spouse does not pick this payment up as a deduction.

Asset Transfers

When the divorce settlement shifts property from one spouse to another, the recipient does not pay taxes on that transfer. However, the property's tax basis shifts to the recipient as well. If the property is sold, the recipient of the property will pay capital gains on all the appreciation before and after the transfer. When splitting up property the tax basis and value must both be considered. A \$100,000 bank account is worth more than a \$100,000 stock portfolio that has a basis of \$50,000. No tax on the bank account, but a capital gain tax on the \$50,000 of appreciation of the stock.

Home Sales

If the family home is sold as part of the divorce, there may be capital gains tax implications. The law allows the taxpayer to exclude tax on the first \$250,000 of gain on the sale of the primary home, if the owner(s) have lived there at least two of the last five years. Married couples filing jointly can exclude up to the \$500,000 as long as either one has owned the home and both used the home as a primary home for at least 2 out of the last five years. After a divorce, if the two-year ownership-and-use tests are met, then each may exclude up to \$250,000 of the gain on their

individual returns. Also, sales after a divorce may qualify for a reduced exclusion if the two-year tests haven't been met. The exclusion will depend upon the portion of the two-year period the home was owned and used. When one spouse receives the house in a divorce settlement and several years later sells the property, the period that the other spouse owned the property is added to the receiving spouse's ownership period for purposes of the two-year test.

Transfer of Retirement Assets

If one spouse gives cash out of a 401(k) plan to the other spouse in a divorce, the transfer should be accomplished using a QDRO (Qualified Domestic Relations Order) to avoid a taxable distribution. This gives the receiving spouse the right to the funds and relieves the paying spouse of the tax burden. A transfer of IRA funds, does not need a QDRO; however, it should be spelled out in the divorce settlement so that it's not deemed to be a taxable distribution.

First-time Home Buyer Credit

If the first-time home buyer credit was claimed and the couple divorces, the tax break is retroactively affected by the divorce. The credit must be repaid if the home ceases to be the primary home within three years of the home purchase. If the home is transferred to the spouse as part of the divorce settlement, then the credit repayment is not triggered. The responsibility of the repayment shifts to the recipient spouse if he/she moves out within three years of purchase.

Divorce tax planning consultation should ideally be done before the issue of divorce ever arises. Informing your clients about the ramifications of divorce, death or any life crisis should probably be addressed before it occurs. With the new legal requirements to maintain our professional integrity and the tax preparer penalty laws codified under IRS Section 6694, I believe that pre-planning for a possible event, such as divorce or death, becomes an integral part of our practice management due diligence.