

# **“TAX TALK TODAY”®**

## **GETTING READY FOR FILING SEASON 2009 – INDIVIDUAL AND BUSINESS**

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Brought to you by the IRS and produced by L&M Production Design Group, based in Alexandria, VA, “Tax Talk Today”® is a free, live, monthly interactive Webcast aimed at educating tax professionals on the most contemporary and complex tax issues. Now in its seventh year with over 500,000 viewings, the award-winning series airs monthly at [www.TaxTalkToday.tv](http://www.TaxTalkToday.tv) and programs are archived on the site for one year after each episode. For additional information or to inquire about sponsorship opportunities, please contact Paul Lamonia at (703) 642-6505 or [Lamonia@LMpdg.com](mailto:Lamonia@LMpdg.com) or visit [www.taxtalktoday.tv](http://www.taxtalktoday.tv).

PHYLLIS GRIMES: This is “Tax Talk Today,” tax show for the tax pro. Today’s program: “Getting Ready for Filing Season 2009 – Individual and Business.” Hello, I am Phyllis Grimes, and welcome to “Tax Talk Today”, as series of programs brought to you by the Internal Revenue Service.

The “Tax Talk Today” series provides you, the tax professional, with the opportunity to interact directly with representatives of the IRS and practicing professionals on current tax issues. In addition, viewing the “Tax Talk Today” series is an easy way to earn continuing education credits. For today’s special 100-minute program, you will earn two CPE credits. You can purchase CE credits through the “Tax Talk Today” store. You will need the course number, which is given at the end of the program, so don’t forget to jot it down.

Also, we want your questions throughout today’s program, so please e-mail your questions to [questions@taxtalktoday.tv](mailto:questions@taxtalktoday.tv). Any questions not answered on the program today will be posted to the “Tax Talk Today” Web site under resources. If you have not already done so, visit the resource section of our Web site; we have posted an outline for today’s program, as well as additional valuable information. Now, let’s get on to today’s program: getting ready for filing season 2009, individual and business.

On today’s program, we will hear expert panelists discuss updates to forms, the latest tax law changes and IRS processing issues that will assist you in preparing your clients’ 2008 individual and business returns. You will also get tips on how to avoid common errors that can cost you and your client time and money. Now, let’s join our first panel. Today’s moderator is Les Witmer. Les brings to “Tax Talk Today” 23 years of experience with the IRS and is currently a communications consultant in Atlanta.

Joining Les is Nancy Aiello, submission processing director in Andover for the IRS, Susan Hansen, field director for the Cincinnati submission processing center for the IRS, Virginia Tarris, tax law specialist, individual tax forms and publications, for the IRS, and Bill Woolf, tax law specialist, business forms and publications, for the IRS. The complete bios for our guests are on the “Tax Talk Today” Web site. Les?

LES WITMER: Thanks, Phyllis. Well, what’s in store for us next? Will anything that the current Congress that’s now in session do have an impact on the filing season, or 2009? I guess we can’t look into a crystal ball and find out the answer, but we can look at what we know, and that is the tax law changes that took place this past year that impact the filing of both individual and business returns. So that’s what we want to do, to take a look at how the IRS is prepared and the issues that face practitioners.

Ginny, last year at this time, we did have a looming tax issue hanging over our heads, and that was the Alternative Minimum Tax, or the AMT patch, as that was called. Is that issue settled? Are there any issues or any changes for 2008 on AMT?

VIRGINIA TARRIS: Well, yes, Les, I'm happy to say that in early October, Congress passed a law extending or increasing the AMT exemption amount for 2008. So for 2008, the AMT exemption amounts are \$69,950 for married taxpayers filing a joint return or for qualifying widowers; they're \$46,200 for single taxpayers and heads of household; they are \$34,975 for married taxpayers filing a separate return. And all of the forms take these increased amounts into account. Unfortunately, I guess, once again, this is only a one-year patch, so we will be facing the same issue for 2009.

MR. WITMER: Okay. Let's talk about anything on the front burner for this year. With the economy, anything out there that people need to be especially wary of?

MS. TARRIS: Well, yes, I think one of the most important things was in February, Congress passed the Economic Stimulus Payment Act and economic stimulus payments were mailed out from late spring through the summer. These payments are not taxable and do not need to be reported on your 2008 tax return. And also available is the Recovery Rebate Credit; the amount of your economic stimulus payment will affect whether and how much Recovery Rebate Credit you can claim. Your economic stimulus payment was based on your 2007 filing status and tax information, while the Recovery Rebate Credit is based on your 2008 income and tax situation. So, for example, if you had a child in 2008 or if, as a result of some of the economic downturns, your adjusted gross income for 2008 may be lower than it was in 2007, you may be entitled to claim the Recovery Rebate credit.

Now, each of our individual tax forms – the Form 1040, the Form 1040A and the form 1040EZ – include a separate line for the Recovery Rebate credit, and the instructions include a Recovery Rebate credit worksheet so that the taxpayer can calculate the amount of their Recovery Rebate credit. In addition, the taxpayer can ask the IRS to calculate their Recovery Rebate credit for them. I think one important thing to note at this time is, in general, both spouses must have Social Security numbers to claim the Recovery Rebate credit. And you must have a Social Security number for any child that you want to claim a Recovery Rebate credit for.

MR. WITMER: Any exceptions to that?

MS. TARRIS: Yes. If you are in the military, your spouse and your children don't need to have a Social Security number to be able to claim the Recovery Rebate credit.

MR. WITMER: Okay. Just a reminder, and to add on what Phyllis said, there's a lot of information that's out there on our resource page; a lot of the facts, figures, forms and other things that we're going to be talking about are either on our "Tax Talk Today" resource page or linked so that you can go to it, so please take a look at it. You mentioned the economic downturn, and there's a lot of what-ifs, and I think later, when we're joined by practitioners, we're going to talk a little bit more about those situations and what the IRS is doing, but maybe what we should do is take a look at some of the changes that took place. There were many laws passed this last year – maybe more than past years – so what are some of the regular stuff that may be significant items that people really need to know about?

MS. TARRIS: Well, thank you. One of the most important items for people, and certainly one that is in the news a lot, is the First-Time Homebuyer Tax Credit. So Congress passed a law at the end of July that provides for First-Time Homebuyer credit. This credit is available for homes purchased in the United States after April 8<sup>th</sup>, 2008 and before July 1<sup>st</sup>, 2009. And one thing to note is, if you buy the home in 2009, you can elect to treat the purchase as if it happened in 2008 and claim the First-Time Homebuyer credit on your 2008 tax return. The maximum credit is \$7,500. It is limited to 10 percent of the purchase price of your home, however, so if your home costs less than \$75,000, the credit would be equal to 10 percent of that. If the purchasers are unmarried individuals, they can allocate the credit among them in any reasonable manner, as long as the total credit does not exceed the \$7,500 or the 10 percent of the purchase price.

The credit is refundable, so that if the tax that you owe at the end of the year is less than the amount of the credit, you will get the difference in a check. You will claim the credit on new Form 5405 and in order to claim the credit, you have to file Form 1040. So if you want to claim the credit, you can't file Form 1040A or Form 1040EZ. And it is also important to note that the credit acts as a 15-year, interest-free loan. So the credit has to be repaid, ratably over a 15-year period, starting two years after the year that you claim the credit. So if you claim the credit in 2008 and the total credit is \$7,500, starting in 2010, you will have to repay to the government \$500 in additional taxes in that year. And it's also important to note that if you don't have to file a return for any other reason, but you owe this \$500 tax back, you must file a tax return. And once again, the credit is only available to first-time homebuyers, and that's somebody who hasn't owned a home within three years before the purchase date of this house.

MR. WITMER: Okay. Other issues that are significant for the individual?

MS. TARRIS: Other issues – yes, we have some additional standard deductions that are available. Ordinarily, you're just entitled to your standard deduction; we have two increased standard deductions this year. One is available for local or state real estate taxes that a taxpayer may pay that they couldn't have deducted anywhere else, either on a Schedule C, for example, or if they did an itemized deductions. So in this case, if you pay real estate taxes, you are entitled to take an additional standard deduction equal to the amount of your taxes up to \$500, or \$1000 if you're married filing jointly. And also, another increased standard deduction is if you have disaster losses from a federally declared disaster other than a Midwestern-area disaster that I'll discuss later, you can claim an additional standard deduction. And you must use Form 1040 to claim that additional standard deduction.

Another item to note is that the capital gains tax rate for taxpayers in the lowest two tax brackets has gone from 5 percent to zero percent. So if you used to pay 5 percent on capital gains, now you'll pay zero. And the threshold amount for earned income that you need to have to be able to claim the additional child tax credit has been lowered to \$8,500 for 2008. Also, we have a kiddy tax, keeping with children. This is a tax that parents may have to pay on income that their child receives. And the age limits have increased for the kiddy tax; it now applies to children age 18, if their earned income is not more than half their support, or to full-time students aged under 24, if their earned income is not more than half their support. All the other key tax rules are the same.

And I guess the last item to note that might be of interest is on the sale of a main home. Ordinarily, you can exclude gain and if you are widowed and sell your main home in 2008, you can exclude up to \$500,000 of gain if the sale occurs no later than two years after the date of the death of your spouse, and the usual ownership and use tests for excluding gain have been satisfied before the date of the spouse's death. Ordinarily, a single person would only be able to exclude \$250,000, so this is a benefit for surviving spouses. And two other quick things to note. We have a use period – ownership and use period – for testing whether you can exclude the gain. And that period has extended for taxpayers serving in the Peace Corps, and it has also been extended for members of the intelligence community who relocate but relocate in the United States. It used to be available, but you had to relocate overseas; now, you only have to relocate in the United States.

MR. WITMER: Okay, good. Thank you. We're going to give you a rest from that long list. Bill, was there such a long list for the business side? Were they affected by the many tax law changes we had this year?

BILL WOOLF: Yes, they were. As Ginny mentioned, there are several – there was a lot of legislation this year, and there were a lot of provisions. A lot of them were very targeted at different groups, but some of them may apply to a large number of people. The one thing I'd like to discuss is, for one, the Section 179 deduction went up from \$125,000 – the maximum – went up from \$125,000 to \$250,000 this year. That gives more flexibility when writing off business assets. But another change everyone needs to be aware of is a change to the optional method for computing self-employment earnings. This is mainly of interest to farmers, I guess; when you're self-employed, you pay self-employment tax, and that can earn you Social Security coverage.

But in bad years, when you have a loss or very low income, you can elect to use an optional method to compute the tax based on a portion of your gross income, and that amount has always been up to \$1600. Back when it was originally enacted, it cost \$400 of income to get one credit of Social Security – one quarter of coverage for Social Security. So \$1600 would be four quarters, just as if you'd had a lot of income that year. In recent years, the amount needed to get a quarter of Social Security coverage is closer to \$1000, so even if your client selected the optional method, they'd only be getting one credit of coverage, and possibly, people may not have been using it. Now, Congress has indexed the amount to \$1600 or four times the amount needed for a quarter of coverage. So it's possible to get four quarters of coverage even in the years when you don't have the income or are at a loss. And that's a good change for – I know the farmers were lobbying for that.

Another change is in the – to clarify the S-corporation penalties and partnership penalties. It's a revenue-raiser to pay for other provisions, they've been increasing the amount that a partnership or an S-corporation would need to pay for filing late. Last year, it was \$85 per partner or shareholder – the number during any time of the year for each month, up to 12 months, for filing a late return or without the complete information. This year, as part of the pension bill that was just signed on December 23<sup>rd</sup>, the amount was raised from \$85 to \$89, so for S-corps, it's \$89. And for partnerships, for returns required to be filed after 2008, there's an additional \$1

add-in because – as a revenue-raiser for the – to exclude from income payments from the Hokie Spirit Memorial Fund for the Virginia Tech problem. They added \$1 to the penalty to fund that. So that's for returns filed after 2008. So in the S-corporation instructions, it's \$89 per shareholder, per month, and for the partnership, it's \$90.

MR. WITMER: Okay. We talked about the economic stimulus and the downturn in the economy. The end of 2008 was anything but normal as far as the economy was concerned. With this major downturn, how will it affect the filing season? We heard from Chris Wagner, the IRS small business and self-employed commissioner and let's hear what he had to say.

(Begin video clip.)

CHRIS WAGNER: I want to express my appreciation of all the dedicated tax professionals who help their clients file timely and accurate returns every year. Your dedication is important to the overall success of America's tax system. This year's filing season will be a little different. Some will have lost their jobs, and others are concerned about their investment losses or retirement plans. Some may have even lost their homes. Many of your clients will face significant economic challenges affecting their businesses. There will be tax law changes to consider, such as the Mortgage Forgiveness Debt Relief Act. There could be more tax law changes that will require you to help your clients look at their tax planning strategy. You may find that some of your clients are not able to pay their taxes for the first time. This will be a big shock to some.

Making sure that your clients understand how important it is to file and pay timely will help them reduce the burden of costly interest and penalties down the road. You will need to discuss payment options with them, which could include requesting an installment agreement, restructuring an existing installment agreement or pursuing an offering compromise. An IRS Web-based online payment agreement is now available. The application process allows taxpayers or their authorized representatives to apply for and receive immediate notification of approval. Check the payment and installment agreement pages at [IRS.gov](http://IRS.gov) for more information. As soon as new tax law provisions are available, they will be posted on [IRS.gov](http://IRS.gov). New information is generally filed either on the [IRS.gov](http://IRS.gov) tax pro news or what's new sections. I, again, am going to express my thanks for the important work you do. The IRS will continue looking for ways to ease some of the challenges you and your clients may face this filing season.

(End video clip.)

MR. WITMER: As Commissioner Wagner alluded to, the economy may affect how people file this year and pay, and it's good to know that there are some payment options that are going to be available that maybe the IRS is going to look at a little bit differently than they have in the past, and that's certainly going to affect practitioners. When we're joined by our practitioners in our second panel, we'll probably get more into that. Let's talk a little bit about the process and the filing of returns. Nancy, it seems like every year, the IRS moves the marble around a little bit as to where the returns need to be filed. That changes again this year?

NANCY AIELLO: Yes, it does. For individual paper returns that are filed, we have four states being realigned. The taxpayers that live in Delaware, New York and Rhode Island will now file their returns in Kansas City and taxpayers that live in Illinois will now file their returns in Fresno. Returns filed with a payment, however, are directed to our lockbox locations.

SUSAN HANSEN: And for the first time in several years, the business returns will be redirected to help level workload. For this year, taxpayers who file business returns from Georgia and Tennessee will file their returns in Cincinnati rather than in Ogden.

MR. WITMER: Okay. I'm sure that a practitioner out there that lives in a certain state is used to filing at the location they've always filed to and you get some of the returns going to the wrong place; what happens? How many of these – is there a number of these that happen, and what happens?

MS. AIELLO: Unfortunately, there are still a number of returns that go to sites that don't process returns any more. And what they do is if it's an IMF return, they'll send it to a processing center that handles IMF, or BMF, they'll send it to a BMF center. But we do see that in quite large numbers considering how long we've been realigning – for some time.

MS. HANSEN: Yes, and this is very costly for the IRS to transship this mail again, once we've received it. And it also delays processing because it has to go from one site to the other.

MR. WITMER: So it could be costly to the taxpayer as well. Okay. Any other changes involving processing, Nancy, individuals?

MS. AIELLO: Well, the 1040ES packages – all practitioners should be aware that their clients will not receive the direct mailing this year of the 1040ES vouchers and envelopes from the IRS, and they should provide the vouchers to their clients for the filing of quarterly and estimated tax payments. And another thing that I wanted to mention is employers are required to give their employees their W-2s this year the end of January, giving them some time to get through the mail. If a taxpayer does not get their W-2 by the middle of February, they can call the toll-free 800 number and we'll send a letter to that employer to encourage them to give those W-2s to their employees.

And one other change for processing – the Form 8453, we started the pin requirement last year for practitioners and that went very well, but we're also centralizing any 8453s that come into the centers in Austin, Texas. So we would encourage those to file them in the right place, which would be Austin.

MR. WITMER: What about in the BMF side, the business side?

MS. HANSEN: On the business side there's new form and procedures for correcting the employment tax. If a taxpayer identifies an error that they filed after December 31<sup>st</sup> – so any errors found in this year – there's a new series of X forms, like amended returns for the 1040s, but for the series of 940 employment tax. The 941X is available now, so that causes the 941C to be obsolete, which used to be used for corrections. And we no longer use the 843, which was

used for some corrections also for that purpose. And the rest of the series we're anticipating they'll be available some time in February. So they'll be a 944X, 943X, C21X – all the employment tax returns and their Spanish versions also. So that's a new process in the business world.

The other change that impacts business returns are the extensions for the fiduciary and partnership returns. There was a regulation issued in June, which changed the period from a six-month period to a five-month extension period. And the reason for that is that the K1s that were issued by those entities will now be available for the taxpayers in time for their October 15<sup>th</sup> extension period. So those are the two changes that impact processing in the business side.

MR. WITMER: Okay, Nancy. Sue mentioned corrections, which brings to mind errors. And you always have a certain number of errors. What are the most common errors and what should the practitioners be wary of – what are the don'ts out there? (Laughter.)

MS. AIELLO: Well, we still continue to receive a large number of returns that are not signed and that causes us to send them back to the taxpayers in many instances, which delays their refunds. We also have missing forms and schedules, and the two largest-missing forms and schedules are the Schedule A and the W-2s, sometimes on decedent returns, the form 1310 or the documentation that's needed to come with the 1040. And on same-paper returns we continue to see taxpayers not using the tax rates on qualified dividends and capital gains versus the standard tax rates as well as incorrect security tax computations. And the last one I wanted to mention is receiving valid taxpayer addresses, especially on e-filed returns. That delays us getting the paper refunds to taxpayers.

MR. WITMER: Okay.

MS. HANSEN: And on the business side, we have a lot of the similar – forget to sign the return and missing schedules and such, and again we'll reiterate on misdirected mail – getting the returns to the right center. But on the business side, two that particularly happen year after year is there's a 944 annual federal employment tax return, which you can only file if the IRS has identified you as meeting the eligibility requirements, but we still have taxpayers who should be filing the 941 quarterly return. They file the 944 and we then have to go in and correct the account and it delays and it's a burden on both the IRS and the taxpayer.

And then the other one has to do with S corporations. You, again, have to file an election; it's a 2553 form. And you have to file that return or that election form within the first two months and 15 days of the year you want the election to be valid for. And we continue to, again, get taxpayers that file the 1120S without having filed the election and that causes a delay. There is some good news, though, because there is a provision now that if you did not file the election for a reasonable cause, you can then file the election with the return and we can possibly process it – if you qualify for reasonable cause we can process it without the delay.

MR. WITMER: Okay, one way to cut down on errors would certainly be electronic filing. Anything new in electronic filing that our viewers should know?

MS. AIELLO: Well, fortunately, we can start up this Friday, January 16<sup>th</sup>. We don't have any delays because of late legislation for electronic filing.

MS. HANSEN: And on the business side for electronic filing, the major one change, all the returns are available as usual, according to the publication, but for this year certain foreign corporations for tax years after December 31<sup>st</sup>, if they have over \$10 million in assets and have to file over 250 returns, they are no required to file electronically like their domestic counterparts. And that was the major one change this year.

MR. WITMER: How about electronic payment?

MS. AIELLO: We do have a new, integrated file and partner for 2009 filing season, that's BullseyeTax, and they can be located on the Internet at Bulleyetax.com. And we have changes to the ATM and debit fee. For VISA there's an increase to \$3.95 per transaction and for MasterCard the change is 2.49 percent of the payment.

MR. WITMER: Okay.

MS. HANSEN: And on the business for e-pay, the only thing is for forms 943 and 945s you can this year pay your liability with a credit card, debit card, which wasn't available before January this year.

MR. WITMER: How about electronic federal tax payment system? The EFTPS? That still going well?

MS. HANSEN: It's still going way and it's also the preferred way the service would like to get the payments in.

MR. WITMER: Good, good to hear that. Ginny, every year towards the end of the year there's always concern about some of the things that are about to expire; I guess we call them the extenders. Were there some last-minute extenders or even some that were known before the end of the year?

MS. TARRIS: Yes, Les, there were. In fact, in the same law that increased the AMT exemption amount, Congress extended certain tax benefits. And the good news is that these tax benefits were extended for two years, so that we don't need to address this issue for 2009. So the tax benefits that have been extended are the state and local general sales tax deduction, the qualified tuition and related expenses reduction, the educator expenses reduction, the ability to make tax-free distributions for individual retirement plans, for charitable purposes and the D.C. First-Time Homebuyer credit was extended. Unfortunately, what was not extended for 2008 was the non-business energy property credit. That is the credit for items such as windows, doors and insulation. It will be enacted or extended for 2009, so you missed 2008 but you get it for 2009.

MR. WITMER: Okay. Bill, how about on the business side? Any significant things that were extended?

MR. WOOLF: Yes, just about everything that was threatening to expire was extended, which Congress likes to do. Especially in the general business credits – several of them were scheduled to expire, the research credit, the end in employment credit. And over the years Congress seems to always extend them, so we've learned in our forms and publications not to say the credit will expire, we say it's schedule to expire – (laughter) – because we expect Congress to step in. Not only do they extend it, they'll do some modification.

Several more general business credits were changed so that they're no longer limited by your tentative minimum tax, so more people would be able to claim them. Credits such as the 8586, the low-income housing credit and the rehabilitation credits. And for tax years ending after October 3<sup>rd</sup> of 2008 the energy credits, along with the 3468, it's going to strain some changes for tax years ending after, because you need to look at when the client's taxes are entered to determine whether it is subject to the tentative minimum tax limitation where it's not. The 3468 form has changed to reflect that.

MR. WITMER: Okay, good information, thanks for sharing that. Susan, thank you for being part of the show and the rest of you will be joining us in the second panel. Thanks for providing a very good background for that discussion, but before we get to that let's go back to Phyllis for the headline news.

(Music.)

MS. GRIMES: Here are the top stories from the IRS. IRS announces new members to IRSAC and IRPAC. The IRS has named four new members to the Internal Revenue Service Advisory Council, or IRSAC, which provides an organized public forum for IRS officials and representatives of the public to discuss key tax administration issues. The four new members will join 26 returning members in 2009. In addition, the IRS has named seven new members to the Information Reporting Program Advisory Committee, or IRPAC. The appointees will join 27 returning members who are in the second year or third year of a three-year term. For more information see the newsroom page on IRS.gov.

E-file tools and resources: IRS is looking for tax practitioners to help spread the good news about e-file by making full use of the electronic tax resource guide for the 2009 tax season. Developed by IRS' electronic tax administration last year, the guide provides useful articles about electronic tax filing that you may want to place on your website, including your client newsletter, or add to a client mailing. The guide also included downloadable and customizable resources such as payroll stuffers, vacation-leave and earnings statement messaging and web videos. Bottom line: The materials in the guide are for you to use in whatever way is most helpful to you and your business. The guide can help your business this filing season while you help taxpayers take advantage of the safety, security and convenience of e-file. For more information see the tax professionals section of IRS.gov.

Also, marketing e-file to your client has never been easier. As an IRS-authorized e-file provider, you have many tools to grow your business. From e-file promotional products to informational publications, the free IRS e-file marketing toolkit has the resources you need. The kit is designed to provide you with tools and advertising aids to help increase your e-file and e-

pay business and keep your individual and business clients coming back. These professionally-developed materials include e-file posters, window decals, desk signs and much more. You can order the entire marketing tool kit, publication 3005, or just the elements of the kit that work best for you, by calling 1-800-892-3676. To view what's in the marketing toolkit, visit today's resource page.

E-news for small businesses: If you have small-business or self-employed clients, keep up with the latest IRS news and announcements by signing up for a free subscription to e-news for small businesses. Just go to IRS.gov, type in e-news for small businesses in the upper right-hand corner search box and click on subscribe to e-news for small businesses. Visit the resource page for links to other subscription services.

IRS focuses on international tax gap: One of IRS' greatest challenges is to close the international tax gap: the difference between the amount of tax owed and the amount of tax paid voluntarily and on time. IRS international has created the international tax-gap series to educate the public on a variety of international issues. Click on the link international tax gap on today's resource page for the new article.

Now let's continue our conversation on "Getting Ready for Filing Season 2009." Joining our panelist are Teddy Prioleau, an enrolled agent in Baltimore, Maryland, and Frank Degen, an enrolled agent from Setauket, New York. Les?

MR. WITMER: Thanks, Phyllis. Welcome to both of you. You both heard during the first segment a lot of the information about changes, also from Commissioner Wagner on some of the things that the IRS will be doing as far as payment. And so I guess a good place to start is maybe to get your views on what are some of the more significant issues facing the practitioner community through this upcoming filing season, both involving processing tax law change and the economy?

THEODORE PRIOLEAU: Well, one of the things that I think is on the minds of many enrolled agents and other tax practitioners is how will our clients pay us and how will our clients pay the IRS, because if you think about it, many, many businesses have shut down. So not only did the \$30,000 a year client lose his job, but his boss lost his job making \$100,000 a year. So those income streams aren't there for that client – that taxpayer anymore, and so we've got to think of some other ways that the IRS can be paid and/or we can be paid.

One of the things that I'm considering is definitely using what we call in the tax-preparing community bank products. And I'm not necessarily referring to the refund-anticipation loan, but there are other bank products out there where I can file the client's tax return and I can deduct my fees from the client's refund and my fees will come to me and the client doesn't have to come out of his or her pocket. I think that's going to be a viable, viable alternative this coming tax season. And we're going to have to educate our clients as to the possibilities as far as them paying the IRS, whether they be installment agreements, offers and compromises or others, but whatever – we're going to have to be proactive.

MR. WITMER: Frank?

FRANCIS DEGEN: Well, I think the most pressing issue for the practitioner community are the new disclosure regulations under code section 7216. Those regulations were last updated in 1974 and they were due for an update; we now have electronic communications, now type electronic signatures, so we appreciated the fact that they were going to be updated. However, the final product to some degree has left the practitioner community quite concerned. There are consent to both use taxpayer information and consent to disclose taxpayer information. I think the tax-practitioner community is pretty well set that consent to disclose is quite appropriate and there's very little, if any, argument with that.

However, the consent to use is really created a raging argument, if I could use such words – in the practitioner community. I'll give you an example: If you read the regulations literally, if a taxpayer – let's suppose you're a taxpayer client of mine. And we do your tax return and as the result of your return I say, Les, I recommend you send a thousand dollars in every quarter in estimated tax. Six months later you call me up and you say well, Frank, I got a bonus of \$10,000, what should I now do on my estimates? Well, if I read the regulations literally, I say to you, Les, I can't answer that question yet, you have to give me a consent in writing to use your information so that we can have this discussion. That's the literal. There's a majority of the practitioner community, and I'm included, don't believe that's the intent. But there's a substantial minority that say this is what it says.

So we're hoping for a little bit more guidance down the road, because it's just simply crazy, the example I gave you, if that's a necessity. So we are hoping for more guidance on that. The second thing, I think, and it goes along with what Ginny gave a good explanation about the First-Time Homebuyer Credit, but from a practitioner's standpoint I don't think many taxpayers who this will apply to understand fully that this is a loan. It's easy to say we're going to give you \$7500 now and pay back \$500 over 15 years – that's easy to say. (Laughter.) But when it comes time to pony up the \$500, it's not going to be so easy. I mean, there is a great advantage in having an interest-free loan, but I do think though that practitioners are going to have to spend some extra time explaining all the ramifications to the taxpayers.

And one other thing that might be significant from a practitioner's standpoint is in tax planning, is if it happens that a married couple takes this credit, if there's a divorce the credit's going to go along to the person who keeps the house, so that might be part of your planning, that if it goes to one house that spouse is going to be responsible for that \$500 a year. It's just something to be concerned about.

MR. WITMER: We've gotten a couple questions in on that area. Also, Frank, we got some questions in on the other one and harking back to the fact that we did a program with the Office of Professional Responsibility that brought up the disclosure issues. From my recollection of the program, I think the intent of what you were talking about was certainly there from the IRS side, but as you said, there may be some further information needs to come out. I think our panel members aren't the experts on that, but it certainly does have an impact on the filing season.

Let me hit some of these questions on the first-time home: Can two single individuals buy a home together, for example two siblings or two unmarried people and each claim the \$7,500 home credit if the home costs \$150,000 or more?

MS. TARRIS: No. The credit is \$7,500 or 10 percent of the purchase price of the home if that is less than \$7,500. These individuals who purchase the house will have to allocate the \$7,500 credit between or among them.

MR. WITMER: Okay. "Is this only for homes sold during 2008? What about someone whose spouse died in 2008 but the house isn't sold until 2009?"

MS. TARRIS: Oh, you're talking about the exclusion for the sale of a principal residence. Yes, it should continue to apply for 2009 as long as the other use and ownership rules have been satisfied.

MR. WITMER: Okay. "An elderly person, 70 years of age, has Social Security and a small pension. She bought a home for the first time in September 2008. Her pension amount is small enough that a tax return is usually not required. Will the First-Time Homebuyer credit still be good in her case? Starting in 2010, if she elects to have federal tax withheld from Social Security or pension, will that count towards her repayment of the First-Time Homebuyer credit, as she normally has no tax?"

MS. TARRIS: Well, if she has additional tax withheld, but she would not really need to pay that tax on her pension or her Social Security, then she is, in effect, repaying that \$500 credit on a monthly basis. So she would have to file a tax return, but that amount she had withheld on her pension or Social Security –

MR. PRIOLEAU: She just needs to be careful that in the ensuing years, let's say she purchased that home in 2008, beginning in 2010, it needs to be repaid. So someone needs to tell her exactly what's going to transpire from here until that's paid. And she also needs to be warned that if, you know, let's say five years from now, she no longer has that home, she's going to be responsible, if I'm not mistaken, she's going to be responsible for paying the rest of that back all at one time. Am I mistaken?

MS. TARRIS: That is correct. If you dispose of the house, if the house is no longer your principal residence at anytime during that 15-year period, then you must repay the entire amount of the unpaid credit back to the government in that year. However, not wishing to be morbid, but this is an 80-year-old woman, and if you die, there is not repayment – not further repayment of the credit necessary.

MR. WITMER: Okay.

MR. DEGEN: Given that woman's circumstances, I wonder if taking the credit as an election, whether it's worth it in the long run.

MR. PRIOLEAU: You see, that's an excellent point. It is an election.

MR. DEGEN: That adds to the point.

(Cross talk.)

MR. PRIOLEAU: So you have to choose to take that credit.

MR. WITMER: That's a good point, and that's one where a practitioner should be helping the client, advising the client on.

MR. PRIOLEAU: That's absolutely correct.

MR. WITMER: Here, let's hit one more on this and then move on, but we've – apparently, this is, as you said earlier, Ginny, a hot topic. Regarding the new First-Time Homebuyer credit, I have several clients who have purchased a home under a land-contract type of purchase. If all other requirements are met, would these taxpayers qualify for this credit? Is a land-contract purchase of a home a qualifying purchase when the proper legal documents are filed with the county reporter's office? What is a land contract?

MS. TARRIS: Land contract is where you are kind of making monthly payments on the home. It's almost – it's a type of mortgage, if you will –

MR. WITMER: Yes.

MS. TARRIS: And, in fact, that will qualify for the First-Time Homebuyer credit as long as everything else has been satisfied. It's the Land Contract Purchase Transfers Benefits and Burdens of Ownership; it's treated as real estate, whatever.

MR. PRIOLEAU: I practice in Maryland, but I do have a client in Michigan, at least one client in Michigan, and when they told me – this was way back in 1994, I purchased a home under a land contract, I had no idea what they were talking about. And Susan was on the panel a little earlier, she said that she's heard of the land contract being – I don't know whether popular is the word or not, but in Kentucky, there are land contracts. So we probably do need to be a little bit more aware of what that land contract situation entails.

MR. WITMER: And, Teddy, you, one of the things you mentioned was the problem with taxpayers on pay and the whole area of economic stimulus. We're getting a good many questions that have come in on the economic stimulus calculator. How do you calculate that? Do you want to elaborate on that, Ginny? How does someone calculate the electronic stimulus, does the IRS have some help here?

MS. TARRIS: Yes. At the time you received your economic stimulus payment, you should have received or soon thereafter noticed 1378, which will – tells you what the notice, what the amount of your payment was. If you did not get it or if you have lost it, there is a site on irs.gov that you can go into and it will tell you what the amount of your economic stimulus

payment was. You enter your Social Security number and other information, it requests and then it tells you what you got.

MR. WITMER: Okay.

MR. PRIOLEAU: And the tax professional community would like to know, if we enter that rebate incorrectly on the 2008 tax return and we electronically file it, we're wondering, will that be rejected or will the IRS correct it?

MS. AIELLO: We have a resolution system that would kick that out and we'd make the correction on the return for what was actually taken in.

MR. PRIOLEAU: Okay. So it will go through.

MS. AIELLO: It should go through, yes.

MR. PRIOLEAU: Okay, very good.

MR. WITMER: Okay, and just a reminder that that site that Ginny was talking about is linked from our "Tax Talk Today" resource page, so people can go to it. Earlier this week, Commissioner Doug Schulman of the IRS issued a statement, and let me just read a part of that. Quote, "we need to ensure that we balance our responsibility to enforce the tax law with economic realities facing many American citizens today. We want to go the extra mile to help taxpayers, especially those who have done the right thing in the past and are facing unusual hardships."

It goes on to talk a little bit more about some of the things the IRS is doing, including what Commissioner – Division Commissioner Wagner talked about as far as payment. And I guess a question to both you, Teddy, and Frank is, as practitioners, how are you going to handle this? You're going to have some people be coming to you for the first time who maybe have – you know, it's not the return that you did last year. It's going to be a different situation. They might have lost their job, lost their home or dipped into their savings, their 401(k). How are you going to handle this?

MR. PRIOLEAU: You're right, Les. We'll have clients who have been coming to us for five, 10, 15, sometimes 25 years. They've been honest as far as you can tell, they've always, always paid their taxes on time. It's going to be a different landscape this year. But one thing for sure is, I will let them know that they need to pat Congress on the back, because Congress passed the Debt Forgiveness Act. And just a little bit about it, I can draw a parallel to what happened back in 1997, I believe it was, where if I owed my favorite retailer \$5,000 and I just simply could not pay and time has gone on and time has gone on and I called my retailer and I said, you know, I'd like to negotiate with you. And I say, you know, I'm going to pay you \$1,000 if you would just go away. I pay them \$1,000, but what would happen is, the difference between that \$1,000 and the \$5,000, I have to pay taxes on. And that retailer is definitely going to send me a statement which is going to say, okay, you have \$4,000 in taxable income. Okay, now, let's bring that forward to 2008. In 2008, if a similar incident happens with your mortgage,

Congress is saying, you know what, we are not going to put this burden on you, we are not going to require that you included that mortgage on your tax return. And I'm going to repeat this: Congress needs to be patted on the back for that. That would have made –

MR. DEGEN: That will only apply to your principal residence, so you have to be careful that you if you have a rental property – and to go back to what you mentioned about Commissioner Schulman, I'm sure the practitioner community is thrilled that he's given good, sound advice in terms of the IRS having to be responsive to the economic times. But, as the trickle-down theory, when we get to the person out in the field who will interact with practitioners, we hope they get that message. Revenue officers or ACS personnel understand that there is now some flexibility, certainly on a commissioner's part, so we hope that they will follow through on that. That remains to be seen, but we're hopeful.

MR. WITMER: What about the what-ifs, all these different scenarios, Frank? How –

MR. DEGEN: Yeah, that's a good success story, Les. On the IRS website, there's now a what-if section that says, what if I lose my home, what if I'm laid off, what if I take a withdrawal for me 401(k) and many issues, and where that came from is the commissioner reached out to IRSAC, the Internal Revenue Service Advisory Council, of which I am a member, and he asked them for some input on how the IRS could react to this – to taxpayers, interact with them in terms of the downtimes that we're now having. So a subgroup of IRSAC came up with this idea of having a section on the website, "What If?", answering a lot of questions that taxpayers will have.

And the good news is, the IRS listened to the input and it's now a product. So it's really a great story in a sense: The service asked for input, the practitioners gave it to them, it was implemented. And sometimes we complain, because often when we give input, it's not always acted on, but this was a win-win for everyone, so we're happy about that aid to the taxpayer.

MR. PRIOLEAU: And the what-ifs are realistic situations such as, well, we know that many, many businesses have shut down. These employers or these employees won't be receiving their W-2's, more than likely. So instead of filing your tax return and including a W-2, you can use a 4852, which is a substitute for the W-2. My question is, and maybe some of the panelists can address this, what happens with the 4852, because we read the instructions. If I remember correctly, it says that you can't file that form before April 15<sup>th</sup>. Well, we're going to have a lot of clients, a lot of taxpayers out there who really don't want to wait for April 15<sup>th</sup>. So we are wondering, is the requirement – is it a requirement that they wait for April 15<sup>th</sup> or is that just a recommendation from the IRS?

MS. AIELLO: The practitioners really should do their – encourage the taxpayers to wait until they have their W-2s. If they can't get it, then that would be a solution. And I don't believe you have to wait until April 15<sup>th</sup>, but as I said earlier, if the taxpayer is having a problem, they can call the 800-number and we will try to contact the employer to get the W-2. But that is a – there's a reason for the substitute W-2, and you can use that.

MR. WITMER: What's the timeframe there, Nancy? How long should they wait before they contact?

MS. AIELLO: Well, in order to give the employers enough time to get them mailed and the postal service to deliver them, they should wait until about mid-February before they start panicking. (Chuckles.)

MR. PRIOLEAU: Yeah. I certainly, and I don't know about Frank, but I certainly will not prepare a tax return and transmit it or mail it off before January – before February 1<sup>st</sup>, if it has that 4852. I certainly will not do it.

MS. AIELLO: Right. And that's good practice.

MR. WITMER: Nancy, as the service centers are the processing centers, are you expecting anything – I mean, again, it might be looking a little bit into the crystal ball, but with the economic situation the way it is, are you expecting people to file earlier to get a refund or are you expecting people to wait, file extensions? Any projections out there or are you just not sure?

MS. AIELLO: Well, the tendency for those who want refunds is to file early. And the people who owe usually file later. But it's better to file even if you can't pay on time, because you don't want those penalties to add up.

MR. WITMER: Right, good advice. Here's a question, something we haven't – well, we kind of alluded to this, and that is the, some of the people, again, what if. They might have dipped into their 401(k). Here's one where the required minimum distribution for IRAs are not required in 2009. For those required to take their first RMD in 2009, can we skip the payment in 2009? What are we talking about here, Ginny?

MS. TARRIS: Well, you – when you reach age 70-and-a-half, you are ordinarily required to take a minimum distribution from your IRA every year. For 2009, for the 2009 year, you are not required to take that required minimum distribution. For the 2008 year, however, you are required to take it. But that 2009 required minimum distribution, or no longer a required minimum distribution, it could be paid as late as sometime in early 2010. So it is a 2009 year required minimum distribution that doesn't have to be taken but the 2008 required minimum distribution, you may take in 2009, but –

MR. WITMER: And for anybody –

MR. DEGEN: The service, the IRS just put out a notice that practitioners may want to avail themselves of. It's within the last two days, I believe. It's Notice 2009-9 and it addresses one issue that Ginny mentioned for the newcomers. Those who turned 70-and-a-half, they do have until April 1<sup>st</sup> of any year to take their first distribution, but for those who turned 70-and-a-half in 2008, the notice clearly says that they must take that distribution by April first. So the 2009 distribution is for the calendar year 2009, for that tax year, not for – so that notice might be worthwhile to jot down for folks.

MR. WITMER: Okay. We haven't mentioned IRAs on the – when you talked about changes for 2008, for filing. Any changes in the area of IRAs?

MS. TARRIS: Well, yes. The amount that you can deduct or that you can contribute to your IRA has increased to \$5,000 per taxpayer. So if you're married, filing jointly, you can each deduct, contribute \$5,000. And if you are age 50 during the tax year or by the end of the tax year, you can contribute an additional \$1,000.

MR. WITMER: Okay.

MR. DEGEN: Les, speaking – if I can interrupt you, speaking of IRAs off 401(k)s, I suspect from a practitioner's standpoint we'll see many more distributions, early distributions that may be subject to the 10 percent penalty. So I think practitioners ought to familiarize themselves with, is there any possibility on a 5329 to avoid the penalty, but the one thing that they do have to remember is that any type of hardship withdrawal, no matter how bad the plight of their taxpayer is, is not an automatic pass on a 10 percent penalty. There is no such thing. There are specific exemptions in Code Section 72T which allow you to perhaps avoid the 10 percent penalty. But I suspect we're going to see quite a few of those this year.

MR. PRIOLEAU: And in talking about the changes from 2008 to 2009, we are kind of wondering – and I'm not going to pose this question to anybody, but we are just kind of wondering how come the energy credits went away in 2008 and are coming back in 2009, because our poor friend over here – (laughter) – she broke windows in 2008 and she's going to take the credit. (Chuckles.)

MR. WITMER: And that's something I think we can maybe talk about a little bit later, because part of your job is not only filling out tax returns for 2008 but advising your people and you've got to be aware of the changes for 2009. With all the speculation out there, I think we're going to probably see some changes in the tax law involving energy, from everything that this new administration is talking about.

MR. PRIOLEAU: I can guarantee you, Frank and I will be in class all year.

(Laughter.)

MR. WITMER: Ginny, you mentioned earlier when you were talking about federally-declared disasters, that there were some significant ones in Midwest. You want to elaborate on that? What happened? We had some that were declared during the year in Midwest, does that – what are the ramifications for this year's filing?

MS. TARRIS: Yes. Well, as you may know, there were some severe storms, tornadoes and flooding in certain parts of the Midwest during 2008, and tax relief has been provided that is very similar in many respects to the tax relief that was provided after Hurricane Katrina to taxpayers in the Midwestern disaster area. And those are all described in quite a bit of detail in Publication 4492B, which is very close to being finalized and will be available to taxpayers very soon. One thing to notice is that there is a new form, 8930, and that will be used for withdrawals

from and repayments to your IRA if they are made in connection with Midwestern-area disasters. That's something that Frank mentioned – hardship, distributions and some exceptions. That is one.

There is also – there were also some tax benefits provided for some of the storms in Kansa, from May of 2007. Not as many benefits as in the Midwest, but certainly some additional benefits, and those are described in Publication 4492A. Once again, IRA distributions is one area where you get some benefits. And additionally, in addition to the increased standard deduction that could be available for losses resulting from federally declared disasters, there are also some additional benefits that are provided now. You can carry net-operating losses that may result from taking deductions relating to federally-declared disasters. You can carry them back for five years. And in addition, if you itemize your deductions, you can deduct the losses from federally-declared disasters without regard to the 10 percent of adjusted gross income limit. And here, perhaps it's worthwhile mentioning that that provision also is one of the provisions in the Midwestern relief.

MR. DEGEN: IT's also interesting in the Midwestern relief. I come from Long Island in New York, and I said, I don't need to know anything about this, but it's interesting for education credits. They are doubled in the Midwestern disaster area, but they don't apply to where you live, they apply to where you go to school. So I may have clients in New York, or Ted may have some in Maryland that'll go to school in the Midwest, and they are eligible – you know, depending on AGI and the other requirements, they are eligible for double education credits. So as practitioners, we need to ask our taxpayers, you know, Bobby's gone to school? Where does he go to school? That's an important question. Many of us ask that, but be cognizant of the fact that if it's in this area, you can double the education credits, which is a significant amount of money.

MR. PRIOLEAU: Yeah, and you know, to kind of highlight one of his points, generally, we will ask the client, okay, how much did you pay for tuition? Client says, \$20,000 and we just determine which is going to be better, the Hope Scholarship credit or the Lifestyle credit. Well, now, we have to ask, as Frank said, okay, where does this particular child go to school? So that's another thing we have to be proactive about.

MR. WITMER: Bill, how does this affect businesses? I mean, you have businesses who might have some of their workforce or maybe a plant in this area, their headquarters might be somewhere else, how does this disaster thing affect business returns?

WOOLF: Right. It could affect businesses, generally, ones that are affected by the disasters. There's a trend here. Katrina was a major disaster, and we did a publication, 4492, and then with the Kansas disasters in 2007, the tornados and storms, we came out with a 4492A. And it was much smaller because Congress only applied part of the Katrina provision.

Now with the Midwestern storms from May and June of 2008, Congress applied some more provisions. So we have a 4492B. And I'm sure that the next major disaster that comes along – we'll probably be doing a 4492C. (Laughter.) But for businesses and the 4492B for the Midwest, we brought back the NOLs, such as Ginny discussed, the 50 percent deduction, instead

of capitalizing the demolition and cleanup costs. The rehabilitation credit was increased for the buildings that were affected in an area.

Now, with Katrina, it was just buildings located in the Gulf Opportunity Zone, but the Midwestern – it's buildings that are actually affected by the storms. Also, the Employer-Employee Retention credit, where your business is destroyed but you keep paying wages to your employees to help them out, there's a credit for making those payments. And also, the Employer Housing credit, where you're housing employees who may have lost their house on that, there's a credit for that.

And maybe one thing that might slow down the 4492C is that Congress started thinking ahead and passed some provisions that would apply to all future disasters, now known as federally declared disasters – things such as the Special Depreciation Allowance, the 50 percent special allowance, was extended through 2008 by the extenders, but for federally declared disasters, once an area has been determined, that amount will be available in that area, even after 2008; it will automatically kick in. And for the Section 179 deduction, I believe there's an extra \$100,000 they can take in those areas. So Congress has started to put into the code some things that will automatically kick in once there's a federally declared disaster.

MR. PRIOLEAU: And Bill spoke eloquently about some of the changes regarding sending in the 1120s late, and how the amount of the penalty has increased. And my question is, does the IRS have an abatement-type of relief for those clients?

MR. WOOLF: Yes, as with most penalties, reasonable cause – if there's a reasonable cause that the return is late, then you should explain that and attach that to the return.

MR. PRIOLEAU: Well, we filed late; that's reasonable. (Laughter.)

MR. WOOLF: Right, whatever has produced results in the past, right? (Laughter.)

MS. TARRIS: Les, there is one other area for disasters. This relates to Hurricane Katrina. I know that was a long time ago, but if, at that time of Hurricane Katrina, you had disaster losses or casualty losses that you deducted on your tax return at that point, and now, you receive a grant that reimburses you for, sort of, the same loss, instead of having to take that grant into income in the year you receive it, you are now allowed to go back and amend the tax return that you originally deducted that loss on. So that, certainly, would only be taken by a taxpayer who would benefit from it – whose taxes this year are higher than their taxes that year. And you must file an amended return before the later of one year from the time you receive the grant, or July 30, 2009. So that is an additional benefit for Hurricane Katrina.

MR. WITMER: Okay. One of the basic things that I guess – I know we put it on our resource page – but you might want to just mention some of the things that have changed – I guess we call them rate changes. They happen all the time, but what are some of the things that people should be aware of, here?

MS. TARRIS: Yes, these are our inflation adjustments – our annual inflation adjustments. The personal exemption has increased to \$3,500. The standard deduction for taxpayers who are married, filing a joint return, or for qualifying widowers, is now \$10,900. It is \$5,450 for taxpayers who are married, filing separately, and it is \$8,000 for heads of household. And I may not have mentioned, it's \$5,450 for single taxpayers also. And the Earned Income credit has also – the thresholds and the amount of the Earned Income credit has gone up. And it's also worthwhile mentioning, at this point, that you do not need children to be able to claim the Earned Income credit.

As long as your earned income is below the thresholds, you can claim the credit. If you have no children and you are single, you are entitled to – or can claim some part of the Earned Income credit if you earned less than \$12,880. If you're married, filing jointly, that amount is \$15,880. And the maximum credit, then, could be \$438. If you have two or more children and you're single, the earned income amount is up to \$38,646, and if you're married, filing jointly, it is \$41,646. And the maximum credit that you would be allowed is \$4,824.

And finally, the standard mileage rates went up, and in fact, unlike in most years where they go up once, this year, because of the increase in gas prices, they went up twice. So there's one rate that is available for the period January 1<sup>st</sup> to June 30 and one rate that's available for the period from July 1<sup>st</sup> to December 31<sup>st</sup>. So the rates are, for business use of your vehicle, 50.5 cents through June 30, 58.5 cents from July 1<sup>st</sup> through December 31<sup>st</sup>, and 19 cents for mileage incurred in moving or to get medical care or 27 cents from the period from July 1<sup>st</sup> through December 31<sup>st</sup>.

MR. WITMER: What about charitable? Did that change at all?

MS. TARRIS: No, the amounts of charitable contributions did not change, but you are now required to have receipts that represent the amount of your charitable contributions for all contributions. Now, for – those could be bank records such as cancelled checks or credit card receipts or those could be a letter from the charity thanking you and acknowledging you for your amount – the amount of your gift.

(Cross talk.)

MS. TARRIS: The charitable amount of mileage is fixed by statute at 14 cents. That never changes, except in the case of something like Hurricane Katrina, Midwestern – that has gone up.

MR. PRIOLEAU: Yeah, and as far as the mileage change is concerned, we were presented with this a number of years ago – seven, eight years or so ago – where heretofore or, prior to that, we could just say, okay, client, how many miles did you go for business? Oh, 1000 miles, well you multiply 1000 times – well, you can't do that anymore. Now, we need to know how many miles were incurred from one period to another and then from that period to the end of the year, because the rates are different. So somehow or another, we're going to have to get our clients to go back and make sure that the mileage that they say they incurred within a specified time, they actually did incur.

MR. WOOLF: You didn't call your clients on June 30<sup>th</sup>?

MR. PRIOLEAU: I did not.

(Laughter.)

MR. WITMER: I guess there's where a log is really important, to keep the dates and the miles where you can do that.

MR. PRIOLEAU: Absolutely, and the IRS says that, really, the taxpayer should keep his or her records contemporaneously, which means as you go. The IRS really doesn't want you to sit down at the audit table and then go back and recreate – (chuckles) – and none of our clients do that, by the way – none of them recreate records.

MR. WITMER: How about charitable contributions? That's another one that you mentioned record keeping – what are some of the things you look for or try to advise your clients as far as keeping records on that?

MR. DEGEN: In combination, these two things, especially with contributions that are more than \$250 – they're not only what Ginny said – all contributions, regardless of size, must be documented. But if it's \$250 or more, you must have a contemporaneous receipt from the charity that has to be in your possession either by, I think, it's the earlier of the due date or the date you filed your return. It is very interesting – there was a tax court case just this past year where the judge looked on a taxpayer that had given over \$6,000 – they tithed – to their church. And the letter from the church was dated January 8<sup>th</sup>, 2008.

This was a 2006 tax year, but the taxpayer went to the church to get the letter because the audit was in 2008 or the trial was. And the judge says, there is no doubt in my mind that you gave the \$6,000. But the law says, you have to have this document before you file your tax return. So, please, if you're a practitioner, understand that you're not going to get any sympathy. You must have those acknowledgements for \$250 or more before the return is filed.

MR. PRIOLEAU: Yeah, in the field, we get a lot of, oh, you know what, I can always go back and get my church to do a receipt or send me a statement. That is not acceptable to the IRS.

MR. WOOLF: What date will they put on it?

(Laughter.)

MR. PRIOLEAU: Good point.

MR. WITMER: We're getting a good many questions, so let me go to some of them and see how they relate to things we've already talked about. We've seen – maybe this energy thing has caught people by surprise, but we seem to be getting, still, questions in. "Since the energy

credit has not been extended, are people out of luck who installed windows or upgraded with qualified purchases in 2008?” Nancy, I’m going to ask you.

(Laughter.)

MS. AIELLO: That message is loud and clear to me, yes.

MR. WITMER: So there’s nothing that can be done for somebody who purchased in 2008? They should have waited until 2009.

MS. AIELLO: Yes, unfortunately.

MR. WITMER: Okay. “Where do non-cash donation of services get reported?” What are we talking about here? We’re talking about charitable contribution.

MS. TARRIS: Right. Well, in that case, I can say thank you very much for making those services, but you cannot deduct the value of the services anyplace on a tax return. You can deduct your out-of-pocket costs – parking, tolls, any supplies that you made or something like that, mileage, as I said, at 14 cents a mile – but you cannot deduct the value of services.

MR. WITMER: Here’s an interesting: “May a taxpayer who’s being claimed as a dependent claim the First Time Homebuyer’s credit?”

MR. PRIOLEAU: I don’t think there’s anything in the provision that talks about that.

MS. TARRIS: No, I don’t think so.

MR. PRIOLEAU: I really don’t believe there’s anything in the provision that talks about that.

MR. WITMER: From the standpoint of the fact that they would have to file a return in the future to pay it. In the future, they wouldn’t be able to be claimed as a dependent to file that return, I would imagine. I answered one. (Laughter)

MR. WITMER: “A time-consuming problem I encounter every year is waiting for the 1040X to process. An example: Parents find they can’t claim their son or daughter as a dependent because their child has filed a return and claimed themselves.” It goes on, but the bottom line is, how long does it take to process a 1040X?

MS. TARRIS: Under normal circumstances, it would take six to eight weeks. Of course, depending on when you mail it is, if you wait until April 15<sup>th</sup>, that adds additional burden, so my recommendation is, don’t mail it on April 15<sup>th</sup> and it should take six to eight weeks. Mail it on April 15<sup>th</sup>, whatever. (Chuckles.)

MR. PRIOLEAU: This person’s saying that every year, their child is filing a return claiming themselves?

MR. WITMER: No, I think it's a practitioner who, probably, has had several different clients. (Laughter.) "A baby born on 12/26/08 and remained in the hospital the rest of the year and into 2009. Question: Is the baby considered as living in the taxpayer's home for Earned Income Tax Credit purposes?"

MS. TARRIS: Yes, the baby is considered living in the home. Being in the hospital is merely a temporary absence.

MR. PRIOLEAU: As well as someone who has suffered an unfortunate death of a child – if that child was born in 2008 and took one breath on this Earth, that child is considered, as long as all the other requirements are met – that child is considered a dependent and a person of that household for the entire year.

MR. WITMER: Okay. Does the taxpayer who owned a rental property in the last three years, but not a resident qualify for the First Time Homebuyer credit?

MS. TARRIS: If they did not own a principal residence – a main home – within that three-year period, the fact that they owned a rental home is irrelevant for the First Time Homebuyer credit.

MR. WITMER: Okay. Will electronic filing be for the entire year? You mentioned that it's – we're just starting up with it. What are they talking about here?

MS. AIELLO: Generally, the electronic filing is shut off after the last extension date. So I don't know of any change to that this year.

MR. PRIOLEAU: And that final extension date is October 15<sup>th</sup>.

MS. AIELLO: October 15<sup>th</sup>, correct.

MR. WITMER: Let's talk a little bit about electronic filing; you mentioned it in the beginning and some of the changes. But you mentioned that, you know, this is something we've used to improve error rate or, possibly, reduce the number of errors. Can you give some information on that? What are we talking about?

MS. AIELLO: Sure. Electronically filed returns, the error rate is generally 2.45 percent, whereas with a paper return, the error rate is over 28 percent. So electronically filed returns do save a lot of resources for the service, and I'm sure the practitioners enjoy that luxury, also.

MR. PRIOLEAU: And, Les, I'll tell you that many, many tax professionals vowed, we will never electronically file a return. But I'd be willing to bet you that probably – oh, I don't know, Nancy may know the figures – but probably 80 to 85 percent of us are now electronically filing our clients' tax returns, because not only does it speed up the process itself, but it also speeds up the refund, and we all know that. Also, instead of the client waiting, you know, eight

weeks to find out whether or not somebody has claimed his or her child, we will now know that within 24 hours. So that's – we love electronic filing.

MR. DEGEN: And it's gotten to the point where some practitioners actually charge an extra \$25 or whatever the fee is to file a paper return, because their office is automated, if you will, to a certain procedure, and it becomes a problem.

MR. WOOLF: And if you file electronically, you don't have to worry about the IRS changing the filing addresses every year. That's why they're shifting it around, because in some states, more people are filing electronically, so there's less work, so it needs to be shifted to another –

MR. WITMER: Sticking with the processing centers, last year, I think we talked about the split refund; people can still do that?

MS. AIELLO: Yes, they can still determine where they want their refund, up to three places. Of the 71 million refunds issued through direct deposit last year, we only had a little more than 213,000 that chose to split their refund using the form 8888. Of course, you can't use the split refund if you're filing with a 8379, which is an injured spouse. And we also, I think, last year, talked about the paper check conversion program. That still is something that the service is doing?

MS. AIELLO: Yes, we've expanded a little bit to the sites that don't process returns anymore but still receive mail. And it's really like – you may have seen it more with your banks where you get a copy of your check rather than you getting the check back.

MR. PRIOLEAU: And having it go to multiple accounts is, I mean, that's absolutely great. You can have one go to your savings account at this credit union, one go to your checking account, one go to your money market – that's a great option. I just think that many tax practitioners are failing to inform their clients that that option is available.

MR. DEGEN: I think part of the problem is, from the practitioner's standpoint, they think it's more work – more of an obstacle, because sometimes, you'll say to a taxpayer, do you want your money direct deposit into an account? Oh no, because the government will know about my bank account. I mean, you know – what are these people thinking? But you do have people that hem and haw, now, given the option that, now, do you want to split it into two or three accounts? A lot of practitioners just say, I don't think it's worth the effort; let's just do it in one and get on with it.

MR. WOOLF: You need those account numbers for all of the –

MR. DEGEN: It is quite useful, though, with married, filing jointly couples that sometimes, where there is a little bit of animosity, shall I say, in the situation. They want to file jointly because it's beneficial tax-wise. And this way, there's a guarantee that they're each going to get half of the refund, and they'll –

MR. WITMER: E-service is – we’ve done programs in the past on electronic filing and e-services, and that, of course, was one of the benefits that came on as a benefit if you e-file it now, it really can go out to everybody. E-service is something that really helps the practitioner community?

MR. PRIOLEAU: I love e-services. I’m pretty sure Frank has used e-services far more than I have, but I love being able to go to the IRS electronically and download the client’s income information or tax return information and those kind of things, because a lot of times, I don’t have the time to do that when I’m in my office. So if I’m at home and my wife is cooking or whatever the case may be – and I’m not being sexist – I can sit on the couch and I can go to the IRS electronically; I can download that information and the next morning, I’ve got it right there in front of me before that client even gets in.

MR. DEGEN: I love it, too, but only about 90 percent of the time, because that other 10 percent can be quite exasperating.

(Cross talk, laughter.)

There are some problems where there’s a deceased husband still – I mean, that died 10 years ago, but you still have to put that – there are a few problems, but 90 percent of it works fabulously. But still, there’s a few idiosyncrasies in there.

MR. WITMER: You’d probably still have that problem if you were dealing with paper and the telephone. We’ve been talking a lot about individual.

Bill, we’ve got a couple of questions that go to the business side, so let me give them to you. They might be a little bit more specific. “Could you please clarify the new law for 15-year recovery, qualified lease-hold improvements effective after 12/31/07 and before 1/1/10, but qualified retail improvement property effective after 12/31/08 and before 1/1/10? Does this mean that improvements to retail property made during 2008 do not qualify?” What are we talking about here?

MR. WOOLF: Well, we’re talking about – there was an extension on the 15-year treatment for lease-hold improvements and restaurant property. You are leasing a building, but you have to make all of these capital improvements to make it look like what you want your store to look like. You’re allowed to write off those over 15 years. And there’s a similar provision for restaurants. And that was extended.

And there was a new provision for something known as qualified retail-improvement property. And that is only for after 2008. The other two were extended. And it’s taken on a Form 4562. And our publication on depreciation, 946, will discuss that, the definition. But the answer is yes.

MR. WITMER: Okay, please explain zero capital gains. I tried to make up a tax return – I tried to make up a tax return; wages 19,800 (dollars), a gift of property that was two acres sold

with no basis and selling price 7500 (dollars). I thought that there would be no tax on the 7500 (dollars).

MR. WOOLF: He's talking about the zero capital gains?

MR. WITMER: Zero capital gains.

MS. TARRIS: Well, there's no – there's zero capital gains tax on taxpayers who qualify for the first two tax brackets. So if you are qualifying for the 10 or 15 percent tax rate, then you should not pay any taxes on your capital gains.

MR. WOOLF: And based on those facts, it looks like there would be a zero-percent capital gains rate.

MR. DEGEN: It's hard to see, but it does sound like it should be zero.

MR. WOOLF: If it was 5 percent last year; now it's zero.

MS. TARRIS: Right.

MR. WITMER: Okay. We've got some more on the first-time homebuyers. If the 80-year-old client that purchased the house for the first time takes the \$7500 credit then passes away, that client doesn't need to pay back the rest of the credit. Does the estate pay the credit back?

MS. TARRIS: No.

MR. PRIOLEAU: No.

(Laughter.)

MS. AIELLO: At least there's unanimity.

MR. PRIOLEAU: I like that.

(Laughter.)

MR. WITMER: I would like to know, if we have a client who chooses to take the homebuyer's credit this year because they believe the closing of their home or purchase of the home will be by June 30<sup>th</sup> and then something happens. They took the credit and the sale did not happen by that date. What then?

MS. TARRIS: You shouldn't take the credit until the sale has happened. Now, if you – you may have to amend your 2008 tax return if you want to elect the credit for 2008 and the purchase happens in 2009. But if the sale has not happened, you aren't entitled to the credit yet anyway.

MR. DEGEN: The sale is on – the credit is on the purchase, not the contemplated purchase.

MR. PRIOLEAU: That's right. Now, you did mention that – and I think I kind of missed it – but you mentioned that there can be an election to show that the client purchased the home in 2008?

MS. TARRIS: Yes, if you purchased the home before the July 1<sup>st</sup>, 2009 deadline, you can elect on Form 5403 to treat that purchase as if it had occurred on December 31<sup>st</sup>, 2008. There is actually a checkbox on the form. And then, you're entitled to claim the credit for 2008.

MR. PRIOLEAU: Thank you, Congress. That's great.

MS. TARRIS: Well, I guess the bad news is you have to start repaying the \$500 a year in 2010 rather than 2011.

MR. PRIOLEAU: Forget about the thank you, Congress.

MR. WOOLF: And it's Form 5405, right?

MS. TARRIS: Yes, I'm sorry, did I say something else? Okay.

MR. WITMER: Okay: "A taxpayer was married last year and filed married, filing joint. This year, the couple is separated. How should the stimulus payment received for the couple last year be entered?"

MS. TARRIS: Well, if the couple is still filing married, filing jointly, whether they're separated or not, there would just be one amount shown on the recovery rebate credit worksheet. If they are married, filing separately, then they each claim one half of the economic stimulus payment from last year.

MR. WITMER: Okay.

MR. WOOLF: The wisdom of Solomon, cut the children in half, right?

(Laughter.)

MR. WITMER: Who qualifies for the additional standard deduction for local and state real estate taxes? And how is it reported?

MR. PRIOLEAU: Well, I can tell you.

MS. TARRIS: Go ahead.

MR. PRIOLEAU: I'm sorry. I can tell you this. I don't see that very often in the state of Maryland because the state of Maryland's income tax rate is fairly high. I'll say it that way. But generally, if a person lives in, say, Texas, Tennessee, Nevada, state of Washington, those clients, those taxpayers generally don't have a state income tax. And that's when that sales tax more than likely will kick in. So again, I don't see that very much in the state of Maryland. I don't know about –

MR. DEGEN: Well, what I would see is a lot of retirees, because retirees don't have – typically – don't have a mortgage. And of course, the mortgage interest deduction is your biggest deduction that generally exists. So many of them, especially with the increased standard deduction for people 65 and over as it is, they generally will take the standard deduction. So I can see this helping quite a few folks, giving an extra to a married couple, giving them an extra \$1,000 deduction. And so, in the 15-percent tax bracket, if it's there, it's \$150 that they're going to save.

By the way, they will check on – if they're practitioners, I'm sure their software is going to do this – but there is a box – I think it's box 39c – you check to tell the service that we are taking this extra deduction, because otherwise the standard deduction won't match up to your filing status.

MS. TARRIS: Right, and there is in fact the worksheet in the instructions, which presumably all the software includes that help you calculate that.

MR. WITMER: Okay, what if you have two single people living together who buy a new home together? One is single and has never purchased a home. The other has lived in another home for the last three years. How much of a credit can they use? Two single people.

MS. TARRIS: Well, yes. Has the single person who has lived in another home owned that other home or just lived there? Two single people who have not been first-time – who have not owned a home in the last three years can claim the \$7,500 credit. If two single people live in the home and only one of them is eligible for the first-time homebuyer credit, then that single individual is the one that would claim the first-time homebuyer credit.

MR. WITMER: Okay, we talked a little bit about – and we mentioned the news release that went out in the commissioner's statement – especially on payment but maybe we should just mention what some of the payment options are that people have as far as – if this is the first time, they don't have anything existing – what are some of the payment options they have? What can they do from the IRS standpoint? And also, what do you advise your clients when they come in?

MR. DEGEN: Well, I think installment agreements are going to be very prevalent this year. Offers in compromise, you know, not as easily developed, shall we say. The taxpayer has April 15<sup>th</sup> due, and they just don't have the \$10,000, whatever it is – installment agreements. And Congress changed the law a few years ago to allow for partial-pay installment agreements, which is a very powerful tool for practitioners to use. At one time, they wouldn't take an installment agreement unless the installment was going to pay off the liability over the remaining period of the statute. But now, there's a lot more flexibility. And of course, under \$10,000, it's

automatic. The IRS must give you the installment agreement. And up to \$25,000, it's what they call streamlined. And you know, you can fill out – I forget what the form number is –

MR. PRIOLEAU: Ninety-four, sixty-five.

MR. DEGEN: Ninety-four, sixty five. And attach it to the tax return and generally the service will honor it. Of course, if it's a very large bill, then you'll probably have to talk to somebody in collections. I think we're going to see a lot more of those. And based on part of what Commissioner Shulman said, we have to expect that they will be readily granted.

MR. WOOLF: Yeah, a lot of these provisions aren't new but practitioners are going to become much more familiar with them after this year.

MR. DEGEN: Correct.

MR. WITMER: Absolutely. Also from the standpoint of existing payment agreements, the person all of a sudden can't make those payments; there wasn't any clarity as far as what needs to be done. But I would imagine there needs to be some contact with the IRS to let them know. And it sounding pretty much like a one-on-one basis that that might be worked.

MR. PRIOLEAU: Absolutely. And knowing that the taxpayer probably already does not have the financial resources to get our services, we are probably going to – and this is never a very, very good idea – but we are probably going to encourage those taxpayers to get in touch with the IRS. Whenever the IRS sends you a letter, there is a phone number that the taxpayer can call. So what we are probably going to do this year is encourage that client, that taxpayer to get in touch with the IRS, him or herself, and let the IRS know what the circumstances are. Many, many times, the IRS will run their calculations. And if it appears as though that client or that taxpayer cannot pay, they won't make them pay. I mean, they'll kind of hold off the collections activity.

MR. DEGEN: I'll disagree a little with Teddy in the sense that I would want – my recommendation to the client would be to contact me. Let me do the talking for them, I mean, because while we hope that the IRS is going to be kinder and gentler, you know, I think practitioners have a better understanding of how the system works.

MR. PRIOLEAU: And we do, but –

MR. DEGEN: And we are better – I suppose we are better able too. So I would encourage my clients to call me.

MR. PRIOLEAU: But, see, the thing is, we're talking about possibly taxpayers/clients who just don't have the financial resources to retain our services. And that's the popular – that's the group that I was talking about, the ones who may not have that, because representation is a long and drawn-out process. I can spend easily three or four hours on the phone with the IRS for any one client and that's a lot of time and resources that I'm using and if the resources aren't

coming into my office, how will I pay my employees? So I've got to think about that; I've really got to take that into consideration.

MR. WITMER: Okay.

MR. WOOLF: I used to answer those calls from the IRS. It's surprising how many people call with "I got a letter from the IRS." Well, what does it say? "Well, I haven't opened it." (Laughter.) They're afraid to open the letter. But I agree with Frank that, really, a practitioner would be better to handle that. But the main message practitioners could get out is that, if you owe taxes on your return, you need to file timely, because that decreases the penalties quite a bit. And it's much cheaper. People don't realize that; they say, I can't afford to pay so I'm not going to file. Filing timely and we can work out the payment later.

MR. WITMER: Okay. "What is needed and how do you get the expanded Hope and Lifetime Learning credit in a federally declared disaster area?" How do you know what universities and so on qualify for the additional credits?

MR. WOOLF: Well, the publication 4492 – well, federally declared disaster – there's a FEMA Web site, [fema.gov](http://fema.gov), which will list these areas. They usually define – they're usually done by county. If it's the Midwestern area, the publication lists counties.

MR. DEGEN: And I think you have to be careful – that question said federally declared – that area doesn't qualify. It's specifically for the Midwest area.

MR. WOOLF: But the Midwestern was federally declared, but the terminology in this question is –

MS. TARRIS: Right, it has to be federally declared Midwestern-area disaster at this point.

MR. WOOLF: Because in our IRS products, we're using federally declared disaster to refer to the new rules in our publication 547, the disaster, casualty and death laws. Talk about the new rules for future disasters, not the specific ones that we cover for the Midwest and Kansas and –

MR. DEGEN: It's safe to say, if they're a student up at UCLA, they're not going to qualify for that credit.

MR. WITMER: Okay. "I have a client who sold a condo, which had been their primary residence in 2006. Does the condo qualify as owning a primary residence within the past three years?"

MS. TARRIS: Yes. Primary residence includes condo, coop, houseboat, mobile home – pretty much anything that's real property that you lived in.

MR. WITMER: "On claiming the real estate tax, can you claim it on 1040EZ?"

MS. TARRIS: No. Yes, you cannot claim the increased standard deduction on the 1040EZ, also, in case they were concerned about deducting it – itemizing it – but it’s not on the 1040EZ.

MR. WITMER: Here’s one, Nancy: “I have a new client who filed her 2007 tax return and got a refund. After she filed, she received another 1099. She did not file a 1040X and then a return. What needs to be done?”

MS. AIELLO: She would need to file an amended return. Otherwise, she could be caught up in the CP2000 and under-report her, so –

MR. WITMER: Any percentage-wise – or how many amended returns do you see? Is that something that, you know – has that number increased over the years?

MS. AIELLO: Yes, it seems to increase, and sometimes we create laws that say, well, you should file an amended return.

MS. WITMER: Yeah, probably what we’re talking about today is a good reason for why that happens. We’ve got just a minute or two left, and what I’d like to do is just, first off, go around the table and ask from the practitioners a tip to your fellow practitioners and from the IRS, what people really – you know, if there’s one or two things to pay attention to, or where can they go to really get good information. So let’s start with the practitioners: Frank, any tips out there for this upcoming year? It seems like it’s going to be a hard one.

MR. DEGEN: Well, we mentioned about the kiddy tax before, and I think that’s going to be difficult under the new rules, where you can have children up to age 23, full-time students. You know, if we had a traditional family, we have Mom, Dad and students living in-home, it’s not so hard to determine where the higher AGI is and follow through on the 8615 form and so on and so forth. But I do think, though, that we don’t have a lot of traditional homes, and since the kiddy tax applies to the parent with the higher AGI, we may not know. If parents separate and you say to a student, where’s your mom live or where’s your dad – they may not know; they may not know the AGI.

So I would caution practitioners that when they do the 8615 form, there is a provision to do estimates on there. But I think that estimate sort of protects the taxpayer. The taxpayer’s saying, “I can’t locate my dad or my mom and I don’t know what their AGI is. I think they make X dollars.” But I might advise practitioners to also file a Form 8275, which is a disclosure form with their tax return. And that will tell the IRS that we can’t – and I think that’s a protection flaw that the preparer – you know, you had shows on earlier this year about the preparer penalties – and I do think that they should pay some attention to that, probably.

MR. PRIOLEAU: I think our appointments will be lasting longer and longer and longer, because one of the things that we’ll definitely have to do with our clients is inform, inform, inform. And so probably 10 minutes of the engagement is going to just end up being informational type of things, not as in, you tell me what you paid for this, that and the other, but

more, okay, here are some of the changes. Also, I want to caution practitioners to refrain from filing that tax return prior to January 31<sup>st</sup> if that client does not have a W-2.

MR. WITMER: Good information. Ginny?

MS. TARRIS: IRS.gov, the Web site – the IRS Web site – is an excellent resource for many questions, and you can also call the many customer service centers.

MR. WOOLF: I was going to plug the Web site. (Laughter.) But it is great, and it's also a great source for the latest forms and publications. Most of the individual products are out; we're still releasing some of the business forms in the next month, probably.

MR. WITMER: Okay. Nancy?

MS. AIELLO: Well, I would recommend that you e-file, and if you choose not to e-file and you send a paper return, make sure you have all of the attachments, all of the schedules, the W-2s and sign the form.

MR. DEGEN: And Les, if I may just get one more for practitioners, we talked about the disclosure rule before – I would advise practitioners to print out – and I believe it's on the resource page – Revenue Procedure 2835. It gives all the particulars for what consent forms should look like, what – they must contain specific language. So I would suggest that they all avail themselves of that tool.

MR. WITMER: Good information. In this expanded “Tax Talk Today,” we got a lot of information out. We got a lot of your questions answered; we didn't get them all answered, and like always, any questions we didn't get answered, we'll post on our resource page. But before we close out, let's go back to Phyllis.

(Music.)

MS. GRIMES: That brings us to the end of today's program, but mark your calendars for Tuesday, March 10<sup>th</sup>, 2009 for “Surviving the IRS Audit.” Remember that you will be able to view today's and other “Tax Talk Today” programs by going to archives on our site. And you can download a podcast from the home page of “Tax Talk Today” and clicking on audio podcasts. Podcasts may also be found under archives. Additionally, written transcripts of our program are available on our site under news.

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Before I sign off, I'd like to share with you that the IRS is committed to continuing to provide you, the tax professional community, with effective and innovative methods for delivering tax information. However, the IRS will no longer be sponsoring “Tax Talk Today” after September. There are two remaining live programs, scheduled in March and May and

program archives will be available through September 30<sup>th</sup>. So tell your colleagues to watch “Tax Talk Today.” I’m Phyllis Grimes, and we’ll see you in March. Thanks for watching.

(Music.)

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