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The Official Publication of the Hawaii Society of Certified Public Accountants

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# President's Message

By Ed Nakano

## Changes, Challenges and Best Practices Brought About by COVID-19 to the Accounting Profession

I found these two articles relating to how COVID-19 has and will impact the current and future of the accounting profession: “Four Changes That Will Stick With Accounting Long After the Pandemic is Over” by Justin Hatch and “Want Hybrid Work to Succeed? Trust, Don’t Track Employees” by Michael Blanding.

Mr. Hatch cites that “necessity is the mother of invention – or in some cases, reinvention”. COVID-19 forced the accounting profession to evolve overnight and that the following adaptations will be part of the industry going forward:

### 1. Adaptability

COVID-19 forced CPAs to adapt quickly to changes in their work and to adjust in the way they work with their clients. CPAs are required to provide up to date information and solutions to their clients.

### 2. Better Communications

The pandemic health concerns have been detrimental for in person interactions. However, this dilemma has been a boon for CPAs. Utilizing Cloud-based dashboards, video conference calls, chatting online and sending frequent emails resulted in more effective communication. Clients were provided fast and insightful information about new programs and how they could help their client’s businesses. The ultimate result is that CPAs have become better communicators for current and future clients.

### 3. Flexible Work Environment

COVID-19 has moved CPAs to work from conference rooms to living rooms. Although many businesses, including CPA firms have and plan to bring workers back to the office, many have become accustomed to and opted to a hybrid work environment . . . some working from home and some in the office. CPAs and their clients have adjusted to working with each other from a distance, which in most instances added to a level of flexibility and benefited everyone. This has enabled both clients and CPAs to “answer the bell from anywhere if needed.”

### 4. Expanded Services

The pandemic and economic crises have expanded CPA services of which new services make up 39% . . . services such as financial advisory, cash flow and risk advisory.

The lessons learned from COVID-19 will have a long-lasting impact on the profession as CPAs continue to adapt and grow for the benefit of their clients.

A flexible work environment has resulted from the pandemic and has become the norm more than the exception. Many companies are working toward a hybrid plan and are being challenged to map one out. Most employees are seeking a permanent change to their schedules. An HBS online survey found that more than 80 percent of employees

prefer working from home at least part of their week. A recent McKinsey survey found that 90 percent of companies are willing to accommodate them with plans for a hybrid work schedule.

Writer Michael Blanding refers to Harvard Business School Professor Tsedal Neeley’s (author of Remote Work Revolution: Succeeding Anywhere – best practice book on remote work), three rules for senior managers to consider for a successful hybrid work environment:

### 1. Trust in Employee Autonomy – “You have to trust that they are intelligent enough and well-intentioned enough to get work done”.

Contrary to some expectations but consistent with years of research, working at home has actually spurred employee productivity to improve. Professor Neeley reported that 70 percent of companies in a variety of industries reported increased productivity among workers during the pandemic. Ms. Neeley recommends that managers should be careful not to treat workers like children by dictating when and where they should work.

### 2. Stop Counting “Butts in the Seats” – It became really important for managers to ask “How’s it going? How are you doing? How can I help?”

Managers must change the way they measure employee performance.



Instead of seeing people to measure performance (“butts in seats”), Professor Neeley recommends focusing on three key measures of performance: results, group cohesion, and employee learning and satisfaction. Focusing on these three measures ensures managers are tracking what is actually being accomplished, rather than micromanaging what appears to be a productive workday. Employees should also be trained to regularly communicate their progress to their managers to keep them apprised.

### 3. Support Work-Life Well Being – “Give Your Employees What They Need”

Professor Neeley says that “one of the unexpected outcomes of the pandemic has been a newfound appreciation for people’s humanity, with managers giving

new consideration for personal challenges”. She urges managers to retain the emphasis on the employee well-being. She says “The least you can do is care about their well-being.” Research has shown that encouraging employees to sharing work-related conflicts and accommodating them, when possible, can create trust, induce a sense of commitment and make the workers feel that their well-being is valued.

Professor Neeley also feels that the advice for this new office reality is giving workers the space they need and then trusting them to do their best work whether they are in the office or in their own homes. She believes that “. . . workers are well intentioned and if given the tools, empowerment, and support, they will not only perform for you – they will thrive.”

“We need to trust ourselves, trust our people, and increase our skills on how to lead both in the office and virtually.”

All great words of wisdom as we pivot through and move forward through these pandemic challenges.

**Take care and be safe.**



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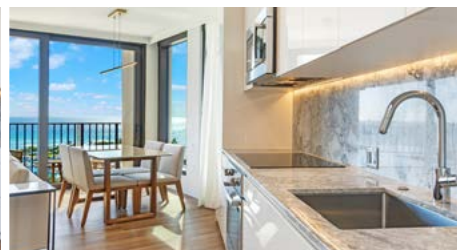
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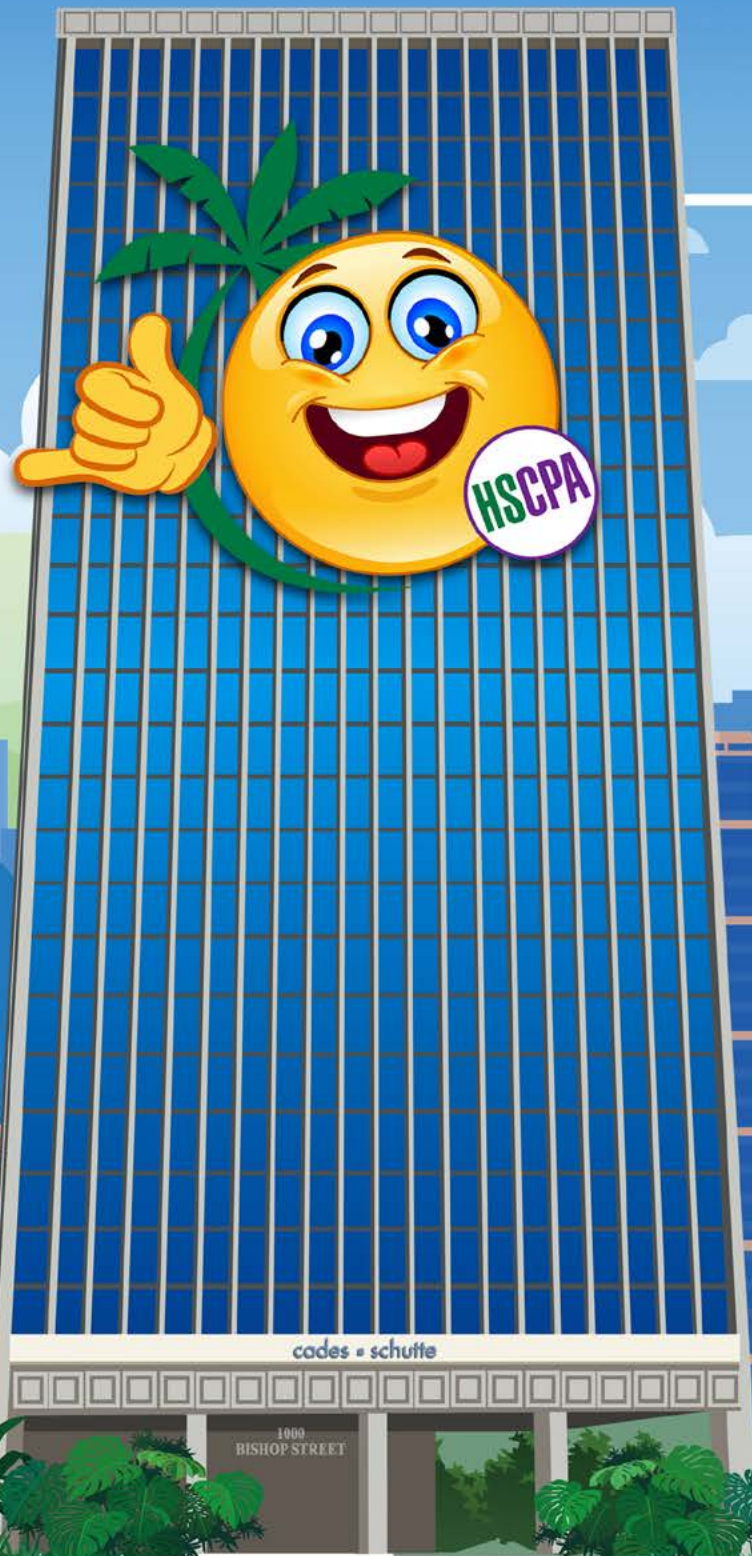
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# HSCPA'S NEW HOME

**A**fter 30+ years in the Pioneer Plaza building in downtown Honolulu, the HSCPA office moved across the street to the Cades Schutte building. While the office space is smaller, it can continue to host educational and networking events in the larger conference room (when members feel comfortable attending in-person events).

Blessing of the new office was held on December 3rd and was officiated by Chief Priest Masa Takizawa of Hawaii Kotohira Jinsha-Dazaifu Tenmangu. This ceremony set the foundation of positive energies, harmony, prosperity and success. It also served to clear and bless the business and its location to set original intentions and to open it to infinite new opportunities, new connections and success.



## CPA Evolution will impact today's interns. How can firms prepare?

By Carl Mayes

For the past few years, the American Institute of CPAs (AICPA) and the National Association of State Boards of Accountancy (NASBA) have collaborated with stakeholders to reimagine CPA licensure through the joint [CPA Evolution](#) initiative, an effort to transform the CPA licensure model. The organizations have now reached the critical implementation phase of this initiative, which addresses the rapidly changing skills and competencies required of a 21st Century CPA.

Many of the students slated for Spring and Summer 2022 internships will sit for the new, CPA Evolution-aligned CPA Exam, which is expected to launch in early 2024. This has implications for firms in a variety of areas, from recruiting

considerations to engagement with academia. The time to start plotting out your firm's strategy is now.

CPA Evolution will bring about some of the most substantive changes to licensure in decades, including a new Core + Disciplines licensure model, increased coverage in areas like information systems and data analytics, and the addition of personal financial planning.

But what does it all mean for your firm? Here are some top considerations to aid your hiring and recruitment strategies.

### Students are more interested in pursuing CPA under the new licensure model

In a Fall 2021 AICPA-NASBA survey of accounting students,

85% of respondents indicated the new approach to licensure either increases their interest in pursuing CPA or keeps their interest at a very high level. In discussion groups with students, common themes surrounded their heightened interest in areas like data analytics, cybersecurity and information privacy, all of which are expected to be addressed in the new CPA Exam based upon preliminary practice analysis research.

This may represent an opportunity for firms when recruiting new staff. In addition to highlighting the [earnings power of CPAs and the impact they can have on society](#), consider discussing the impending changes to the licensure model and how they reflect the exciting work firms are doing in emerging areas. For students interested in technology, there has never been a better time to pursue CPA.

### Universities are changing their curricula to incorporate emerging topics

In another Fall 2021 pulse survey, the AICPA and NASBA asked accounting faculty about their plans relative to CPA Evolution. Here's what they heard:

- 88% of respondents indicated their accounting program will be

## Hawaii Practices For Sale

**Gross revenues shown:** Honolulu CPA \$1.075M, Honolulu CPA \$660K, Kamuela/Waimea Area Tax & Bkkgng \$250K; Kauai Island CPA \$100K; Kailua/Maui/Honolulu CPA \$530K; Honolulu CPA \$282K, Kahului CPA \$230K. For more information, please call 1-800-397-0249 or visit [www.APS.net](http://www.APS.net) to see listing details and register for free email updates.

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- making curriculum changes based on CPA Evolution
- 81% said they expect to make curricular changes by Fall 2022

To inform hiring decisions, firms may want to reach out to the universities they recruit from to determine what, if any, curriculum changes are being made. Practitioners may also consider aiding the academic community in the transition, as nearly half of the faculty that won't be making curriculum changes cited challenges in finding qualified personnel to teach emerging topics. Subject matter experts at your firm might consider serving as guest lecturers or adjunct professors to ensure the next generation of CPAs has the skills and competencies they need to be successful.

### Many accounting program graduates will have different skillsets

As academic programs evolve, students are expected to pursue learning tracks aligned with their interests. In a 2020 AICPA-NASBA survey of students,

- 54% of respondents indicated they plan to pursue the Business Analysis and Reporting discipline,
- 24% plan to pursue Information Systems and Controls, and

- 22% plan to take Tax Compliance and Planning.

To pass these disciplines, students will need more knowledge and skills in the related subject matter, and firms will be the beneficiaries. In fact, in an April 2021 AICPA-NASBA survey of firm hiring directors, 83% of respondents from firms with 11 or more personnel indicated that if accounting programs were aligned with CPA Evolution, their hiring of new graduates from accounting programs would likely increase, accounting program graduates would be considered more valuable than they are today, or both.

Firm leaders may want to engage with the firm's HR team to consider how CPA Evolution will impact their approach to talent acquisition moving forward.

### Next steps

The AICPA is currently conducting a [practice analysis](#) to determine the knowledge and skills required of newly licensed CPAs that should be assessed in the CPA Evolution aligned Exam. An associated CPA Exam Blueprint, which will detail content eligible for testing in each of the Core and Discipline sections, is expected to be issued for public comment in mid-2022 and published in final form in early 2023, with the launch of the new CPA Exam planned for January 2024.

As CPA Evolution continues to progress, please check back for updates at [EvolutionofCPA.org](#). If you have any questions, please reach out to the AICPA and NASBA at [Feedback@EvolutionofCPA.org](#).



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# EVENTS

## Event Highlights of the Y-CPAs and Associates

The young CPA professionals and associates (Y-CPAs) of the HSCPA have been busy throughout the year – even through the pandemic! That did not stop them from continuing their mission to promote the profession and provide an avenue for young professionals to get involved.

These committed and energetic young professionals are not slowing down ... they have a line-up of presentation workshops, community service projects, and other events planned for this year.

We're proud of their accomplishments and would like to share some of the 2021 highlights. Thank you, Y-CPAs, for your contributions to the HSCPA, the community, and the accounting profession!



*Hawaii Foodbank CSFP Senior Food Box Packaging*



*Junior Achievement at Ma'ema'e Elementary School*



*Ala Moana Beach Park Clean-up*



*Family Programs Hawaii*



*Junior Achievement at Ma'ema'e Elementary School*



# Hawaii Society of CPAs Advocates for Businesses and Practitioners on Schedules K-2, K-3

On February 24th, the AICPA and 52 state CPA societies sent a [letter to Assistant Treasury Secretary Lily Batchelder and IRS Commissioner Charles Rettig](#) regarding widespread concerns on the Schedules K-2 and K-3 reporting. The letter states:

**“The AICPA and state CPA societies across the country call on the Treasury Department and the IRS to delay implementation of the Schedules K-2 and K-3 to 2023 (the 2022 tax year filing season) and to suspend any assessment of penalties against Partnerships or S Corporations for failing to file or failing to timely provide Schedules K-2 and K-3 for the 2021 tax year.”**

HSCPA is strongly supporting these efforts and is advocating on behalf of members to urge IRS and Treasury to delay implementation of these changes in order to allow practitioners sufficient time to understand and implement these changes.

Mid-tax filing season updates to the Schedules leads to confusion and unintended errors. Delaying also allows the IRS adequate time to complete the e-File system in order to accept the new Schedules electronically. HSCPA is also echoing calls to suspend penalties for failing to file, or failing to provide in a timely manner, Schedules K-2 and K-3 for the 2021 tax year.

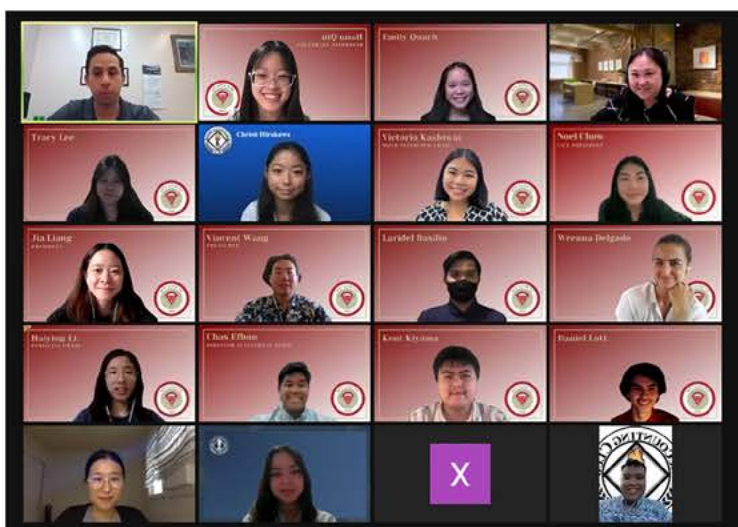
“While we certainly see the value in streamlining reporting tools and standardized international tax reporting, HSCPA recognizes that there are many concerns raised by CPAs regarding the recent revisions to filing instructions on Schedules K-2/K-3,” said Darryl Nitta, HSCPA Board and AICPA Council member. “The issues raised during this filing season due to the continual changes regarding filing obligations and the delayed e-File system necessitates a delay until 2023.”



*Junior Achievement at Ma'ema'e Elementary School*



*Junior Achievement at Ma'ema'e Elementary School*



*University of Hawaii Workshop*



# TAX FOUNDATION OF HAWAII

Hawaii's Watchdog on Taxes & Government



By Tom Yamachika

## Blockbusters Buried in “Tax Administration”

Every year, our Department of Taxation submits bills to the Legislature for their consideration. Those bills are included in the Governor's Package. Under our laws ([section 231-3\(7\), HRS](#)), the Department is supposed to recommend “any amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of taxes.”

So, the Department of Taxation is sponsoring SB 3145 and HB 2177 (same bill, introduced in both chambers of the legislature) “Relating to Tax Administration.”

That bill contains a few things that do sound like boring administrative stuff. It expands the Department's authority to require electronic filings. It makes professional tax preparers file returns electronically. It takes away the fee for certified copies of tax clearances (but that doesn't affect the Department's ability to charge for tax clearances themselves, even though they don't charge for them now).

Then we get to penalty enhancement. This is where the bill starts getting scary.

First, it says that late filing penalties, which are now 5% a month but are capped at 25%, can go to 75%. That

wouldn't be relevant to most of us who are diligent and file our taxes on time all the time, but if a person falls off the system for one or two years for whatever reason, the penalties can get pretty intense. Right now, unlike in the federal system, a taxpayer who misses a return can and occasionally does get written up for 70% penalties (25% for failure to file, 25% for negligence, and another 20% for substantial understatement). Penalties are added to the tax and bear interest at 8% just like tax, so everything adds up quickly. The bill would change the 70% to 120%, more than the tax owing.

Next, it adds a new penalty for returns that are late but that do not show tax due (including situations where the government owes the taxpayer money). Those returns aren't currently penalized. The bill gives the Department the authority to impose a penalty anyway and determine the amount of that penalty itself without further legislative action.

Next, it takes aim at informational returns where no tax is due. These would include the Hawaii versions of Form 1099 and Schedule K-1. If these forms aren't filed on time, the penalty is \$200, times the number of recipients of the forms, times the number of months that the returns are late. The federal code has a version of this penalty in place and the

Department's saying that it's high time we adopted it too.

It then makes a grab for interest on money paid on disputed taxes on appeal. Occasionally folks don't agree with the Department's assessment of tax due, and the system allows the taxes to be paid and set aside while the courts or the Board of Review determine who is right. The bill says that if the taxpayer wins, the State will pay the taxpayer 4% on the money held if the taxpayer is an individual, 3% if the taxpayer is a corporation getting back less than \$10,000, and a measly 1.5% if the taxpayer is a corporation getting back more than \$10,000. But if the taxpayer wins, it's the taxpayer's money so why is the State allowed to profit by giving the taxpayer a below-market interest rate? The Hawaii Supreme Court used to have a rule saying that because the money is held in a special account, the actual earnings in the account attributable to the taxpayer's money would be refunded to the taxpayer if the court ruled in the taxpayer's favor. Perhaps we should go back to that rule.

Both the House and Senate bills are alive at this point in the legislative session. We'll give you more session updates in the coming weeks.





## Kindness Rocks!

By Yumi Ueda

**K**ung Hee Fat Choy! It is the year of the Tiger, which started on February 1st and will end on January 21st, 2023. The Tiger is the third animal in the Chinese zodiac and those born in the year of the Tiger are brave, competitive, and confident. They are authoritative and make great leaders.

One quality that can stand out not only in a leader but for everyone is empathy. Empathy is the ability to understand and share the feelings of another. It means being able to put yourself in someone's shoes and understand what they are going through. Now that our lives are somewhat getting back to normal, a.k.a. pre-pandemic busy-ness, it becomes even more important that we remember to be aware of what

others may be going through or how they may be feeling.

As with many other soft skills that we learn, it may come naturally and easily for some people, but for others we need to practice and make conscious efforts with daily reminders. One way that we can help train our mind to be more empathetic is by showing kindness. Believe it or not, kindness plays an important role in and has been shown to increase empathy and compassion.

The science behind kindness includes technical medical vocabulary that describes what happens in your brain when you are being kind. But the bottom line is acts of kindness gives feelings of satisfaction and can release hormones that contribute to your overall mood. It can be something simple; like smiling

at the stranger in the elevator with you... holding the door open for the person behind you... letting someone go ahead of you in line.

Children today are given the opportunity to learn these soft skills at an early age - but at school, it's called SEL (Social-Emotional Learning). As part of their school curriculum, my kids came home with their project, "Kindness Rocks!". You may have seen painted rocks around your neighborhood or hidden near a tree at a park. Some may even have inspirational messages on them. If you do see one, you can re-hide it or keep it.

My kids came home from school with their rocks and told us they were instructed to give it to a family member. They then gave their rocks to each other.





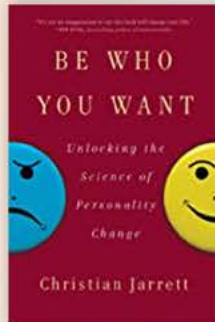
# Norman's Book Review

## "Be Who You Want"

by Christian Jarrett

*You are who you are. That's because you are the middle child. A leopard doesn't change its spots. You are just like your parents.*

And so on. Many people feel or are made to feel that when they are born, their personality traits are essentially



set in stone. Christian Jarrett's book definitively describes "how people do change, and if you want to change yourself, you can!" With the pandemic easing, I thought this would be the perfect book to start 2022 because it can help you "be the best version of yourself that you can possibly be!" The following are some of the key take-aways from the book I thought you would like.

### People Can Change, Often Profoundly

You probably know people who have changed significantly over time, yourself included. Good people turning bad and vice versa, shy people becoming extremely expressive, lazy people becoming focused, etc. The author went from being a very shy student to party animal in college to family man, great speaker and writer. Oscar winning actress Emma Stone had high anxiety as a child.

### Five Main Personality Traits

The following are the five main personality traits and their subtraits from the book.

- **Extraversion:** Warm, active, happy
- **Neuroticism:** Anxious, impulsive, vulnerable
- **Conscientiousness:** Competent, dutiful, cautious
- **Agreeability:** Trusting, altruistic, empathic
- **Openness:** Imaginative, sensitive, curious

### The Dark Triad

The following are the three antisocial traits which bad people exhibit and should be minimized to be a better person.

- **Narcissism:** Entitlement, vanity, manipulateness
- **Machiavellianism:** Cynical worldview, lack of empathy
- **Psychopathy:** Superficial charm, impulsivity, criminality

### Your Personality and Genes

"Between 30 – 50% of your personality is attributable to your parent's genes, and the rest is due to your life experiences."

### Does Birth Order Matter?

Based on two studies with 400,000 and 20,000 participants, "birth order has few or negligible associations with personality."

### Does Birth Spacing Matter?

Based on a study of 4,000 people over a 42-year period, birth spacing is a factor. The study found "the bigger the age gap between siblings, the more likely the younger child has an introverted, emotionally unstable personality."

### Friends Matter

From preschool age to early 20's, children tend to acquire the traits of their friends. If your friends are happy, you are more likely to be happy too. Parents and teachers have less of an influence.

### Personality and Life Expectancy

"More impulsive people tend to die earlier, and people with more self-control are more likely to live longer. Also, a conscientious personality is as important as socioeconomic status or education level to lead a long life."

### Personality Changes Over Time

"As people get older, they tend to become more stable, friendlier, more self disciplined and have less angst. On the downside, they become less outgoing, sociable and open-minded." For you older CPAs, have you noticed these changes, too?

### Being Highly Agreeable

"Highly agreeable people are the most skilled at shaping their own experiences. They prefer to expose themselves to positive situations and experiences, and always seem to be in a good mood."

### Sleep and Mood

Not surprisingly, "getting enough sleep is one of the surest ways to lift your mood. A study of over 20,000 people



found that falling just one hour short of the optimum amount of sleep (7 – 9 hours) was associated with a 60 – 80% increased risk of experiencing negative moods like hopelessness and nervousness.” CPAs are prone to working long hours and being sleep challenged.

## Four Main Types of Drunk Personality

CPAs are known for having a few drinks to relax after work. As you probably know or experienced, “being drunk makes us more extraverted, but lower on everything else – less agreeable, less open, less conscientious, and less neurotic.” According to psychologists, the following are the four main types of drunk personality. If it applies, who are you?

- **Ernest Hemingway:** You don’t change as much as others when you’re drunk.
- **Mary Poppins:** You’re charming when drunk.
- **The Nutty Professor:** You’re an introvert when sober and show a drastic increase in extraversion and lower conscientiousness when you are drunk.
- **Mr. Hyde:** You’re unpleasant to be around when drunk.

## Positive Corporate Culture

“A positive and agreeable workplace will filter through and have a positive effect on corporate culture and employees. Performing positive acts – doing favors for others and going the extra mile – will permeate throughout the organization. A rude and disagreeable company culture will have a negative effect on the organization and employees. Psychologist Alex Fradera calls incivility “the mucus of the workplace” because of the way it can spread through an office culture like a cold.”

## Being More Conscientious

“Being more conscientious increases the odds you’ll adopt healthy behaviors, do well in your education and career, and reduce your risk of developing Alzheimer’s disease. On the flip side, you are more likely to be jobless if you are low in conscientiousness.”

## Low Extraversion / High Neuroticism

“A Swedish study that tracked the same people over 30 years found that those who were low in extraversion and high in neuroticism were six times as likely to develop depression and anxiety.”

## Extraverts and Introverts

“Extraverts tend to be happier than introverts, but they are also more prone to alcohol and drug problems.”

## Three Principles of Successful Personality Change

The following are the three principles

you must possess if you want to successfully change your personality.

- A willingness and intention to change your behavior
- A belief in the malleability of personality
- Persistence with your behavioral changes until they become habitual

## Are Surgeons Psychopaths?

Yes! “After taking a psychopathy questionnaire, nearly 200 doctors scored higher than the general public on certain traits like stress immunity and fearlessness, and surgeons scored the highest of all.”

## Summary

The book shows “with the right attitude, enough dedication and suitable techniques, we can choose to change our personalities at will and be who we want to be.” It is inspiring and one of the most interesting and helpful books I have read. Enjoy and have an awesome 2022 and beyond!!!

*“Personality is more plastic than plaster.”*

*“Change is constant, and dedicating yourself to being the best version of yourself is a lifelong endeavor.”*

*“Find your calling in life or reflect on the personal values that matter most to you. This will lay the foundation for meaningful, authentic personality change.”*





# On the Other Hand

By Ronald Heller, Attorney & CPA



Note: This month, you get two questions and answers – no extra charge.

**Q:** Could a taxpayer just assert the Fifth Amendment on his tax return, and refuse to fill in any information?

**A:** A taxpayer tried that – he filed Form 1040, but instead of showing numbers for gross income, taxable income, etc. he simply put asterisks, and put a note on the return saying “FIFTH AMENDMENT EXERCISED.” He also attached a statement saying that upon advice of counsel, he was “invoking the privilege(s) afforded . . . by the Fifth Amendment to the Constitution of the United States.” The question was whether or not this constituted filing an income tax return for purposes of starting the statute of limitations running. The IRS said “No.” [See Chief Counsel Advice 200547012.](#)

Under Code Section 6011, everyone who has more than a specified minimum level of gross income is required to file an income tax return. As noted in the Chief Counsel Advice, there are generally four requirements for a document to be treated as a valid tax return: The document must be signed by the taxpayer under penalties of perjury, it must purport to be a tax return, it must supply sufficient information to calculate tax

liability, and finally, it must be “an honest and reasonable attempt to satisfy the requirements of the tax law.” See [Beard v. Commissioner, 82 T.C. 766.](#)

Obviously, a return with asterisks instead of numbers did not provide sufficient information to calculate tax liability. In addition, whether or not it was “an honest and reasonable attempt to satisfy the requirements of the tax law” was at least open to debate. Therefore, the return failed at least one, and arguably two, of the four tests. The Chief Counsel Advice concluded that since the return was not a valid tax return, it did not start the statute of limitations running.

**On the other hand**, the document in question was apparently processed by the IRS as tax returns when it was initially received, and the IRS made an assessment of tax based on the return. Therefore, the taxpayer argued, the IRS could not take the position that no return had been filed.

The Chief Counsel Advice concluded that processing the document as a returns was a mistake by the IRS, and a mistake by the IRS cannot start the statute of limitations running – only the filing of a valid return can start the statute running. Since the documents was not a valid returns, it was also a mistake to assess tax based on the document. Therefore, the proper thing to do was to abate the assessment made by the IRS, leaving the

IRS free to start again with the determination of a deficiency and the issuance of a deficiency notice. In that new process, the IRS was free to use any and all information it had, including but not limited to information from the invalid return. Note that the taxpayer effectively achieved the worst of all possible results: the document he submitted was not a tax return, and therefore did not start the statute of limitations running, but at the same time the IRS was free to use the information in the document against the taxpayer.

**Q:** The IRS just served a summons on one of my clients, directing him to appear with all of his financial records. The client is asking “Can’t I assert the Fifth Amendment and refuse to give them anything?”

**A:** Your client may be entitled to assert the Fifth Amendment privilege against self-incrimination, but I’d suggest a consultation with an attorney who specializes in the defense of criminal cases first. If the client has a genuine reason to believe that he may be subject to criminal prosecution, then he’d better get some legal advice before doing anything.

**On the other hand**, if he doesn’t have any genuine basis for thinking that a criminal prosecution may be likely, then



a court might say that he has no legitimate basis for asserting the Fifth Amendment.

In *United States v. Back to Health Chiropractic*, 96 AFTR 2d 2005-7071, the taxpayer received two separate IRS summonses, one for his personal records and one for records of his business. The IRS said that they wanted the records as part of a civil investigation, but if it turned into a criminal investigation, anything the taxpayer had produced could be used against him. The taxpayer asserted the Fifth Amendment privilege against self-incrimination, and refused to produce documents in response to either summons. He chose to represent himself in court.

The Court first noted that each of the two summonses met the basic requirements for a valid and enforceable summons:

(1) The IRS investigation was being conducted for a legitimate purpose, to determine whether the taxpayer or his corporation owed taxes. (2) The records requested were relevant and material to the investigation. (3) The IRS did not already have the records or the information they contained. (4) The procedural requirements for issuing and serving a summons had been followed. Once the IRS had established these facts, the burden of proof was on the taxpayer to show that there was some valid reason for the court to deny enforcement of the summonses.

The court said that the Fifth Amendment can be a valid reason for refusing

to produce records, but “a substantial and real hazard of self-incrimination is a pre-requisite to the proper assertion of the Fifth Amendment ‘act of production’ privilege.” Since the taxpayer was apparently being investigated for failure to file a 2001 tax return, the court found that the prospect of a criminal prosecution was not “merely trifling or imaginary,” i.e., there was “a genuine prospect of future criminal prosecution.” The court therefore denied enforcement of the IRS summons with respect to the taxpayer’s personal documents.

At the same time, however, the court said that the owner of a corporation cannot assert his personal privilege against

self-incrimination as a valid ground for refusal to produce corporate records. A sole proprietor could conceivably assert the privilege with respect to his business records, but the owner’s privilege does not extend to corporate documents. The court enforced the summons for corporate records.

Moreover, even on the personal side, the taxpayer “won” the case by convincing the court that there was “a genuine prospect of future criminal prosecution.” Whether or not that constitutes a good result is debatable. The wisdom of the taxpayer’s decision to represent himself is also debatable.

# Webinars

**March 3 8:00am – 10:00am**

[Preparing Schedules K-2 and K-3:  
Critical Tax Season Update](#)

**May 17 8:30 am to 12 noon**

[Mergers and Acquisitions -  
Complete Guide to Relevant Issues](#)



**May 19 8:00 am to 11:30 am**

[Advanced Quickbooks Tips  
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**May 20 8:00 am to 11:30 am**

[Artificial Intelligence for Accounting  
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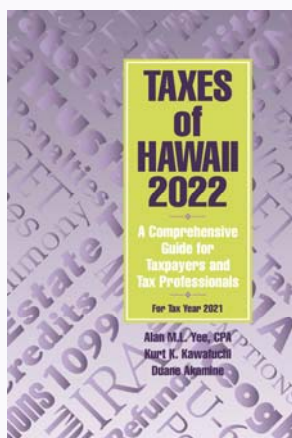


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