Internal Revenue Service Advisory Council 2015 Public Report
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INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

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NOVEMBER 18, 2015

GENERAL REPORT

OF THE

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

The Internal Revenue Service Advisory Council (the IRSAC), the successor to the Commissioner's Advisory Group established in 1953, serves as an advisory body to the Commissioner of Internal Revenue. As an advisory body designed to focus on broad policy matters, the IRSAC's primary purpose is to provide an organized public forum for senior Internal Revenue Service (the IRS) executives and representatives of the public to discuss relevant tax administration issues.

Chartered to convey the public's perception of the Internal Revenue Service and its activities to the Commissioner, the IRSAC membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, and the payroll community. The IRSAC is currently comprised of 20 members with substantial, disparate experience and diverse backgrounds. Many provide tax advice to clients, others manage their large employer's tax affairs, and many are active in the volunteer income tax community. In addition to representing different-sized organizations, industries, and geographic regions of the United States, members also represent occupations that interact with the IRS and the tax community in a variety of ways. Each member has a unique perspective on tax administration and is committed to providing meaningful input and feedback to the IRS. The members are volunteers, and receive no compensation for their service.

Working with IRS leadership, the IRSAC reviews existing practices and procedures, and makes recommendations on both existing and emerging tax administration issues. In addition, the IRSAC suggests operational improvements, conveys the public's perception of professional standards and best practices for tax professionals and IRS activities, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the Commissioner and senior IRS executives on substantive tax administration issues.

The IRSAC is currently organized into three subgroups — the Small Business/Self-Employed and Wage and Investment (SBSE/W&I) Subgroup, the Large Business and International (LB&I) Subgroup, and the Office of Professional Responsibility (OPR) Subgroup.

The members appreciate the invaluable assistance, dedication, and support provided by personnel from the IRS Office of National Public Liaison (NPL) and the operating divisions — Candice Cromling, Director, NPL; Carl Medley, Chief, Liaison Advisory Groups, NPL; Lorenza Wilds, IRSAC Program Manager, NPL; Anna Millikan, NPL; Maria Jaramillo, NPL; Brian Ward, NPL; Johnnie Beale, W&I; Tonjua Menefee, SB/SE; and Kate Gregg, LB&I. They are also grateful for the invaluable assistance provided by IRS executives and other personnel throughout the year. We thank them for their commitment to the IRS' and IRSAC's mission and for engaging in the meaningful discussions and dialogue that each subgroup held on numerous important issues. The IRSAC members were honored and privileged to have the opportunity to work with these dedicated, qualified individuals. Their dedicated service to the IRSAC, IRS, and the public should be recognized as truly exemplary.

Issues selected for inclusion in this annual report represent those to which IRSAC members have devoted particular attention during four working sessions and numerous conference calls throughout the year. The issues included in the IRSAC annual report are issues that members consider especially important but also include issues that IRS personnel brought to our attention and for which input was requested. Nearly all issues involved extensive research efforts.

We acknowledge the many challenges that the IRS has recently experienced and, knowing the demands on IRS executives and operating division representatives, we also sincerely appreciate and want to recognize the time and effort devoted by them to IRSAC activities during the year.

The 2015 SBSE/W&I Subgroup, co-chaired by Andre' L. Re and Sherrill L. Trovato, prepared recommendations regarding cost-effective ways to improve individual taxpayer authentication to ensure a high level of confidence while minimizing taxpayer burden, to mitigate fraud by payroll service providers, to improve the taxpayer experience by increasing the IRS' communication with taxpayers, and other suggestions to improve the Offer in Compromise process and the automated online self-service applications.

The 2015 LB&I Subgroup, chaired by Mark S. Mesler, Sr., prepared recommendations regarding recommendations regarding penalty administration in light of impending LB&I examination process changes and the IRS' emphasis on international information reporting. In addition, the Subgroup made recommendations on risk assessment and examinations in relation to recently modified Tangible Property Regulations.

The 2015 OPR Subgroup, chaired by Ronald D. Aucutt, prepared recommendations to maintain the independence, strength, and visibility of the IRS Office of Professional Responsibility and provide it with the legislative authority it needs to do its job of protecting taxpayers and our voluntary compliance system. It also prepared a recommendation to reaffirm and strengthen a 2011 IRSAC proposal that OPR consistently use the *Uniform Standards of Professional Appraisal Practice* in judging appraiser conduct.

In addition to the reports and recommendations of the three IRSAC subgroups, the Council as a whole identified two transcendent issues — securing adequate funding for the IRS and preserving a strong, balanced, and independent Office of Professional Responsibility — that merit special attention because of their fundamental importance to enabling the United States to have a system of tax administration that can and will meet the objectives of the stated mission of the Internal Revenue Service:

> **The IRS Mission**
> Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.
>
> This mission statement describes our role and the public's expectation about how we should perform that role.

- In the United States, the Congress passes tax laws and requires taxpayers to comply.
- The taxpayer's role is to understand and meet his or her tax obligations.
- The IRS role is to help the large majority of compliant taxpayers with the tax law, while ensuring that the minority who are unwilling to comply pay their fair share.

ISSUE ONE: THE IRS NEEDS SUFFICIENT FUNDING TO OPERATE EFFICIENTLY AND EFFECTIVELY, PROVIDE TIMELY AND USEFUL GUIDANCE AND ASSISTANCE TO TAXPAYERS, AND ENFORCE CURRENT LAW, SO THAT THE INTEGRITY OF, AND RESPECT FOR, OUR VOLUNTARY TAX SYSTEM IS MAINTAINED

Executive Summary

The Internal Revenue Service is a bureau of the Department of the Treasury, one of the world's most efficient tax administrators,[1] and by some measures the largest financial services organization in the world. The financing of the federal government depends largely upon the Internal Revenue Service, which collected 93 percent of federal receipts in FY 2014.[2] In FY 2012, the IRS collected more than $2.5 trillion in revenue[3] and processed more than 237 million tax returns, and more than 2 billion information returns.[4]

Including the effects of across-the-board rescissions and reductions required by sequestration and other adjustments, overall funding for the IRS has decreased about 17

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[1] The IRS spent just 48 cents for each $100 it collected in FY 2012. (Table 29, IRS 2012 Data Book.) The US spends roughly half what the average OECD country spends to collect $1,000. See Organization for Economic Cooperation and Development, "Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies," at http://www.oecd.org/ctp/administration/tax-administration-23077727.htm. According to IRS Budget Division, in 2013 IRS spent less than $5 to collect every $1,000 in net revenue. Today that amount is even lower, below $4, and it is likely that only Switzerland now spends less. IRS also spends under one tenth of one percent — currently about 0.06%— of U.S. GDP on tax administration, far lower than most developed countries, again with only Switzerland lower. Note that most OECD countries generate a substantial portion of their revenue from indirect/consumption taxes with self-enforcing features that require less service/compliance work, making the comparison even more significant.

[2] GAO-15-624, "IRS 2016 BUDGET: IRS Is Scaling Back Activities and Using Budget Flexibilities to Absorb Funding Cuts," June 2015 ("GAO-15-624"), at 1.

[3] Id.

[4] There were 2,109,781,400 information returns of various types filed in 2014. *See* Publication 6961 (Rev. 7-2014).

percent on an inflation-adjusted basis since FY 2010,[5] and is now below FY 2009 levels.[6] These reductions do not include the effects of the unfunded mandates of significant new program costs, like administration of the Patient Protection and Affordable Care Act (the ACA) and other laws, imposed on the IRS.

The IRS has managed these massive downward adjustments in its funding by scaling back activities, freezing hiring, limiting training, and using limited budget flexibility[7] to reallocate resources among its four appropriations accounts and the programs they respectively control.

As discussed below, these cuts have already had a significant and negative impact on both the taxpayer service and enforcement functions of the IRS, inhibiting its ability to carry on the IRS mission. In our view and in the views of others, the adjustments forced by recent budget reductions have had substantial and widespread negative impacts on the agency, all of its 81,279 personnel,[8] federal taxpayers, state taxpayers whose state tax-related obligations are affected by interaction between their state tax system and the IRS, and taxpayer representatives (the attorneys, certified public accountants, enrolled agents, software providers, and others who assist taxpayers in filing their tax returns and dealing with the resulting obligations that flow from them). Thus, the reductions affect all the issues with which IRSAC and taxpayers generally are concerned.

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[5] National Taxpayer Advocate 2014 Annual Report to Congress 13 (Most Serious Problem: TAXPAYER SERVICE: Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers).
[6] GAO-15-624, at 1.
[7] *See* note 16 below for additional discussion of these constraints.
[8] Full Time Equivalents ("FTE") reported for FY 2015. GAO-15-624, at 1. Since FY 2010, IRS's overall staffing has declined by about 13,000 FTEs (14.1 percent). FTEs units are the computed number of equivalent employees working full-time, or the ratio of the total number of paid hours during a period (part time, full time, contracted) by the number of working hours in that period Mondays through Fridays.

Recent deficiencies in funding are eroding the significant investments and substantial progress made in the last two decades in modernizing and streamlining the IRS, and making it more efficient. These investments were made at the behest and with the support of House and Senate Congressional leaders in both parties, the Treasury Department and IRS, and private individuals, all of whom care deeply about both particular issues and the core integrity and effectiveness of our tax system. The funding deficiencies compromise the IRS' ability to deal with the challenges now before us and those yet to come, and may have even more dramatic and costly future impacts on our system of voluntary compliance and self-assessment. An efficient, well-functioning IRS is absolutely critical to every aspect and program of our federal government. State governments are also adversely affected, as most state tax systems "piggyback" off aspects of the federal tax system.

IRSAC does not believe that current levels of funding are adequate to achieve these goals so necessary to each and every one of us as American citizens. We say this as professionals who deal with the tax law, tax system, and tax agency on a daily basis. We say this because, candidly, it needs to be said. We believe our tax system, which is dependent on voluntary compliance, is increasingly at risk.

Description of the Problem

The financing of the federal government depends largely upon the IRS, which collected 93 percent of federal receipts in FY 2014.[9] In FY 2012, the IRS collected more

[9] GAO-15-624, at 1.

than $2.5 trillion in revenue[10] and processed more than 237 million tax returns, and more than 2 billion information returns.[11] Because of the accumulated expertise of its large workforce, its massive systems and the huge data depository they hold, the IRS has been mandated additional duties outside its traditional mission and responsibilities, such as administration of significant portions of the ACA passed by the Congress.

Between FYs 2010 and 2015, the IRS's budget has been reduced by more than $1.2 billion.[12]

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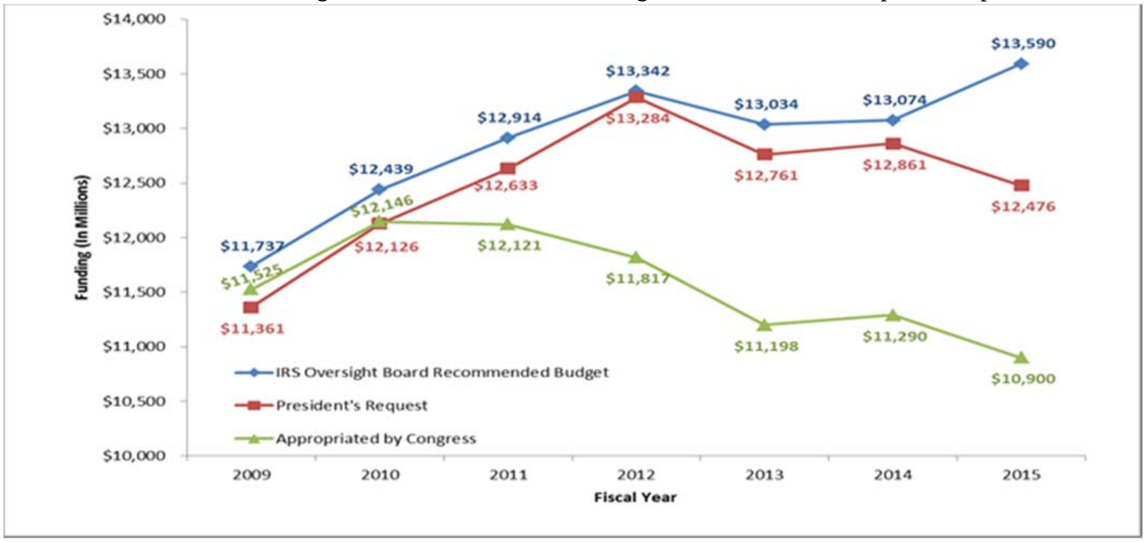
[10] Id.

[11] There were 2,109,781,400 information returns of various types filed in 2014. *See* Publication 6961 (Rev. 7-2014).

[12] Treasury Inspector General for Tax Administration, "Reduced Budgets and Collection Resources Have Resulted in Declines in Taxpayer Service, Case Closures, and Dollars Collected," Report 2015-30-035, May 8, 2015, at 1: "Due to delays in enacting Federal budgets for the past several years, Continuing Resolutions have been passed to keep the Government operating. As such, the full-year operating budget has not been known until well into the fiscal year. Additionally, the impact of the sequestration provisions in the Balanced Budget and Emergency Deficit Control Act, as amended by the Budget Control Act of 2011, Pub. L. No. 112-25, 125 Stat. 240 (2011), significantly affected the IRS. During Fiscal Year (FY) 2013, the IRS operated under a Continuing Resolution, in addition to sequestration rules, that funded the agency at just less than $11.2 billion. That amount was significantly lower than both the President's and the IRS Oversight Board's FY 2013 recommendations, approximately $948 million less than the FY 2010 budget. The IRS's FY 2015 enacted budget of $10.9 billion was more than $1.2 billion (10 percent) less than the FY 2010 enacted budget."

The IRS's Recommended, Requested, and Appropriated Budgets From FY 2009 to FY 2015

Source: IRS Oversight Board's FY 2015 IRS Budget Recommendation Special Report.



Including the effects of across-the-board rescissions and reductions required by sequestration and other adjustments, overall funding for the IRS has decreased about 17 percent on an inflation-adjusted basis since FY 2010,[13] and is now below FY 2009 levels.[14]

This startling statistic does not include the substantial burdens of unfunded mandates such as the ACA. In February 2015, the IRS released version three of its ACA cost estimate as part of its ongoing practice to refine the cost estimate and to address GAO recommendations with respect to the estimation process.[15] The cost estimate totals $2.72 billion (adjusted for inflation) from mid-FY 2014 through FY 2026; when prior years are included, the estimate increases to $3.43 billion from FY 2010 through 2026 (adjusted for inflation). Likewise, new Treasury Department initiatives on taxpayer

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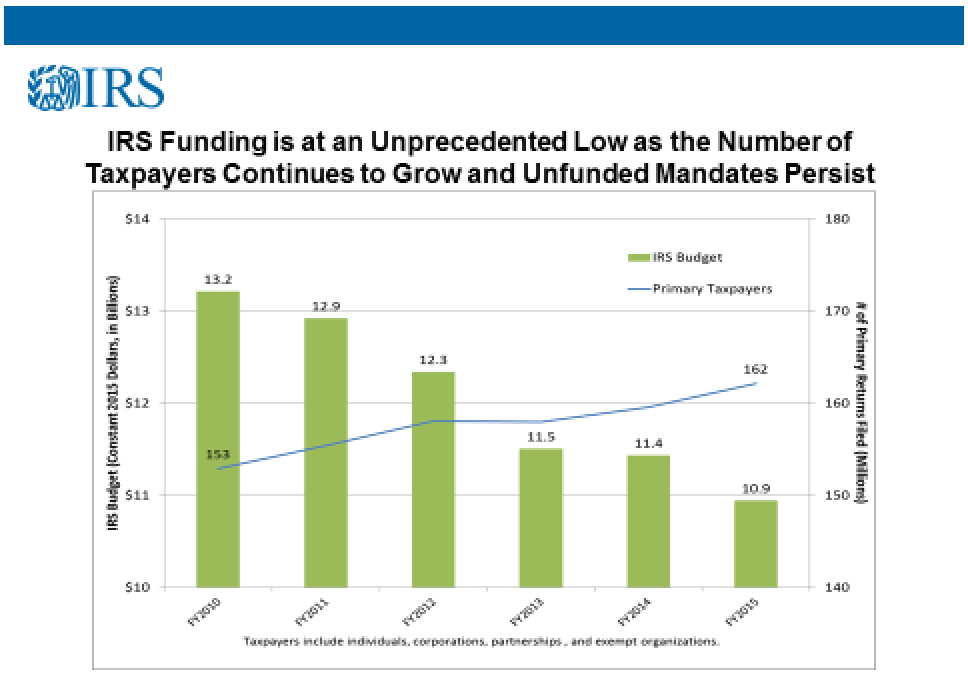
[13] National Taxpayer Advocate 2014 Annual Report to Congress 13 (Most Serious Problem: TAXPAYER SERVICE: Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers).
[14] GAO-15-624, at 1.
[15] GAO-15-624, at 22.

information exchanges or participation in those of other government organizations, such as the Foreign Account Tax Compliance Act (FATCA) passed by the Congress, and the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) initiative, have also magnified the need for resources without corresponding increases in funding.



Notes to figure: The taxpayer population has grown about 6 percent since FY 2010 while the IRS budget, in real terms, has decreased 17 percent. In addition to ACA and FATCA, which IRS expects to cost over $600 million to implement in FY 2016, IRS now has responsibilities for the ABLE Act and the Health Coverage Tax Credit. Implementing these two new programs is expected to cost over $50 million next year. Inflationary costs such as increased contributions to employee health plans and pay raises also costs IRS about $200 million a year. Source: IRS Budget Division.

The IRS has responded by scaling back activities, freezing hiring, limiting training, and using limited budget flexibility to reallocate resources among its four appropriations accounts.[16]

[16] Appropriations laws contain constraints and limitations on the ability of an agency to cross-fund or reallocate resources between the bucketed appropriations. This is important to note because of recent

These impacts affect all the issues with which IRSAC and taxpayers generally are concerned.

Increased Automation Brings Both Pros and Cons

The IRSAC commends the IRS for nevertheless continuing to seek ways to improve taxpayer service and ensure compliance, while reducing taxpayer burden by, among other measures, deploying new and improved technology. But there are significant implications to these changes, both in the short and longer term. Even those changes that may at first seem to be improvements may have long-term negative

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criticism that the IRS should be more nimble and adjust by moving money to higher priority needs and defunding others.

The appropriations provided by Congress currently fall into four bucketed amounts: Enforcement, Operations Support, Taxpayer Services, and Business Systems Modernization.

Congressionally approved appropriations are intended to provide a mandated framework that supports the activities of an agency. While the IRS cannot transfer resources from one appropriation account to another without specific statutory authority to do so, the agency still has some flexibility because fund centers may receive funds from more than one appropriation account. The IRS may reprogram funds among budget activities within certain limits. Reprogramming shifts funds within an appropriation account and agencies may reprogram without additional statutory authority. The IRS is restricted from reprogramming funds within appropriation accounts without Congressional committee approval if the reprogramming will, among other things, augment existing programs, projects, or activities (which IRS refers to as budget activities) in excess of $5 million or 10 percent, whichever is less.

Enforcement funds activities such as determining and collecting owed taxes, providing legal and litigation support, and conducting criminal investigations. Operations Support funds activities including rent and facilities expenses, IRS-wide administration activities, and IT maintenance and security. Taxpayer Services funds taxpayer service activities and programs, including pre-filing assistance and education, filing and account services, and taxpayer advocacy services. Business Systems Modernization funds the planning and capital asset acquisition of IT to modernize IRS business systems. In addition to the amount appropriated to these four accounts, the IRS supplements its budgetary resources through specific collections, such as user fees and certain reimbursables, which are not appropriated annually.

Budget activities divide appropriation accounts into additional functions. For example, the Enforcement appropriation is broken into three budget activities: Investigations, Exam and Collections, and Regulatory. Each budget activity, in turn, has multiple program activities. For example, Exam and Collections has 20 program activities, such as Tax Reporting Compliance – Field Exam; Earned Income Tax Credit Management and Administration; and Whistleblower Office. In addition to program activities, the lower levels of the budget formulation and budget execution structures include business units and other areas of interest, which are not discrete categories. For example, Wage and Investment is one division within the IRS and can be referred to as a business unit, while identity theft would be considered an area of interest that crosses divisions within the IRS.

A GAO investigation reported that IRS is utilizing its limited budgeting flexibility and taking steps to improve agency-wide coordination of budgeting decisions. GAO-15-624, at 4-5.

consequences — for example, the shift to more and more automation and less and less contact with live persons may disadvantage and disappoint taxpayers who often have complex problems that are not easily addressed by those automated systems.

Importance of Voluntary Compliance

These problems and others stemming from a degraded enforcement presence may adversely affect the voluntary compliance of many more taxpayers. Our tax system is one of self-assessment. The Voluntary Compliance Rate (VCR) is the amount of tax for a given tax year that is paid voluntarily and timely, expressed as a percentage of the corresponding amount of tax that the IRS estimates should have been paid. It reflects taxpayers' compliance with their filing, reporting, and payment obligations. For example, a 2007 report issued in conjunction with Congressional reviews of the then approximately $345 billion Tax Gap (the aggregate amount of taxes of each type that should be paid each year and are not) provided an estimate of the VCR of 83.7 percent for all taxes and all taxpayers for FY 2001.[17] Similarly, the amount was estimated at $450 billion for FY 2006, the latest IRS data available, and the overall VCR, or the gross Tax Gap as a percentage of total true tax liability, at 83.1 percent.[18]

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[17] Internal Revenue Service, U.S. Department of the Treasury, "Reducing the Federal Tax Gap: A Report on Improving Voluntary Compliance," August 2, 2007.

[18] Theodore Black, Kim Bloomquist, Edward Emblom, Andrew Johns, Alan Plumley, and Esmeralda Stuk, "Federal Tax Compliance Research: Tax Year 2006 Tax Gap Estimation," IRS Research, Analysis, and Statistics Working Paper, March 2012.

The Threat to Voluntary Compliance

Individual Income Tax Underreporting Gap and Net Misreporting Percentage by "Visibility" Category	Substantial Reporting and Withholding	Substantial Reporting	Some Information Reporting	Little or No Information Reporting
Voluntary Compliance Rate	**99%**	**92%**	**89%**	**<50%**
Associated Revenue Loss (Tax Gap)	**$11B**	**$12B**	**$64B**	**$120B**
Examples	Wages and Salaries	Pensions, Dividend/ Interest Income, SS and UI Benefits	Deductions, Credits, Partnerships/S-Corps, Capital Gains	Proprietor Income, Rents, Royalties, Farm Income

Overall voluntary compliance rate of about 83 percent.

For every 1 percent increase in voluntary compliance the IRS collects an additional $30 billion in revenue.

Source: IRS.

The most cost-effective systems of imposing and collecting taxes are those that encourage and permit the vast majority of taxpayers to meet their tax obligations voluntarily, allowing for tax administrations to concentrate their efforts and limited resources on those taxpayers who do not comply. The VCR has remained remarkably constant over the several decades since statistics began to be kept in 1974, but may change if and when major changes are made in the system. Even a small percentage of degradation of the VCR would necessitate considerable additional resources to be committed to maintain the new lower level of compliance and would likely result in significant revenue losses as well.

Impacts of Insufficient Funding

Recent funding levels at the IRS impair the ability of the agency to adequately perform its critical mission of providing much needed services and support to taxpayers who strive to meet their tax obligations and to identify and address the non-compliance of those who are not so inclined.

IRSAC recognizes the immense challenges that the Congress faces in trying to address federal spending on government programs in order to balance the federal budget. We also recognize the desire of the Congress to exercise its oversight function in relation to how certain personnel at the IRS have administered the tax laws affecting tax-exempt organizations. These challenges and issues, however, make it more, not less, important for the IRS to have the necessary resources and support it needs to appropriately manage and perform its central function of administering the tax laws fairly and collecting the taxes properly due under those laws.

Direct Program Impacts

IRS initially absorbed the recent budget cuts through savings and efficiencies, but was compelled to reduce, delay, or eliminate services. The IRS also scrutinized contract spending to ensure only the most critical and mandatory requirements are fully funded.[19]

A recent GAO investigative report looked at IRS responses to the funding decreases since FY 2010, and concluded that the examined business units (several larger and key units) scaled back activities, potentially reducing program effectiveness or

[19]GAO-13-541R, "IRS's 2013 Filing Season and 2014 Budget Request," April 15, 2013, at 20.

increasing risk to IRS and the federal government.[20] Each business unit examined — Human Capital Office, Office of Chief Counsel, and SB/SE Division — took actions to absorb budget reductions:

> One common element among each of the business units examined is that they spend 80 percent or more of their funds on labor. When IRS receives its budget, the Corporate Budget Office coordinates with business units to ensure that each business unit has sufficient funding to support Full Time Equivalents (FTEs) already onboard. The review of FTEs aligns anticipated salary and benefit costs to available appropriated funding for each business unit…. From fiscal year 2010 to fiscal year 2014, FTEs declined through attrition in each of the business units examined [from 20 to as much as 29.6 percent of unit FTEs]. Because labor comprises the majority of these business units' expenses, unit managers are limited in how they implement budget cuts. According to business unit officials, budget reductions were often implemented by decreasing the amount or type of activity performed. One key factor that influenced business units' decisions about how to prioritize activities was whether the activity was statutorily mandated. According to IRS officials, statutorily mandated activities—such as tax litigation in the Office of Chief Counsel—remained a priority. [tabular data summarized][21]

Some examples of reduced or eliminated activities that were cited include the following: non-filer investigations, private letter rulings, bankruptcy program, acquisition of e-discovery and document management software for tax litigation, and background reinvestigations of employees. All of these are important activities.

Lack of Necessary IRS Personnel at Required Experience Levels

In addition to the reductions just mentioned, significant reductions were also made in internal staff costs, such as hiring, training[22] and travel.[23] GAO estimated in the

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[20] GAO-15-624.
[21] *Id.*, at 10.
[22] Reductions in training budgets, some of which continue, in particular functions ranged from 74 to 96 percent in the four operating divisions. GAO-14-534R, "Internal Revenue Service: Absorbing Budget Cuts Has Resulted in Significant Staffing Declines and Uneven Performance," April 10, 2014 (Updated April 18, 2014), at 22. *See also*, Written Statement of Nina E. Olson, National Taxpayer Advocate, Hearing on Internal Revenue Service FY 2015 Budget Request Before the Comm. on Appropriations, Subcomm. on Financial Services and General Government, U.S. Senate, 113th Cong., 2d Sess. (Apr. 30, 2014), at 11.

referenced reports that the savings were $56.2 million for the training and travel reductions for the period surveyed.

Another example of how the IRS has had to respond to the budget realities are the severe constraints that have been placed on hiring, either new hires or the filling of vacated positions. The report explains that:

> IRS plans to replace few employees who leave the agency. In an agency with over 80,000 FTEs, all requests for external hiring in fiscal year 2015 must be approved by a direct report to the Commissioner. Specifically, requests for new hires are reviewed by the Deputy Commissioner for Operations Support, Deputy Commissioner for Services and Enforcement, and in certain cases, the Chief of Staff.[24]

This has led to many critical positions being left unfilled.

These adjustments are not "cost free" to the tax system. Taxpayers and practitioners are experiencing adverse effects due to required cutbacks attributable to recent and projected funding reductions. Although some training allowances were recently restored, the effects of the earlier cuts on program effectiveness, not to mention staff retention, cannot be overstated.

A further comment about staff retention is appropriate. Recent cutbacks and sequestration meant that most IRS personnel saw limited or no compensation raises in recent years, even without considering the effect of the furloughs in FY 2013. This environment likely hastened the departure of senior IRS personnel who were already eligible for retirement. IRSAC is concerned that, coupled with other personnel policy changes that constrain the IRS' inability to fill vacancies, the budget reductions

[23] Reductions in travel costs were cut by 87 percent. GAO-14-534R, at 22.
[24] *Id*. at 14.

contribute to a significant erosion of experienced leadership at a critical time, that cannot help but adversely affect taxpayer service and tax law enforcement.

But the longer-term effects of those adjustments may be much more dramatic than the cuts themselves. The IRS must recruit and properly train a sufficient staff to perform the critical functions that Congress has assigned it in the face of complex and constantly changing tax laws. Since its most recent major reorganization in the late 1990s, IRS personnel and their activities have been centered on two major functions: taxpayer services and enforcement of the tax laws. The IRS has made major strides to further automate its systems and operations in both areas and to reduce costs of operations through such means. IRSAC believes that there have been many positive accomplishments in this process in essential IRS programs throughout the IRS. Nevertheless, as the cited GAO study indicates, many necessary IRS programs are still people-intensive and therefore highly dependent on qualified personnel, supported by appropriate levels of funding for compensation, training, travel, and other items.

With many senior IRS personnel opting for retirement, and funding limits preventing many vacancies from being filled, IRSAC is concerned that the IRS will not have sufficient experienced and trained personnel to adequately address taxpayer needs and protect taxpayer rights. This concern is already seen in the decline in taxpayer service.

Decreases in Quality of Taxpayer Service

The effects of the reduced funding are being felt in various negative ways, not only by agency personnel but also by taxpayers and their representatives. There are many areas in which the metrics of taxpayer service at the IRS have been measured and scrutinized over the years. A recent report by the Taxpayer Advocate Service looks at a number of them.[25] Of particular note are the observations with respect to telephone calls and taxpayer correspondence, affecting the ability of taxpayers to interact with IRS with respect to matters of great importance to them:

> During the filing season, the IRS was only able to answer about 37 percent of the calls routed to telephone assistors, and those callers who managed to get through had to wait on hold an average about 23 minutes. (Except where otherwise noted, the telephone and correspondence data cited herein is for the filing season covering the January 1 through April 18 period or the comparable period for prior years.)
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> The percentage of calls answered by telephone assistors (known as the "Customer Service Representative Level of Service" or "LOS") and the average hold times this filing season constituted by far their worst levels since the IRS adopted its current performance measures in 2001. For comparison, the IRS reached its high-water mark in providing taxpayer service in 2004 when it answered 85 percent of taxpayer calls directed to telephone assistors and hold times averaged three minutes during the filing season. Even during last year's filing season, the IRS answered 71 percent of its calls and hold times averaged about 14 minutes.
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> Between January 1 and April 18, the IRS Accounts Management (AM) telephone lines received about 50 million taxpayer telephone calls. Of those, about 30 million were routed to automated processes, and about 20 million were routed to telephone assistors. One might assume that calls routed to automation would be answered at a much higher rate than calls routed to telephone assistors, but that is not the case. Of the 49.9 million calls the IRS received on its AM lines, including calls routed to automation, 24.1 million were deemed to be answered. That is less than 50 percent.
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> One basic system limitation results in what in IRS parlance is known as a "courtesy disconnect." When the IRS switchboard is overloaded and cannot handle additional calls, the IRS essentially hangs up on callers. The number of courtesy disconnects

[25] Taxpayer Advocate Service, Fiscal Year 2016 Objectives Report to Congress, June 30, 2015. To understand the IRS's telephone statistics, a few concepts are important to review. First, the IRS tracks the total number of calls it receives, which is known as the "Enterprise Total." The Enterprise Total includes calls to the "Accounts Management" (AM) telephone lines (which typically account for around 85-90 percent of all "Enterprise Total" calls), calls to the compliance telephone lines, and calls to a few additional low-volume telephone lines. Second, answered calls are split between "Assistor Answered Calls" and calls handled by the IRS' automated processes. Whether a call is routed to automation or to a customer service representative (CSR) depends on the telephone number the taxpayer calls and how the caller responds to the prompts he or she encounters. Third, the official "Level of Service" statistics reflect only calls routed to CSRs on the AM telephone lines.

skyrocketed this filing season as compared with prior years, rising by more than 1,500 percent from about 544,000 in 2014 to about 8.8 million this year.

The Practitioner Priority Service (PPS) phone line is used by tax professionals who are trying to reach the IRS to assist their clients. Over the course of the filing season, the IRS answered only 45 percent of practitioner calls on this line, and the hold time averaged 45 minutes. Thus, the use of the term "priority" has understandably evoked a combination of frustration and amusement from tax attorneys, CPAs, and Enrolled Agents, who must decide whether and how much to charge their clients for the time they spend waiting on hold. Of course, the 45-minute hold time represents merely an average. One practitioner told the National Taxpayer Advocate of waiting six hours to reach a telephone assistor. Another practitioner whom the National Taxpayer Advocate knows well forwarded an email from an associate at his law firm reporting on a four-hour and 24-minute telephone call, of which the first four hours and three minutes were spent waiting on hold.

TRADEOFF BETWEEN TELEPHONE SERVICE AND CORRESPONDENCE

Since 2008, the IRS has received more than 100 million telephone calls from taxpayers in every year, and it has received an average of more than ten million letters from taxpayers responding to proposed adjustments and other notices (*e.g.*, requesting penalty abatements, responding to math error notices, and making payment arrangements).

There is a large pool of AM employees that the IRS shifts back and forth between answering the phones and responding to taxpayer correspondence. However, the IRS faces a difficult choice in deciding which service to prioritize, and with relatively poor levels of service on both and limited resources, it is not an easy choice. If it assigns more employees to answer taxpayer telephone calls, it will fall further behind in processing taxpayer responses to proposed adjustment notices. If it assigns more employees to process taxpayer responses to proposed adjustment notices, it will answer fewer telephone calls.

At the end of the 2014 filing season, 22.7 percent of taxpayer correspondence had not been processed within normal timeframes and was considered "overage." At the end of the 2015 filing season, the overage percentage was 25.1 percent.

While the decline in processing taxpayer correspondence was much more modest than the decline in telephone performance, the consequences of a failure to process taxpayer responses to proposed increases in tax liability can be more significant. Therefore, the IRS made a decision to minimize increasing correspondence delays. [Portions of text, graphics, and internal footnotes were omitted.][26]

[26] *Id*. at 9-19.

Recent GAO and IRS Oversight Board reports indicate percentages of overage taxpayer correspondence at even higher levels, as high as fifty percent as measured in those studies.[27]

These are not mere abstract statistics; they have real-world consequences for taxpayers and their representatives. The only good news in them is that the call volumes are down from the levels in the early to mid-1990s, and that is likely owing to the positive effects of increased automated assistors and other technology, such as the IRS' website, as well as fewer tax law changes.

Much has been done to make necessary information and services available on the IRS website, and the progress there is truly remarkable and positive. However, many of the unanswered calls and correspondence are from taxpayers seeking additional information to prepare and file their tax returns and reports, and these taxpayers are being frustrated in their efforts. Many of the calls and correspondence are taxpayers and/or their representatives trying to respond to IRS inquiries and notices, including impending levies and other collection matters. Because some of these processes are automated, the inability to engage with IRS can mean serious problems for the affected taxpayers and significantly higher costs for their representatives. Additionally, many taxpayers are trying to deal with problems related to identity theft.[28] Resolution of these types of issues

[27] Report GAO-15-420R, "Internal Revenue Service: Observations on IRS's Operations, Planning, and Resources," April 10, 2014 (Updated March 3, 2015), at 18. GAO-15-163, "Tax Filing Season," at 18-19. IRS Oversight Board FY 2015 Budget Recommendation Special Report, at 13.

[28] In 2013, the Service had approximately 690,000 open cases of identity theft. Written Statement of Nina E. Olson, National Taxpayer Advocate, at 4, *Hearing on Identity Theft-Related Tax Fraud Before the Comm. on Oversight and Government Reform Subcomm. On Government Operations, U.S. House of Representatives*, 113th Cong., 1st Sess. (Aug. 2, 2013).

cannot and should not be fully automated because they require engagement with IRS personnel to resolve complex matters.

Similarly, the ability of taxpayers and their representatives to meet with the Office of Appeals to resolve tax controversy cases administratively has also been negatively affected by decreased funding.

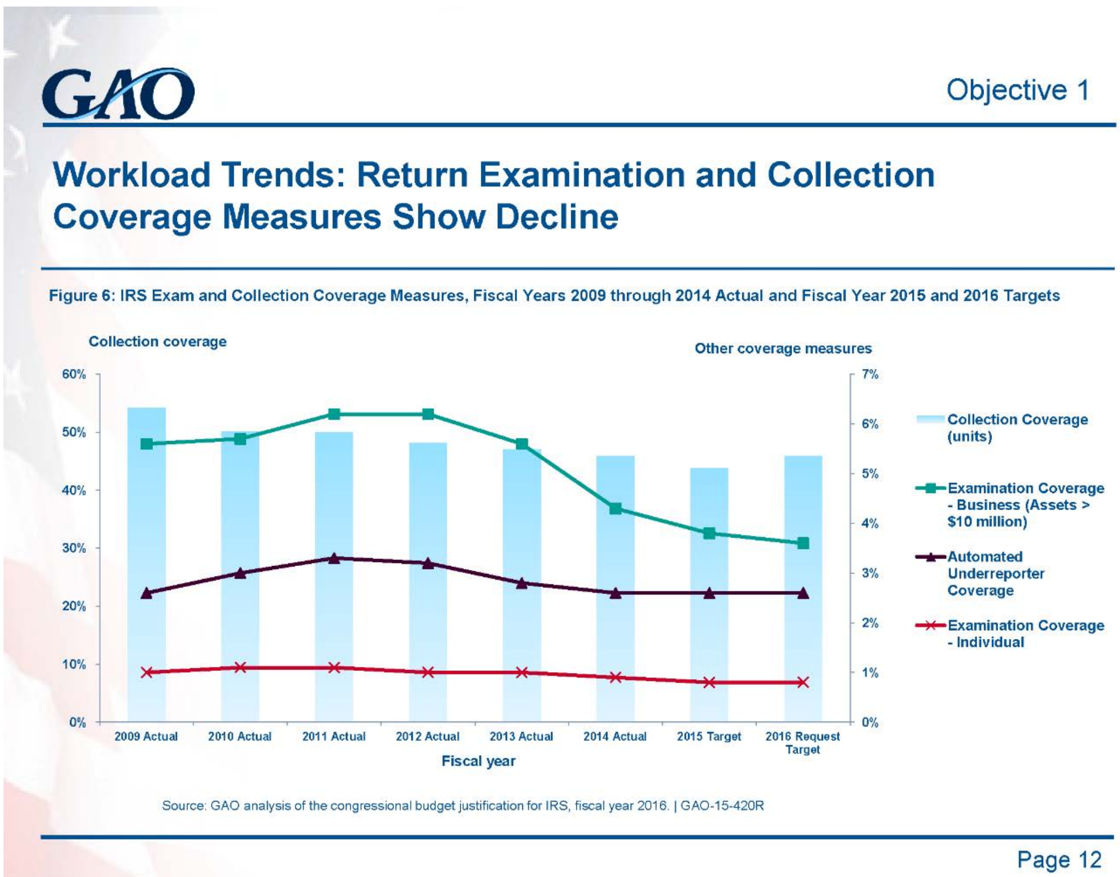
IRSAC is concerned that because most of the IRS' budget is devoted to personnel costs, the funding reductions necessarily reduce the staff available to deal with these issues.

Negative Effects on the IRS' Ability to Administer and Enforce the Law Fairly

The decline in budget resources has adversely affected enforcement programs as well. At the same time that the IRS is struggling to meet taxpayer needs in its service functions, it is also struggling in its enforcement efforts — its work to close the "Tax Gap." In FY 2012, the IRS brought in federal revenue of about $2.52 trillion on a budget of $11.8 billion, a return-on-investment (ROI) of 214:1. As the IRS recently estimated in a letter to Congress, reductions in the enforcement budget will inevitably and negatively affect the level of tax collections by as much as seven times the amount of the budget cuts.

In addition, while much of the lower collections will be attributable to the relatively small percentage of taxpayers who have traditionally ignored their responsibilities, a growing amount may be attributable to the effects of increasing cynicism of taxpayers about the fairness and integrity of the tax system. Thus, previously honest and diligent taxpayers who would otherwise end up paying more to subsidize noncompliance by others could themselves be tempted into noncompliance.

More broadly, any reduction in voluntary compliance and the VCR will increase the cost of enforcing the tax law. Whatever the costs of running the current system, those costs are orders of magnitude less than what would be necessary if taxes were in fact forcibly exacted rather than paid by honest citizens striving to voluntarily comply with their obligations, and who would want to live in such a system.



Report GAO-15-420R, Internal Revenue Service: Observations on IRS' Operations, Planning, and Resources, April 10, 2014 (Updated March 3, 2015), at 12.

GAO

Appendix III: IRS Adjusted Enforcement Coverage and Efficiency Targets Downward

Table 8: IRS Enforcement Coverage Measures Fiscal Years 2009 through 2013 Actual and 2014 and 2015 Targets

	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Target[a] (Original)	FY 2014 Target (March 2014)	FY 2015 Target[b]
Selected Examination Measures								
Examination Coverage - Individual	1.0%	1.1%	1.1%	1.0%	1.0%	1.0%	0.8%	0.8%
Examination Efficiency - Individual	138	140	139	142	142	145	133	124
Examination Coverage Business (Assets > 10mil)	5.6%	5.7%	6.2%	6.2%	5.6%	4.9%	4.2%	4.1%
Automated Underreporter Coverage	2.6%	3.0%	3.3%	3.2%	2.8%	3.1%	2.5%	2.7%
Automated Underreporter Efficiency	1,905	1,924	2,007	2,041	2,025	2,001	1,931	1,950
Selected Collections Measures								
Collection Coverage	54.2%	50.1%	50.0%	48.1%	47.0%	47.1%	42.7%	45.0%
Collection Efficiency	1,845	1,822	1,952	1,997	2,057	2,039	2,007	1,900
Automated Collection System Accuracy	94.3%	95.9%	94.9%	94.7%	94.4%	94.5%	94.0%	94.0%

Source: GAO analysis of fiscal years 2014 and 2015 congressional justifications for IRS.
Notes: Coverage measures generally are the number of closed examinations by the number of filings for the prior year. Efficiency measures are generally the total number of cases closed divided by total full time equivalents used. Automated Collection System Accuracy refers to the percent of taxpayers who received the correct answer to their question.
[a]The FY 2014 target was based on the FY2014 budget request.
[b]The FY 2015 target was based on the FY2015 budget request.

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Report GAO-14-534R, "Internal Revenue Service: Absorbing Budget Cuts Has Resulted in Significant Staffing Declines and Uneven Performance," April 10, 2014 (Updated April 18, 2014) at 27.

Recommendation

Funding levels are now significantly below levels that IRSAC members, in our role as concerned citizens, believe necessary for the IRS to successfully achieve its traditional mission, and new ones like the critical role it is currently required by law to play in the implementation of the ACA. These roles include both assisting taxpayers in complying with their legal obligations and enforcing those legal obligations when necessary. The impacts of recent reductions in IRS programs are already being felt by all American taxpayers. These issues must be addressed now.

Recent deficiencies in funding are eroding the significant investments and substantial progress made in the last two decades in modernizing and streamlining the IRS, and making it more efficient. Insufficient funding may have even more dramatic and costly future impacts on our system of voluntary compliance and self-assessment.

We have experienced the fact that taxpayers often blame the IRS for their unhappiness with our system of tax laws, or in some cases its enforcement. The IRS does not make the tax laws, and unless and until the laws are changed, the IRS must enforce those laws enacted by the Congress and signed by the President. Lawmakers in both political parties often criticize the IRS, usually because of genuine concerns with specific aspects of tax administration and enforcement. When criticism is due to poorly executed enforcement, those problems should be specifically and surgically addressed either by realignment of programs and resources, by additional funding if appropriate, or by personnel actions specific to the individuals involved. But an efficient, well-functioning IRS is necessary to the functioning of our federal government. The same is true for our state governments, as most state tax systems "piggyback" off aspects of the federal tax system. We do not believe that current levels of funding are adequate and regret that, if they continue, they may lead to serious consequences to all of us. We recommend that the IRS be funded at a level no lower than the FY 2016 budget request proposed by the Administration.

ISSUE TWO: LOOKING FORWARD IN THIS VOLATILE ENVIRONMENT, THE IRS MUST MAINTAIN THE TAXPAYER AND PRACTITIONER PROTECTIONS AFFORDED BY A STRONG, BALANCED, AND INDEPENDENT OFFICE OF PROFESSIONAL RESPONSIBILITY

Description of the Problem

With the current budget constraints on the IRS creating a need to consolidate and prioritize expenditures, and with the resulting pressures on taxpayer voluntary compliance and enforcement of the tax laws, the IRSAC believes it is critical that IRS maintain the systemic protections afforded both taxpayers and practitioners by a strong, balanced, and independent Office of Professional Responsibility (OPR).

The quality and accuracy of tax returns and other submissions to the IRS is especially vital in a time of reduced IRS monitoring capacity due to budget constraints and personnel reductions. IRSAC believes that OPR's function is increasingly vital at this time, that legislation is needed to restore OPR's ability to regulate return preparers and all aspects of professional assistance to and representation of taxpayers. Further, within the IRS it is important that funding priorities not jeopardize OPR's independence and vitality.

These concerns are heightened by the results of recent court cases that have limited in significant ways the authority of OPR. If not addressed, these developments could leave taxpayers, practitioners, IRS, and the Congress to face some of the destructive behaviors that have undermined the tax system in the past. Further, OPR should not just be "another enforcement office" in the IRS organization. Practitioners should be able to expect a fair and impartial evaluation of allegations made against them by others, including personnel in the examination functions of IRS, given that the possible effects of such actions include limitations on their ability to practice and earn a living.

<u>Recommendation</u>

Because of its significance and importance, the IRSAC has included these matters in its General Report. As much more fully discussed in the OPR Subgroup report, IRSAC urges the IRS to maintain the independence, strength, and visibility of OPR.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

SMALL BUSINESS/SELF-EMPLOYED AND WAGE & INVESTMENT SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Small Business/Self Employed (SB/SE) and Wage & Investment (W&I) subgroups (hereafter "Subgroup") were combined for the 2015 cycle. The Subgroup consists of a diverse group of tax professionals including attorneys, enrolled agents, certified public accountants, educators, general tax practitioners, a certified payroll professional, and persons with financial backgrounds. The members of this Subgroup have a wide range of experience in taxation, including both preparation of tax returns and representation of taxpayers. We are honored to serve on the IRS Advisory Council and appreciate the opportunity to submit this report.

The Subgroup wants to thank SB/SE Commissioner Karen Schiller and W&I Commissioner Debra Holland for their recognition of the value of the Subgroup as an integral part of their leadership teams. The Subgroup enjoys a close working relationship with the professionals within various operating divisions of the IRS; this year was no exception as we found them helpful in providing the information, resources, guidance, and IRS personnel necessary to develop our report. We also appreciate the support provided by our designated liaisons that did a masterful job of navigating the IRS and ensuring that we generally had access to the necessary information to develop our analysis and issue our report.

The Subgroup researched and is reporting on the five issues listed below. While the Executive Summary is limited to only a few of the recommendations, the full report presents them all.

1. **Identity Authentication of 1040 Forms**

Recommendations to provide the most cost effective method of individual taxpayer authentication to ensure a high level of confidence and to minimize taxpayer burden include implementing a system where IRS has access to W-2 information on the same date as required to be sent to taxpayers (January 31) and expanding the Identity Protection PIN process to anyone who requests one, including spouses and dependents.

2. **Review of Automated Online Self-Service and TeleTax Telephone Application /Tools**

IRSAC was asked to review the new online self-service and TeleTax telephone interactive application options and to provide suggestions on enhancement and/or improvements. The review was expanded to include other areas of taxpayer outreach. Recommendations include continuing various existing online applications, enhancing the TeleTax phone tool topics so the core of the 150 topics currently used can be incorporated into one of the existing online tools, expanding outreach to the English as a Second Language (ESL) community to increase their participation in various IRS programs, and increasing the number of languages available on online tool applications to include those presently offered in the Online Payment Agreement tool.

3. **Third-party Payer Arrangements for Employment Taxes**

To help mitigate fraud by payroll service providers (PSP), the IRS should require all new employers to sign up for an Electronic Federal Tax Payment System (EFTPS) account regardless of whether they will be remitting taxes on their own, or using a PSP. In order to keep employers informed of potential issues with their account, all notices regarding payroll tax filings, where the address has been changed to the PSP address, should be sent in duplicate to the actual business location. The "New Employer Toolkit" should be updated to provide pertinent information regarding the tax filing/remittance process.

4. Reducing Taxpayer Burden by Improving the Taxpayer Experience

The members of IRSAC recognize that taxpayer education is a continual process, so information on how to avoid the most common IRS notices and how to best communicate with the IRS when notices are received should be available via all communication channels (irs.gov, YouTube videos, etc.) that explain specifically what information should be included with tax filings to avoid notices. Under the current budget environment it often takes longer to process taxpayer communication, but taxpayers should not be faced with larger tax burdens due to IRS delays. The accrual of penalties and all collection activities, including subsequent notices and liens, should be suspended if the IRS requests additional time to process correspondence or responses to notices or IRS actions.

Increasing the number of Nationwide Tax Forums presented each year can reach a greater number of tax professionals who will benefit from the affordable training, allowing them to provide better service to taxpayers. Expanding the VITA program to reach more geographic locations will give more deserving taxpayers valued assistance with their tax returns.

5. **Review of Offer in Compromise (OIC) Form and Booklet 656-B, and Collection Information Forms 433-A, 433-B, and 433-F to Improve Taxpayer Compliance and Successful Utilization**

The Form 656-B booklet, Form 433-F, and related documents were reviewed to make these documents easier for the user to understand and complete; as a result numerous revisions in both the forms and their instructions are recommended to clarify financial terms. Adoption of the recommendations will save both the taxpayer and the IRS time and make the OIC program more efficient.

ISSUE ONE: AUTHENTICATION OF 1040 FORMS

Executive Summary

The members of IRSAC were asked to recommend methods of authentication to reduce filing of fraudulent returns. The methods must be efficient, cost effective and will not overburden the taxpayer. Recommendations include matching information from the Form 1040 with employer-provided W-2 forms before issuing taxpayer refunds, coordination of federal and state employment information reporting in a year-round exchange, and expanding the availability of Identity Protection PINs (IP PINs) and use of IP PINs for spouses and dependents on the Form 1040.

Background

A strong system to authenticate tax returns filed by true taxpayers is needed to stop the many fraudulent returns filed to receive fabricated refunds. In processing year 2014, the IRS detected 1,071,691 Identity Theft returns using its model and filtering systems, and stopped $6.5 billion in fraudulent refunds. An unknown number of fraudulent returns are also filed each year that the IRS is currently unable to identify and stop before a refund is issued. These fraudulent returns cause frustration and burden for legitimate taxpayers and are a drain on the United States Treasury.

Authentication of taxpayer information on the Form 1040 can be achieved using a system that incorporates the verification of taxpayer data to determine if the information is being reported accurately, or is falsely reported for fraudulent tax refund purposes. IRSAC found two means may be helpful to authenticate the correct return: matching employer-provided W-2 information with that reported on the tax return and utilizing existing information provided to government agencies. Another validation method increases the scope of the IP PIN program; reporting on the tax return any spouse or dependent IP PIN received during the year will help ensure that only those who are legitimately claimed are properly included on a tax return.

Matching employer-provided information with the W-2 information stated on the taxpayer's Form 1040 is an effective means of authenticating a return that imposes little burden on the taxpayer. If a taxpayer's name, social security number, and date of birth are stolen — which is not a rare occurrence — a fraudster can electronically file a fraudulent return. At present, the IRS is not able to match information from employer-provided W-2s until after most refunds have been issued because of the time it takes to receive the processed information from the Social Security Administration. To authenticate suspicious returns, the IRS uses "manual verification techniques" that often require calling or faxing employers, which are difficult and time consuming to process. The IRS could more efficiently authenticate returns before issuing refunds if it had access to employer-provided W-2 information at the same time it is provided to the employees. Under IRC §6071(b), employers are currently required to issue W-2s to employees by January 31 but do not submit them to the IRS (through the Social Security Administration) until late February (by mail) or late March (electronic submissions). By changing the employer deadline so employee W-2 information is submitted to taxpayers and to the IRS and Social Security Administration by January 31, the IRS could match the information from the employer-provided W-2 with the Form 1040 return provided by the taxpayer; this gives the IRS another means of authenticating the return to reduce the number of fraudulent refunds that are released.[29]

The IRS should also utilize other information about taxpayers that is or can be provided to the IRS on a continual basis, often before the start of tax season. Sharing of information with states or other federal agencies may be in the common interest of all. One example is receiving shared information from state employment or department of revenue agencies who receive quarterly employment data from employers throughout the year. The IRS may use this information, acquired throughout the year and ready for the individual filing season, to help authenticate the information on Form 1040. Quarterly payroll/unemployment returns often include the employee's name, social security number and gross wages along with the employer's Employer Identification Number (EIN), which provides the IRS with another validation point that a person was employed by a particular firm and that a subsequent W-2 is appropriate. Information received from the states and other agencies is helpful to the investigation process and if it can be matched, it is even more helpful. Currently, taxpayer data flows into IRS using existing channels such as the one used between Department of Health and Human Services (HHS), prior to the contract discontinuance, and Return Integrity and Compliance Services (RICS) from National Directory of New Hires (NDNH) which provided IRS authenticating and verifying information for Earned Income Tax Credit (EITC). Under the Social Security

[29] Different methods of authentication that match the W-2 with the tax return are being considered by the IRS and the United States Congress. *See* Joint Committee on Taxation, *"Description of the Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud,"* at 9 (JCX-108-15) (September 11, 2015). The IRS has considered authentication of tax returns using W-2 forms in conjunction with a GAO report. *See,* Government Accountability Office, *Identity Theft: Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud,* GAO-14-633 (August 2014). IRSAC does not suggest any one method is best but does support the concept of matching information from third-party provided W-2 forms, and possibly 1099 forms, with information on taxpayer-provided 1040 forms.

Act provisions, the IRS may access NDNH data for two purposes: administering the EITC and verifying employment reported on a tax return. If a false return is detected, it should be sent to the appropriate division within IRS for investigation before a refund is released.

The third method to authenticate returns increases use of the Identity Protection PIN (IP PIN). The IP PIN is a form of identification, issued by the IRS, for the sole purpose of ensuring that a tax return has been filed by the taxpayer to whom the IP PIN has been assigned. Traditionally, it is limited to taxpayers victimized by identity theft. When identity theft has occurred, the true taxpayer submits Form 14039, *Identity Theft Affidavit*, with the tax return and includes documents verifying the taxpayer's identity to receive an IP PIN. The taxpayer's IP PIN is changed annually and the taxpayer is notified by mail of the new number to use on the next tax return.

Currently, there is a pilot program in Florida, Georgia, and the District of Columbia, the locations with the highest rates of identity theft, that allows taxpayers to apply for an IP PIN even if they are not yet the victim of ID Theft with regard to the IRS. This is beneficial to the IRS because the individual taxpayers participating in the pilot program are taking steps to ensure they do not become victimized.

Despite the success of the IP PIN**,** the program has not prevented fraudsters from using a stolen identity to claim a dependent on Form 1040 because taxpayers have not been required to list an IP PIN for a dependent claimed on a tax return. IRSAC believes that many fraudulent returns have been filed claiming as individuals (with and without assigned IP Pins) as dependents inappropriately.

IRSAC intended to recommend including all IP PINS on Form 1040 and related schedules for all who have an IP PIN requirement, including spouses and dependents. We are pleased to see the recent announcement that IRS will require an IP PIN for anyone who “has an IP PIN requirement” starting January 1, 2016.[30] Including an IP PIN section on Form 1040 for dependents and spouses should deter this and we support this action.

We commend the efforts of the IRS to stem fraudulent returns and support efforts to develop effective authentication systems that are cost effective and minimize taxpayer burden. We encourage the IRS to develop additional pilot projects to test and fine tune ways to stop identity theft. Many of these recommendations and other efforts will require changes to IRS processes and may require new technology, infrastructure, and staff. We recommend financial support and legislative changes as needed so the IRS is able to develop programs to stop identity theft that meet these criteria.

Recommendations

1. Implement a system that gives the IRS access to W-2 information on the same date it is required to be sent to taxpayers (January 31). Such a system will likely require employers to file their W-2 information forms by January 31.
2. Match information from employer-provided W-2 forms with wages on a taxpayer’s Form 1040 before issuing refunds unless it is not possible to do so.
3. Implement a system that allows IRS to match information about taxpayers it receives throughout the year from states or other federal agencies.

[30] See IRS Quick Alerts for Tax Professionals, “New IP PIN Business Rules,” October 2, 2015, which should be included in Publication 4164 on 10/9/15.

4. Continue to pay refunds on the current schedule, unless a return has been identified as potentially fraudulent.
5. Develop systems that may include new technology, legislative, and financial support to implement the above recommendations. Legislative changes include, but are not limited to, changing the employer deadline for submitting W-2 forms to January 31.
6. Expand the Identity Protection PIN process:
   a. All individuals who request an IP PIN should be given one. Once the IRS receives Form 14039, *Identity Theft Affidavit*," an IP PIN should be assigned to the individual submitting the affidavit.
   b. If Form 14039 is submitted with a joint return, the taxpayer or spouse who was not the victim should be assigned an IP PIN as well.
   c. Include all assigned dependent and spouse IP PINs on Form 1040 and related schedules. The spouse IP PIN should be required on the signature block of page 1 of Form 1040 so both spouses are included. Dependent IP PINs should be reported on a modified Page 1, Line 6 of Form 1040. IRS plans implementation of IP PIN inclusion on January 1, 2016, but that should include these elements.

ISSUE TWO: REVIEW OF AUTOMATED ONLINE SELF-SERVICE AND TELETAX TELEPHONE APPLICATION TOOLS

Executive Summary

The members of IRSAC were asked to review the new self-service telephone interactive application options and to suggest enhancement and improvements. There are currently six different self-service online tools offered to the taxpayer, which include Where's My Refund, Where's My Amended Return, Get Transcript, TeleTax, Online Payment Agreement, and Free File. These online tools reduce the burden on IRS call centers and positively influence taxpayer accessibility. All six of these tools can be accessed in Spanish, but only one, the Online Payment Agreement tool, is accessible in six different languages. The members of IRSAC expanded the recommendation to include other areas of taxpayer outreach.

The Get Transcript online tool has been temporarily suspended. Since all online tools have produced great results for the taxpayer, IRSAC examined how to incorporate the benefits of these applications into existing services and tools, and also to explore expanding its outreach to include more of the ESL (English as Second Language) community.

Background

Taxpayers have long been afforded the opportunity to obtain free tax help in several ways, including by telephone, in person, and via the internet where information and free advice is available 24 hours a day, 7 days a week. The IRS provides a variety of channels of communication and assistance to taxpayers by various means to ensure that the taxpayer has all necessary tools to get the help and answers needed to stay in compliance with tax filing and paying requirements. In a world of fraud, identity theft, and deceptive refund practices, it is essential that the taxpayer remain vigilant and informed because if not, they can easily be victimized.

The IRS must remain a stable and reliable source of timely information for the taxpayer to get answers to questions on how to prepare and file their annual tax returns accurately, how to respond to an IRS notice, how to make a payment on income taxes due, and how to understand their appeal rights. These are just a few of the 150 topics currently available under the TeleTax phone tool. Although a taxpayer cannot speak with an IRS representative through TeleTax, the TeleTax phone tool was instrumental in advising a taxpayer how to speak to an assistor and what time that assistor would be available.

It is imperative that the taxpayer receives answers to these topics; the vital information previously disseminated in TeleTax can also be incorporated into other online tools so taxpayers can remain informed and involved in his or her tax reporting and in compliance with tax law changes. By expanding TeleTax topics to online applications, the information becomes readily available to taxpayers.

Get Transcript is another tool that is popular with taxpayers since many financial and educational institutions use the tax transcript to verify the taxpayer's reported wages. This tool was recently suspended from the online tool applications but is expected to be reinstated when possible. Taxpayers are still able to get a copy of their account or wage transcript by mail or by visiting a Taxpayer Assistance Center (TAC) located in many of our major cities.

The Where's My Refund tool remains an online tool that taxpayers use to trace and track their refunds. With this tool, taxpayers obtain an immediate reply on the progress of a tax refund. This tool is updated every 24 hours giving the taxpayer the most current information after the tax return was received electronically or four weeks after mailing a paper return.

The Where's My Amended Return tool remains an online tool taxpayers can use to track and trace the progress of their amended tax returns. This tool provides a status report of the 1040X Amended Tax Return for the current tax year as well as for the three prior tax years. This tool completely tracks the progress of the 1040X filing as early as three weeks from the date the IRS receives it into their system.

The Online Payment Agreement tool can be used by both individuals and businesses. Once the application is transmitted to the IRS, the taxpayer receives an immediate notification that the installment agreement is accepted, which eliminates the waiting period to receive a letter approving or denying their request.

The Free File online tool provides taxpayers with the ability to use brand-name software or use the free fillable forms to file their federal tax returns up to and including the extension periods.

Many taxpayers are not native English speakers. They can be disadvantaged by not having access to understandable information about tax compliance in other languages beside English and Spanish.

We applaud the efforts of the IRS in its outreach to taxpayers in providing these online tools and recommend enhancing self-service online tools so taxpayers can continue to receive assistance on tax compliance matters in this important way.

Recommendations

1. Continue the online tool applications for Where's My Refund, Where's My Amended Tax Return, Free File, Online Payment Agreement, and Get Transcript.
2. Incorporate the core of the 150 topics currently provided in the TeleTax phone tool into one of the existing online tools so this valuable information continues to be available to taxpayers.
3. Increase outreach to the ESL community to participate in various IRS programs, establish Public Service Announcements or media campaigns that include the ESL community and expand the online tool applications to include all the languages that are currently offered in the Online Payment Agreement tool.
4. Continue to brainstorm with future members of IRSAC to find new, creative methods of communicating with individual taxpayers.

ISSUE THREE: THIRD-PARTY PAYER ARRANGEMENTS FOR EMPLOYMENT TAXES

Executive Summary

The IRS requested feedback on the tools provided to clients of third-party payroll service providers, including the Electronic Federal Tax Payment System (EFTPS) inquiry PINS (Personal Identification Number) and Dual Address Change notices, and their effectiveness in mitigating fraud.

Background

Employers can appoint or enter into an agreement with a third-party to assume some or all of the employer's federal employment tax withholding, tax return preparation, reporting, and tax payment responsibilities. There are four types of common third-party payer arrangements:

- Payroll service provider (PSP). A PSP typically prepares employment tax returns for signature by the employer and processes the withholding and payment of associated employment taxes. An employer's use of a PSP or any other third-party does not relieve the employer from responsibility of ensuring that all of its federal employment tax responsibilities are met.
- Reporting agent. A reporting agent is a type of PSP. An employer and a third-party file Form 8655, *Reporting Agent Authorization*, with the IRS to designate a PSP as a reporting agent. An employer may authorize a reporting agent to sign and file certain tax returns. The reporting agent files separate employment tax

returns for each employer and may also deposit and pay taxes on the employer's behalf.

- Section 3504 agent. An employer and a third-party file Form 2678, *Employer/Payer Appointment of Agent*, with the IRS to authorize the third-party as an IRC Section 3504 agent of the employer. A Section 3504 agent performs acts such as withholding, reporting and paying employment taxes. The aggregate tax is paid under the Section 3504 agent's EIN, unlike with a PSP or reporting agent, where the tax is paid under the employer's EIN. A Section 3504 agent also becomes jointly and severally liable for the taxes that the employer is responsible for if the employer reported such wages to the 3504 agent.
- Professional employer organization (PEO). A PEO, sometimes referred to as an employee leasing organization, enters into an agreement with an employer to perform some or all of the employment tax withholding, reporting, and payment activities related to workers performing services for the employer. The aggregate tax is paid under the PEO's EIN.

Of the four most common types of third-party payer arrangements, only reporting agents and Section 3504 agents are required to submit an authorization form that discloses the relationship between an employer and a third-party. The IRS does not require a similar authorization for employers that use a PSP or PEO.

If a third-party payroll provider mismanages or embezzles funds that it should have paid to the IRS, the employer may end up paying the amount equal to the tax twice: once as the employer actually owed to the IRS, and again to the service provider who failed to remit those payments to the IRS as they were responsible to do. Employers cannot delegate their responsibility for filing and paying employment taxes to a third-party.

The IRS has and continues to develop tools to enable employers to monitor the actions of their third-party payers, but improvements are needed to the IRS safeguards to protect employers and the government when third-party payroll providers are not compliant with payment and filing requirements.

Recommendations

The IRS requested recommendations specifically for the first of the four types of third-party arrangements, Payroll Service Providers (PSPs). IRSAC's recommendations are:

1. The IRS should require all new employers to sign up for an EFTPS account regardless of whether they will be remitting taxes on their own, or using a PSP, Reporting Agent, Section 3504 agent, or PEO. This enables the employer to either pay payroll taxes directly or to verify that taxes have been paid by the third-party.
2. The IRS should provide an updated "New Employer Toolkit." When a new employer registers for an EIN, the IRS would send a toolkit with pertinent information regarding the tax filing or remittance process. The IRS could distribute the notice in the same manner the employer applied for the EIN so if the employer applied for an EIN online, the notice would be sent electronically with the EIN letter. For example, the toolkit might include:

a. Information on the implications of the employer's choice to hire a third-party PSP to remit taxes.

b. Information or a notice explaining not only the importance of remitting payroll withholding taxes in a timely and efficient manner, but also confirming that the employer cannot delegate the responsibility for depositing payroll taxes regardless who is responsible for remitting the funds.

c. Information that it is possible to use EFTPS to ensure that payroll deposits have, in fact, been made.

d. Links to useful tools on irs.gov, such as http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/Public-Employers-Toolkit.

3. Revisions to the Employment Taxes for Business web page should be made so that the information about employer responsibilities is closer to the top of the page, rather than listed last. While all of the information on the Toolkit webpage is important to some degree, IRSAC members believe that employment taxes have a higher priority than some of the other items listed.

4. Create a catalog of YouTube videos that a new employer may access to learn more about employer responsibilities and how to handle them.

5. The IRS should develop processes and procedures that require PSPs to provide and have their client sign:

a. Form 8655, *Reporting Agent Authorization,* if the new employer is going to have the PSP remit taxes; or

b. A disclaimer or other official notice (to be determined) if the PSP is not going to remit tax payments to the IRS.

c. In either case, the IRS should require the employer (client) to sign a document with the PSP indicating that they understand their role (such as using EFTPS to verify tax deposits are being made) and the employer's responsibility for the payroll tax deposit. The PSP could actually help the client log into and create an EFTPS account, and show the client-employer how to verify payment of taxes.

6. The IRS should work with the tax practitioner community and professional associations to provide information on the tools available to employers to monitor their tax remittances.

7. Regarding the change of address notices, the IRS should develop an algorithm to determine if the address change is substantial enough to warrant a letter about the change. For example, if the only change was "Street" to "St.", or "North" or "N.", no letter should be sent. However, if the street name, city, or zip code were actually changed, a letter is warranted.

8. In order to keep employers notified of potential issues with their account all notices regarding payroll tax filings, if an address has been changed to the PSP address, notices should also be sent in duplicate to the actual business location.

ISSUE FOUR: REDUCING TAXPAYER BURDEN BY IMPROVING THE TAXPAYER EXPERIENCE

Executive Summary

Taxpayer compliance has long been an issue providing countless challenges to the IRS. The members of IRSAC have been asked to provide input to assist in ensuring taxpayer compliance with their filing and payment obligations by providing a positive taxpayer experience and reducing the burden of compliance.

Background

On June 10, 2014, the IRS announced the adoption of a Taxpayer Bill of Rights.[31] This document collects and clarifies numerous rights that are found throughout the Internal Revenue Code (IRC) which previously may have been difficult to locate and were hard to understand. IRSAC commends the IRS in its efforts to provide fair treatment to all taxpayers and to make these rights easier to see and understand.

Among the 10 provisions outlined are the right to Quality Service and the Right to be Informed. In recent years providing quality service and information has become a challenge because of budgetary constraints faced by the IRS. In her most recent report to Congress, Nina Olson, the Taxpayer Advocate reported some alarming statistics:[32]

- During the 2015 tax filing season, only 37 percent of the calls routed to telephone assisters were answered with average hold times of 23 minutes.

[31] IR-2014-72 (June 10, 2014).
[32] Taxpayer Advocate Service, Internal Revenue Service, *Objectives Report to Congress, Fiscal Year 2016* (June 30, 2015).

- The Practitioner Priority lines were answered 45 percent of the time with average hold times of 45 minutes.
- Disconnects (where the call is terminated by the IRS because of its inability to answer) increased from approximately 544,000 in 2014 to about 8.8 million in 2015, an increase of approximately 1500 percent.
- 25.1 percent of taxpayer correspondence was not processed within a normal time frame.
- Taxpayer Assistance Center (TAC) services were significantly decreased, including a reduction in the hours, narrowing of the scope of questions that would be answered and discontinuation of tax preparation services for low income, disabled and elderly taxpayers.

The end result is that the Right to Quality Service has suffered. The inability to achieve effective two-way communication burdens taxpayers in their efforts to comply with their tax filing and taxpaying obligations. A secondary result is that the reduction in communication erodes the taxpayers' Right to be Informed, which can lead to higher instances of noncompliance. This can be particularly troublesome for small sole proprietors who should be filing a Schedule C but who are confused about their filing requirements.

With the added responsibilities related to the Affordable Care Act (ACA) and the Foreign Account Tax Compliance Act (FATCA), combined with less funding and reduced staffing, the IRS is in the extremely difficult position of trying to find ways to provide more quality service and information to taxpayers who are trying to meet their compliance and tax filing requirements. In light of these restrictions, we commend the

IRS on the increased amount of information that is available to taxpayers through irs.gov. This website provides taxpayers with a significant amount of resources at their fingertips.

The IRS has two programs currently in place that can be expanded to better serve taxpayers and to increase their satisfaction. The first, the Nationwide Tax Forums is intended to provide tax professionals with continuing professional education and guidance on various tax preparation and tax controversy topics. Recently the IRS reduced the number of Tax Forums, which potentially reduces the number of tax professionals who can take advantage of this valuable resource. While the Nationwide Tax Forum does not impact a taxpayer directly, it benefits them by providing their return preparers with accessible and affordable education. The second, the Volunteer Income Tax Assistance (VITA) program helps taxpayers by providing free tax preparation assistance to those who need it, including the elderly, disabled, and low-income taxpayers.

We also commend the IRS' efforts to work with various stakeholder groups to reach the largest number of taxpayers possible. IRSAC recognizes that the dedicated staff at the IRS is working to address the taxpayers' Right to Quality Service and their Right to be Informed and offers the following recommendations to help achieve these goals.

Recommendations

1. The IRS frequently communicates with taxpayers through notices. Taxpayer education regarding how to avoid the most common IRS notices and how to best communicate with the IRS when notices are received could reduce taxpayer burden. Information provided through various channels (irs.gov, YouTube videos, etc.) explaining specifically what information should be included with tax filings to avoid

notices could reduce the need for communication. If resources already exist that contain this information, they need to be publicized and highlighted in a prominent location on the website during the filing season.

2. Many taxpayers, including those who are self-employed, do not understand their need to file a Schedule C for certain types of income received. For example, taxpayers may not understand that most cash received while conducting business is actually taxable, or that all income received is subject to income tax reporting, not just what is reported on Form 1099-MISC. Taxpayers may be confused about what to do when they receive an unexpected Form 1099-MISC and when they mistakenly believe they did not have to report income. IRSAC recommends that information should be prominently displayed in the recipient instructions on the back of Form 1099-MISC to indicate that "IRS will attempt to match information reported on this form to your tax return" and to direct taxpayers to information on the IRS website that explains their filing requirements and answers questions such as "Why did I receive this form?", "Where do I go to find Schedule C reporting instructions?", and "Why didn't my employer withhold taxes?", among others. This information could also be included in the letter issued to taxpayers when they receive an employer identification number for a new business and on the Form W-9 that payers use to request identifying information on payees. There is a web page referenced on the back of the Form 1099 recipient copy for latest information on legislative changes (www.irs.gov/form1099misc), but that link is broken as of the date of this writing and requires additional search on the website; if a link provided on a form no longer exists, the web page should redirect the inquiry appropriately. The members of

IRSAC understand and appreciate that the back of Form 1099 is filled with information for recipients, but the font is small and very difficult to read. By also linking this information to a web page and providing answers to other frequently asked questions it will reduce taxpayer confusion about their tax requirements for income received, whether it is reported on Form 1099-MISC or not. In conjunction with this information, we also recommend the following:

a. Reaching taxpayers with this same information through state and local business licensing agencies.
b. Developing free and or low-cost public announcements and media attention regarding the taxability of cash payments (possibly working with the Ad Council).
c. Reaching out to high school and college students with Understanding Taxes curriculum to educate future taxpayers on their true filing and paying requirements, especially when they are self-employed.

3. Because of delays in resolving many tax issues due to budget constraints that impacts staffing, we recommend suspension of the accrual of penalties and all collection activities, including issuance of subsequent notices and liens, if the IRS requests additional time to process taxpayer correspondence or forms submitted in response to an IRS request. Taxpayers should not be faced with a larger financial burden because of the inability to communicate effectively with the IRS, especially when that inability is not created by the taxpayer.
4. Expand the online tools to address many taxpayer issues that could be effectively handled through means other than phone calls or correspondence. In particular, we recommend:

    a. Live Chat
    b. An online Power of Attorney application process to replace the Disclosure Authorization program that was discontinued approximately two years ago. At this time a tax professional must either fax their Power of Attorney (Form 2848) to the Centralized Authorization File (CAF) or fax or hand it directly to an IRS employee, which often significantly delays the opportunity to assist taxpayers. By being able to process a Power of Attorney and obtain transcripts without delay, tax professionals can begin assisting taxpayers more quickly and effectively.
    c. The irs.gov website currently contains an extensive list of Frequently Asked Questions, but they are scattered throughout various pages of the website. IRSAC recommends consolidating this area on one page with search capabilities and highlighting this on the main landing page. We also suggest including cross references to IRS instructional videos (where applicable) within the various answers.
5. Expand tools available on the IRS2Go cell phone app to provide taxpayer access to information on demand on their paying and filing requirements, and topics such as their paying and filing requirements among others.
6. Continue exploring use of online tools for taxpayers and tax professionals.
7. Enhance the IRS Nationwide Tax Forums by expanding the Forum locations to reach more tax professionals who need the education and guidance provided by this valuable resource.
8. Expand the current VITA program to reach more geographic locations so this important resource is available to additional taxpayers who need it.

ISSUE FIVE: REVIEW OF OFFER IN COMPROMISE (OIC) FORM AND BOOKLET 656-B, AND COLLECTION INFORMATION FORMS 433-A, 433-B, AND 433-F TO IMPROVE TAXPAYER COMPLIANCE AND SUCCESSFUL UTILIZATION

Executive Summary

The members of IRSAC were asked to review the Form 656 Booklet, *Offer in Compromise*, Form 656 *Offer In Compromise*, and Forms 433-A (OIC) *Collection Information Statement for Wage Earners and Self-Employed Individuals*) 433-B (OIC) *Collection Information Statement for Businesses*, and 433-F *Collection Information Statement*, for the purpose of identifying any possible changes to encourage taxpayer utilization and improve successful resolution and payment of tax liabilities consistent with the Fresh Start Initiative.

Background

An Offer in Compromise (OIC) allows a taxpayer to settle tax debt for less than the full amount owed. OICs may be granted based upon the taxpayer's unique facts and circumstances, and the IRC enumerates three acceptable taxpayer arguments for OIC acceptance: whether the tax liability is owed (doubt as to liability), whether the taxpayer can pay the debt (doubt as to collectability), or whether a public policy or equity ground exists to compromise the debt (effective tax administration). The IRS expanded and streamlined the OIC program as part of its Fresh Start initiative to cover a larger group of struggling taxpayers. First announced in 2008, the Fresh Start program is intended to make it easier for individual and small business taxpayers to pay back taxes and avoid tax liens. A taxpayer unfamiliar with the terminology used in Form 656, its instructions, and Forms 433-A (OIC), 433-B (OIC), and 433-F may find the forms confusing, and consequently may submit incomplete or inaccurate applications, or be otherwise discouraged from completing and submitting an OIC. Further, there sometimes is confusion in distinguishing between income tax liabilities that arise from conducting a business that is assessed against an individual and other tax liabilities, such as employment and excise taxes, which arise from conducting the same business activity but that are assessed against the business entity.

Some terms with differing commonly accepted meanings, and defined meanings, are used in contexts where it is not clear which meaning of the term applies. For example, the term “individual shared responsibility payment” may be confused with other terms such as “joint liability” or “trust fund recovery penalty.”

While an OIC should settle all of the outstanding tax debt of a taxpayer, taxpayers may be confused by the number of offers that must be submitted and the number of application fees that must be paid.

IRSAC questions a policy decision regarding the calculation of acceptable offers. A taxpayer submitting a “lump sum” offer, which may be paid in five months or less, considers only 12 months of monthly income, while any other offer, including those that may be paid sooner than by lump sum, considers 24 months of income. IRSAC also questions the requirement that married taxpayers who have joint and separate tax liabilities must file multiple OICs.

Taxpayers needing to prepare an OIC or collection information statements are often under emotional and financial stress, and confusing terminology, lack of clarity in instructions, and the need to parse terms and phrases exacerbate the taxpayer's fear and uncertainty of providing comprehensive financial information to the IRS. A taxpayer struggling with these forms is a taxpayer attempting to comply with the tax laws. Any clarification that can be provided would ease the taxpayer's anxiety and frustration and would encourage better participation in the collection process and use of the OIC. Accordingly, the members of IRSAC offer the following recommendations.

Recommendations

A. Form 656 (Offer In Compromise)

1. Prominently placed, in bold print, the first question asks if the taxpayer used the Pre-Qualifier tool on irs.gov before filling out the form. The prominence of this question implies that use of the tool is a prerequisite for submitting an offer. While intended to assist a taxpayer in making an offer, use of the Pre-Qualifier tool is not required. The results indicated by the tool do not make the final determination of an acceptable offer, nor is the tool likely to produce the same result as the offer amount that results from using Forms 433-A (OIC) or 433-B (OIC). IRSAC agrees that the tool can be helpful and instructive, and its use should be encouraged, but recommends that language be added to Form 656 and its instructions, to clarify that neither use of the tool nor obtaining indication of a successful offer, is required. To enhance access to and use of the tool, both the form and the instructions should provide a full URL for the Pre-Qualifier tool (*i.e.*, http://irs.treasury.gov/oic_pre_qualifier).

2. The purpose of an OIC is to settle all unpaid tax liabilities of the applicant whether the taxpayer is an individual or a business entity. All tax liability assessed against a taxpayer, regardless of its source, should be included in a single offer with a single fee. An individual may have personal income tax liability from conducting business as a sole proprietor, a single member Limited Liability Companies (LLC) (as a disregarded entity or as a partnership), a partner in a partnership, or a stockholder in an S corporation. In addition to personal income tax liability, an individual may have other personal tax liability arising from conducting the business such as trust fund recovery penalty and employer payroll tax liability. These same business entities may have their own tax liabilities, such as employment and excise taxes, which are not assessed against an individual. The format and presentation of Sections 1 and 2 cloud the distinctions between the tax liabilities of an individual and those of business entities, and should be revised to clarify that an applicant should complete either Section 1A or Section 1B, but not both. If Section 1A is completed, Section 2A should also be completed; if Section 1B is completed, Section 2B should be completed. Sections 1A and 2A should be completed by individuals applying to compromise tax assessed against them personally, and sections 1B and 2B should be completed by business entities applying to compromise tax assessed against, and owed by, the business entity taxpayer.

3. The trust fund penalty may be imposed on a person who is found to be a responsible person with respect to any business employer regardless of the form of the business. The second box under Section 2A refers only to the trust fund

recovery penalty imposed on a responsible person of a corporation, and should be clarified by using “business” or “employer” or “business employer” instead of “corporation.”

4. A taxpayer might bear the financial burden of payroll tax liability in more than one capacity, such as a stockholder of an S Corporation and as a responsible person. Knowing how the OIC payment will be allocated to satisfy a payroll tax liability assessed against multiple persons would assist the taxpayer to prepare a viable offer. The instructions should explain how an OIC payment will be allocated with respect to a trust fund recovery penalty that is compromised along with other tax liabilities, and the extent to which the taxpayer may direct application of OIC payments to the trust fund recovery penalty.

5. Section 4 presents a chart of the gross monthly household income limits for purposes of low-income certification and waiver. The chart reflects total monthly income that is 250 percent of the poverty guidelines published by the Department of Health and Human Services. The poverty guidelines are adjusted in January each year, so the chart in the printed forms is out of date. A chart date and a complete URL should be added so that a taxpayer may easily access a current, relevant chart.

6. The instructions state that the low income waiver does not apply to businesses other than sole proprietorships. A taxpayer conducting business as a single member LLC (a disregarded entity for income tax purposes and taxed as a sole

proprietorship) should be permitted to apply for the low income waiver, and the instructions should be revised to clearly permit such taxpayers to do so.

7. Section 6, Designation of Down Payment and Deposit, uses terms not previously used to refer to components of an offer. The term “down payment” is first used in Section 6 while Section 5 refers to an “Initial Payment” made with respect to a lump sum offer, and a “first month’s installment” made with respect to a periodic payment. Section 6 also refers to “the required payment” to be submitted with an offer. A clear understanding of these terms is essential for purposes of determining whether a taxpayer is submitting a “deposit” with the offer. In common usage, these terms have similar meaning and might be used interchangeably. Sections 5 and 6 should be revised to define and consistently apply terminology.

8. The terms “individual shared responsibility payment” and “shared responsibility payment” appear at least three times in the OIC booklet and three times in Form 656 before a definition is given in the last paragraph of Form 656. The terms, sometimes in bold print, are scattered throughout the booklet to discuss exceptions to tax liens and the effect of payment defaults, but these references do not assist the taxpayer to complete an OIC, and are a distraction. The final paragraph of Section 8 addresses issues relating to shared responsibility payments. It contains the only definition of the term, which is imbedded in a sentence that is unduly long, complicated, and incomprehensible. The final paragraph of Section 8 and the various references to “shared responsibility payment” should be deleted, and should be replaced with a single, well-placed

paragraph that defines the term and discusses its relevance to and effect on the OIC.

9. The final paragraph of Section 8, Offer Terms, shifts perspectives from first-person to second-person, shifting the IRS to first-person and the taxpayer to second-person. Because the Offer Terms are presented as being the agreement of the taxpayer, references to the taxpayer should be consistently in first-person for all paragraphs included in the Offer Terms section.

10. In the Form 656 Booklet section "Can You Pay in Full?" the term "lump sum" is used in a context appearing to apply its commonly understood meaning of a single payment in full. For purposes of an OIC, however, "lump sum" has a statutory definition under IRC section 7122 of payments made in five or fewer months. To avoid confusion, the term "lump sum" should not be used in this paragraph.

11. Form 656 Booklet uses various phrases that all appear to refer to the same period of time — the period between filing of the OIC by the taxpayer and a final determination on the OIC by the IRS — including "during the offer investigation," "offer evaluation process," "through final decision," "during consideration of your offer," "while the IRS is evaluating your offer," and "after your offer is pending." The context may require slight variations, but consistent use of a standard term or phrase would be less confusing to taxpayers.

12. Form 656 Booklet, section "Other Important Information," addresses the effect of filing an OIC on an existing installment agreement and states that "you

will not be required to make payments during the consideration of your offer." To avoid confusion with the requirement that proposed periodic payments must be made during the consideration of the OIC, this paragraph should be revised to make it clear that only the payments under the installment agreement are suspended.

13. Form 656 Booklet, section "How To Apply," instructs spouses with joint and separate tax liabilities to file multiple OICs and pay multiple application fees. IRSAC recommends reconsideration of this requirement. While each separate OIC requires consideration of the household income of both spouses, the household income should not multiply with the number of OICs that must be submitted. All necessary parties will be parties to an OIC that settles the joint and separate tax liabilities of both spouses. Even though a spouse cannot settle or compromise the separate tax liabilities of the other spouse, the liable spouse will be a party to the OIC. Married taxpayers who share a common household income should be allowed to jointly submit a single OIC, with a single application fee, to settle the common household tax debt, including all of their joint and separate tax liabilities.

14. Form 656 Booklet, section "If You Owe Individual and Business Tax Debt," instructs that separate OICs must be submitted for individual and business tax debts. A business is defined in the paragraph as being "any business operated as other than a sole-proprietorship." In this context, it is not clear how a single member LLC, a disregarded entity taxed as a sole proprietorship, is treated. Income tax liabilities from a disregarded entity taxed as a sole proprietorship

should not require an OIC separate from that of the individual who bears the tax liability of the single member LLC; the instructions should be revised to clarify that no separate OIC submission is required.

15. Form 656 Booklet, section "Important Information," instructs that if "the option to make monthly payments" was selected, the taxpayer "must continue to make the payments during the evaluation of your offer." This statement is not accurate. Both the lump sum option and the periodic payment option require monthly payments, but the lump sum monthly payments are suspended pending acceptance of the OIC. This paragraph should be revised to refer to the option to make periodic payments rather than to monthly payments.

16. The Application Checklist should provide specific instructions on how to complete Forms 2848 and 8821 for purposes of an OIC.

B. Forms 433-A (OIC), 433-B (OIC), and 433-F

1. All of the Forms 433 assume that reported assets are wholly owned by the taxpayer (or a taxpayer and spouse) and do not account for taxpayers who jointly own assets with someone who does not owe tax debt. By not accounting for non-party's interests, the forms do not accurately reflect the taxpayer's actual liquidity and net worth. The forms should be revised with instructions that explain how a taxpayer should describe and value assets that are jointly owned with someone other than the person's spouse.

2. Transmitting Form 433 to the IRS takes a significant amount of time and effort, and it creates significant problems that inhibit the taxpayer's ability to effectively

utilize the form. The frustration experienced by the taxpayer while attempting to communicate at a critical juncture in the collection process creates stress and contributes to issues between the taxpayer and the IRS agent principally handling the account. For example, low income taxpayers often cannot afford the cost of professional assistance when a significant amount of professional time is attributable to delays in communicating with the IRS because of extended hold time, disconnects because the system is overloaded, or transmission of documents through a slow fax machine network.

There are a few possible solutions to this problem. The first is to have a pilot program for practitioners that allows them to email or upload forms (via a secure email or online system), such as a Form 2848, *Power of Attorney*, or 433-F, to the IRS employee with whom they are speaking. This would reduce the amount of lag time required by fax machines, allowing the existing IRS resources to connect with more taxpayers per day.

Another possibility is to create a pilot program that allows practitioners to upload the required forms to the IRS's database. The IRS should halt collection action pending review of Form 433-F by an IRS automated collection service (ACS) representative when collection would create a hardship which leaves the taxpayer unable to meet necessary living expenses. Then, after the information is processed, either the practitioner could call the IRS and an agent would immediately be able to access the forms, or, after the agent has reviewed the forms, the agent could call the practitioner to discuss the case. This would reduce the amount of time transmitting the documents while providing agents with more time to update themselves on the case. Under the current system, agents are expected to familiarize themselves with a case very quickly. By allowing agents more time to look at the information, both parties will be able to have a more meaningful and detailed conversation.

C. Form 433-A (OIC)

1. Add to the bold faced print instructions to Section 2 of Form 433-A (OIC) an instruction to "Complete this section if you or your spouse received income from employment (that is, either or both of you received a Form W-2)."

2. Section 3, Personal Asset Information, provides a section for "other valuable items" but is not clear whether regular household contents such as personal effects, clothing, furniture, entertainment equipment, and computers should be included. Provide a clarifying statement on the face of the form or in the instructions to guide the taxpayer in properly accounting for such items or to otherwise confirm that such items may be omitted.

3. Section 5, Business Asset Information (*for Self-Employed*), requests information for assets similar to information requested in Section 3 for personal assets. Modify the instructions so an asset is included only once, under either Section 3 or Section 5.

4. Section 6 has a line item for "Other secured debts (*not credit cards*)." This wording suggests there was a previous request for secured debt when no other request is made in Section 6 for secured debts of any kind. The word "other" should be deleted. Further, this line item is in the section for business expenses. In

accounting terms, a debt is not an expense. It appears that this item is intended to request debt service (monthly payment) information. The form or instructions need to clarify what information is required for this line item.

5. Section 7, Monthly Household Income and Expense Information, has a section for income information of a Spouse. The next line solicits income information of a “non-liable spouse.” If income information of a spouse is relevant, and is to be included regardless of the spouse’s personal tax liability, there is no need to imply there is a distinction between liable and non-liable spouses, and the reference to “non-liable” spouse should be removed.

6. Section 7, Monthly Household Expenses, refers to IRS Collection Financial Standards found at irs.gov. The reference should be to a complete URL (*i.e.*, http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Collection-Financial-Standards).

7. The calculation of the Offer Amounts determined per Section 8 of 433-A (OIC) and Section 5 of 433-B (OIC) are not clear. If the offer is to be paid in five months or less, the offer requires inclusion of 12 months of monthly income. If the offer is to be paid in more than five months, the offer requires inclusion of 24 months of income. There is no clear indication of when the five-month count begins. By statutory definition, a lump sum offer is one that requires a 20-percent down payment with the balance paid in five or fewer monthly installments. Per Form 656, the 20-percent down payment submitted with the offer does not count as one of the five installments. All five of the installment payments on a lump

sum offer are suspended pending acceptance of the OIC. Depending on the delay in accepting a lump sum offer, the final installment easily could be well beyond five months. It should be clarified which OICs may include only twelve months income and which require twenty-four months.

8. Section 5 of Form 656 defines a periodic payment offer as one that is paid in full in 6 to 24 months. A periodic payment offer must be accompanied by a down payment, and all proposed installments must be paid timely while the offer is pending acceptance. It is possible, in some cases, for periodic payment offers of 6 to 12 months to result in full payment prior to a comparable lump sum offer of five or fewer installments, because payment of the lump sum installments are suspended while the OIC is being considered by the IRS. While a lump sum offer must include only 12 months of income, a periodic payment offer, which might fully pay sooner than a comparable lump sum offer, must use 24 months of income. The policy should be revised to permit periodic payments of not more than 12 months to be based on the inclusion of 12 months of income rather than 24.

D. Form 433-B (OIC)

Instructions on the face of Form 433-B (OIC) clearly direct that this form is to be completed if the taxpayer's business is a "single member LLC." Next, it instructs that business conducted as a sole proprietorship (filing Schedules C, D, E, F, etc.) should not use this form, but should use Form 433-A (OIC) instead. For income tax purposes, there is no distinction between a sole proprietorship and a single member LLC that is a disregarded entity taxed as a sole proprietorship because in both cases the business's income tax liabilities are the individual's liability. A single member LLC should not be required to file Form 433-B (OIC) while its single member is required to file 433-A (OIC). An individual taxpayer should be permitted to file one OIC to settle all of the tax liabilities assessed against him or her including those attributable to a single member LLC. Instructions on the face of Forms 433-A (OIC) and 433-B (OIC) should be revised to clearly direct which form is to be used for a single member LLC.

E. <u>Form 433-F</u>

Title loans and payday loans, often used by low income taxpayers, carry a high interest rate and consume a significant amount of monthly income and cash flow. Because of the high interest rates, the balance of the loan and the required payment can change significantly from month to month. The volatility of alternative forms of credit are not adequately accounted for, which is of particular concern with Form 433-F, the form most frequently used by the IRS with respect to low income taxpayers to determine if the account is "Currently Not Collectible," or to determine the terms of an installment agreement. Further, if one of these loans is secured, aggressive collection practices present a very real possibility of collateral being repossessed by the lender. These loans are a significant burden on low income taxpayers and on their ability to pay tax debt. Form 433-F should be revised to separately identify title and payday loans and to account for the effect of their volatility on the taxpayer's ability to pay.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR)
SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Office of Professional Responsibility Subgroup (OPR) (hereafter "Subgroup") consists of a diverse group of tax professionals, including lawyers, an appraiser, an enrolled agent, and a certified public accountant. This year the OPR Subgroup addressed the need for a continued strong presence of the Office of Professional Responsibility, the need for legislation to enable oversight of tax preparers and advisers, and the application of a single set of standards to appraisers.

The OPR Subgroup has always enjoyed a very good working relationship with the Office of Professional Responsibility and this year was no exception. Despite leadership changes within the office, all personnel from the Office of Professional Responsibility were extremely helpful and cooperative in the subgroup's working sessions, contributing data, and offering insight for the framework of this report.

The OPR Subgroup's recommendations on the following three topics are set forth in this report.

1. **Continuity of independence, strength, and visibility of the Office of Professional Responsibility (OPR)**

After decades of little change to Title 31 Code of Federal Regulations, Subpart A, Part 10 (also known as Treasury Department Circular 230, or simply Circular 230) and the functioning of the Office of Professional Responsibility, Circular 230 and the OPR have evolved rapidly in recent years, permitting the effective pursuit of truly disreputable practitioners. The OPR needs to retain its autonomy and continue the current vigorous level of investigative and educational activities.

2. **Statutory authority of the IRS to regulate tax practice**

In 2010, the IRS instituted a program requiring all individuals who prepare tax returns for compensation to meet certain minimum standards including testing and annual continuing education. Four years later in *Loving v. IRS*, the U.S. Court of Appeals for the D.C. Circuit invalidated this program on the ground that the IRS does not have the statutory authority to make this program mandatory. The court also raised questions about the extent to which the IRS can regulate any tax return preparer who is not acting as a taxpayer's representative. The IRSAC believes all tax return preparers should be subject to the competency and ethical standards in Treasury Circular 230 and that all tax return preparers not subject to the standards of a bar license or accounting license should be required to demonstrate competency by successfully passing an appropriate test and taking annual continuing education. We therefore recommend that the IRS be granted the explicit statutory authority to regulate tax return preparers and, indeed, all stages of tax practice.

3. **Application of appraisal standards consistent with the Uniform Standards of Professional Appraisal Practice (USPAP)**

Following up on the recommendations in the 2011 IRSAC report concerning standards applicable to appraisers, who are subject to discipline under Treasury Circular 230, we recommend adoption of USPAP or equivalent standards in evaluating appraiser conduct.

ISSUE ONE: CONTINUITY OF INDEPENDENCE, STRENGTH, AND VISIBILITY OF THE OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR)

Executive Summary

With the current budget constraints on the IRS creating a need to consolidate and prioritize expenditures, the OPR Subgroup has concerns that the Office of Professional Responsibility may become a target for a reduction in its size or authority. IRSAC urges the IRS to maintain the independence, strength, and visibility of the OPR.

Background

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Since 1921, the regulations governing practice before the IRS have been published in 31 C.F.R. part 10 and are reprinted as Treasury Department Circular No. 230.

After decades of little change to Circular 230 and limited roles for the Office of Professional Responsibility, Circular 230 and the OPR have evolved rapidly over the past few years. Evidence of this evolution is the robust pursuit of truly disreputable practitioners. By increasing the number of attorneys on staff and focusing on patterns of behavior, the OPR has successfully and appropriately sanctioned practitioners who are unfit to practice.

The OPR serves a unique and crucial function and hence needs to retain its independence and operating strength. Authority for enforcement of Title 31 U.S.C. § 330 is delegated to the OPR, while other IRS activities are authorized and governed by Title 26. Title 26 and Title 31 protect the integrity of the system in different ways. This distinction is exemplified by the objectives of the two U.S.C. Titles. A preparer penalty in

Title 26 may be assessed on an isolated, specific past act of a tax preparer, whereas Circular 230 can be prospective, based on a practitioner's fitness to practice, prior to acting as a representative.

Examples of the distinctions between Title 26 and 31 are many. Sanctions available in Circular 230 include suspension and disbarment, keeping disreputable and incompetent representatives from practicing before the IRS. These sanctions hold practitioners to standards of behavior and allow the IRS to restrict the activities of practitioners who are disreputable and unfit to practice. Conversely, preparer penalties in Title 26 are purely monetary, and injunctions to prohibit illegal activity under Title 26 must be sought by the Department of Justice, following a protracted, arduous process. In addition, most preparer penalties under Title 26 are the result of referrals from the exam division. Since the IRS audits a mere fraction of all returns filed, only a very small percentage of disreputable individuals are being scrutinized for penalties under Title 26. In contrast, the OPR's investigations under Title 31 derive from internal referrals and external complaints against practitioners. Finally, Circular 230 contains extensive provisions for due process, requiring that OPR operate with completely different procedures from any reflected in Title 26. The IRSAC believes that functions that are so different in origin and operation call for different mindsets of management and should not be blended with other functions. In addition, since the OPR may be called upon to evaluate the conduct of the practitioner in relation to personnel in the Compliance or Appeals functions, the IRSAC believes that its being separate from those parts of the IRS strengthens its credibility and effectiveness. Thus, there is no other office in the IRS to which the OPR might appropriately report, and it is fitting that it report directly to the Deputy Commissioner for Services and Enforcement.

Historically, a major function of the OPR was administration of the Special Enrollment Examination and processing of licenses and renewals for enrolled agents. Until a few years ago, the OPR sanctions were predominantly based on practitioners' compliance with the tax laws on their own personal returns, and only rarely did the OPR address the duties and restrictions relating to practice before the IRS. Over the past decade, the OPR has been relieved of the administration of Enrolled Agent credentialing and has enhanced investigative capabilities that permit it to investigate and sanction for disreputable behavior, becoming a highly effective division.

Thus, by 2015 the majority of the OPR investigations have shifted to violations of standards of conduct in tax practice itself. Unethical behaviors such as theft of taxpayers' funds, filing false powers of attorney, failure to perform due diligence, and representing conflicting interests have emerged as the primary focus of the OPR activities. The tax professional community has applauded and supported the OPR's growth into a viable disciplinary organization with respect to disreputable practitioners.

OPR's shift to monitoring standards of conduct in tax practice has been supported by substantive educational outreach efforts, which alert practitioners that there is a "cop on the beat." This increased awareness of practitioner responsibilities significantly benefits tax administration and voluntary compliance.

Recommendation

The IRSAC recommends that the IRS maintain the OPR's autonomy and maintain its delegated authority for enforcement of Section 330 of Title 31, reporting directly to the

Deputy Commissioner for Services and Enforcement. The IRSAC also recommends that sufficient resources be allocated for the OPR to continue the current robust level of investigative activities and educational outreach.

ISSUE TWO: STATUTORY AUTHORITY OF THE IRS TO REGULATE TAX PRACTICE

Executive Summary

It is in the public interest to safeguard the integrity of tax return preparation, tax advice and tax representation at all stages. The authority of the IRS to do that has been successfully challenged in the courts. The IRSAC believes that Congress should remedy this situation by strengthening Title 31 U.S.C. § 330.

Background

Title 31 U.S.C. § 330 authorizes the Secretary of the Treasury to "regulate the practice of representatives of persons before the Department," including their character, reputation, qualifications, and competency. For decades, under regulations promulgated under Title 31 and published as Circular 230, the IRS has overseen the professional behavior of attorneys, certified public accountants, enrolled agents, and other credentialed professionals advising and representing taxpayers before the IRS. At times this oversight has been intense, as with tax shelter opinions in the 1980s (section 10.34 of Circular 230) and the written advice restrictions in the mid-2000s (section 10.35 of Circular 230). At other times it has been more watchful than assertive.

The OPR has responsibility for matters related to practitioner conduct, has exclusive responsibility for discipline, including disciplinary proceedings and sanctions, and has responsibility for matters related to authority to practice before the IRS.

In the past, Circular 230 had provided that mere tax return preparation did not constitute practice before the IRS. That changed in 2010 when the IRS expanded its oversight to cover hundreds of thousands of previously unenrolled and unlicensed tax return preparers after studies confirmed that large segments of the public had their returns prepared by unenrolled and unlicensed paid return preparers who often committed errors and otherwise abused the tax compliance system.[1] Those studies, for example, showed that 55 percent of preparers were subject to no regulation and that tax returns prepared by all preparers had a higher estimated percent of errors—60 percent—than self-prepared returns—50 percent. Significantly, the studies also accentuated that unregulated tax return preparers are not required to have any minimum education, knowledge, training, or skill before they prepare a tax return for a fee.

Because 60 percent of taxpayers rely on paid tax return preparers, those preparers must be knowledgeable, their knowledge must remain current, and they must behave in accordance with high ethical and professional standards.

Current Case Law Interpreting Title 31 U.S.C. § 330

In the *Loving* case, the court struck down the IRS's expanded oversight of return preparers, holding that the IRS had no such authority under Title 31.[2] In *Ridgely*,[3] the court invalidated Circular 230's contingent-fee restrictions as applied to "ordinary" refund claims – i.e., claims (amended tax returns) filed prior to an examination of the original return. The courts did so on the basis that preparers of tax returns and "ordinary" claims for refund are not representing taxpayers and are not practicing before the IRS as defined in Title 31 U.S.C. § 330.

In analyzing whether tax return preparers and refund claim preparers are

[1] Government Accountability Office, *Paid Tax Return Preparers : In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T, (April 8, 2014) (testimony before the Senate Finance Committee); IRS Tax Return Preparer Review in 2009 and 2010; IRS Publication 4832, as cited in the 2014 IRSAC Final Report.

[2] *Loving v. IRS,* 742 F.3d 1013 (D.C. Cir. 2014), *affg*, 920 F. Supp. 2d 108 (D.D.C. 2013).

[3] *Ridgely v. Lew*, Case 1:12-cv-00565-CRC (D.D.C. 2014).

"representatives" of taxpayers "practicing before" the IRS, the courts said that these roles do not come into being until a dispute arises between the IRS and the taxpayer. For example, the courts said that in the normal course of return and claim submissions, before a return is being audited or there is otherwise a dispute between the taxpayer and the IRS, the tax professional is not "practicing" before the IRS in the sense of having a "case" before the IRS, another term found in Title 31 U.S.C. § 330. The courts said that a tax professional is not "representing" a taxpayer unless the representative has the power to bind the taxpayer as would an agent for a principal. Accordingly, even though Title 31 U.S.C. § 330(d) expressly states that nothing in section 330 or in any other law prevents the IRS from regulating tax advice with respect to an activity that has the potential for tax avoidance or evasion, dicta in the opinions makes possible the argument that most tax advice is outside the scope of section 330 oversight.

The courts also described the existing return preparer penalty provisions of Title 26 (the Internal Revenue Code) variously as comprehensive, careful, regimented, specific, and constituting a tightly controlled system of preparer regulation that should not be "eclipsed" by the broader and more flexible regulatory scheme under Title 31.

Whether the current penalty system is careful, specific, or tightly controlled is highly debatable when examined in specific factual contexts. For example, monetary penalties may be considered a mere cost of doing business by an unscrupulous practitioner. That said, if Circular 230 applies only to practice in the narrow dispute-related sense described by the courts in *Loving* and *Ridgely*, then the whole tax opinion arena could be beyond the scope of OPR scrutiny. The IRSAC believes that what is needed is a comprehensive, careful, and tightly-controlled system to safeguard the trustworthiness of all phases of tax advice, return and document preparation, and dispute representation. Because the cited cases rest on the courts' interpretation of the terms in Title 31 U.S.C. § 330, the setback those cases have produced can be remedied by congressional action to change the statute.

Current Legislative Proposals to Expand Oversight of Tax Return Preparers

Recognizing the need for IRS oversight of currently unenrolled and unlicensed tax return preparers, members of Congress have introduced a number of bills specifically expanding the scope of Title 31 U.S.C. § 330 to cover "tax return preparers" as defined in section 7701(a)(36) of the Internal Revenue Code, or establishing oversight of such preparers under the Internal Revenue Code itself.

The IRSAC applauds the intent of this legislation particularly expanding the scope of Title 31 U.S.C. § 330 to include unenrolled and unlicensed tax return preparers as professionals who practice before the Internal Revenue Service. The income tax is generally self-assessed, and paid return preparers are critical advisers and assisters of taxpayers in understanding and fulfilling their self-assessment obligations. Given the meager 0.9 percent audit rate[4] that the IRS is able to sustain, leaving more than 99 percent of tax return data unreviewed, the system is clearly dependent upon the accuracy of the information that is originally submitted.

All paid tax return preparers have an important role in tax administration because they assist taxpayers in complying with their obligations under the tax laws. Incompetent and dishonest tax return preparers increase noncompliance and undermine confidence in the tax system.

[4] 2014 IRS Data Book Table 9a.

Recommendation

The IRSAC recommends enactment of legislation to overturn the results in *Loving* and *Ridgely* by expressly affirming the Treasury Department's authority under Title 31 U.S.C. § 330 to regulate paid tax return preparers. Guidance on the appropriate scope of the legislative grant may be found in the vision stated in section 10.2(a)(4) of Circular 230:

> Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

ISSUE THREE: APPLICATION OF APPRAISAL STANDARDS CONSISTENT WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

Executive Summary

In 2011 the IRSAC recommended to OPR that it "adopt the Uniform Standards of Professional Appraisal Practice ('USPAP'), or equivalent, as one of the standards for judging appraiser conduct."[37] We reaffirm that recommendation. To strengthen that affirmation, we cite key sources of authority that help explain the importance of the USPAP.

Background

Sources of Authority for the USPAP: The Financial Institutions Examination Council

The Financial Institutions Examination Council is established under Title 12 U.S.C. § 3303 to prescribe uniform principles and standards for the federal examination of financial institutions. It is composed of the Comptroller of the Currency, the Chairman of the FDIC, a member of the Board of Governors of the Federal Reserve System, the Director of the Consumer Financial Protection Bureau, the Chairman of the National Credit Union Administration Board, and the Chairman of the State Liaison Committee.

Title 12 U.S.C. § 3310 creates the Appraisal Subcommittee of the Council, which is authorized by Title 12 U.S.C. § 3331, *et seq.*, to "monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation."[38] The Appraisal Foundation's Appraisal Standards Board is responsible for promulgating the

[37] http://www.irs.gov/pub/irs-utl/irsac_2011_report_for_irs.gov_revised_12-12-11.pdf.
[38] 12 U.S.C. § 3332 (Functions of Appraisal Subcommittee).

USPAP.[39] Updated every two years, the USPAP reflects the current standards of the appraisal profession and establishes requirements for appraisers in order to promote and maintain a high level of public trust in appraisal practice.

Other Official Affirmations of the USPAP

The USPAP is specifically affirmed in a federal tax context in current pronouncements and publications of the IRS.[40] For example, Internal Revenue Manual (I.R.M.): Part 20, Penalty and Interest, Exhibit 20.1.12-2, *IRC 6695A - Job Aid (IRC Sections 6695A, 6700 & 6701 Valuation Penalty Job Aid)*, encourages IRS auditors to ask:

> Does the appraisal comply with the USPAP (Uniform Standards of Professional Appraisal Practice) standards?[41]
>
> If no, describe the most significant errors or omissions in the appraisal.[42]

In addition, Notice 2006-96, 2006-2 C.B. 902, Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions, states:[43]

> Generally accepted appraisal standards. An appraisal will be treated as having been conducted in accordance with generally accepted appraisal standards within the meaning of § 170(f)(11)(E)(i)(II) if, for example, the appraisal is consistent with the substance and principles of the Uniform Standards of Professional Appraisal Practice ("USPAP"), as developed by the Appraisal Standards Board of the Appraisal Foundation. Additional information is available at http://www.appraisalfoundation.org.[44]

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[39] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, § 1103, Pub. L. No. 101-73, 103 Stat. 512 (August 9, 1989); Dodd-Frank Wall Street Reform and Consumer Protection Act, §§ 1473(b) and (f)(1), Pub. L. No. 111-203, 124 Stat. 2190, 2191, and 2192 (July 21, 2010).
[40] USPAP is generally affirmed in numerous provisions of the United States Code and regulations. The Appendix to this report is a partial list of those references.
[41] http://www.irs.gov/irm/part20/52679005.html.
[42] http://www.irs.gov/irm/part20/52679006.html.
[43] Notice 2006-96, 2006-46 I.R.B. 902 (November 13, 2006).
[44] http://www.irs.gov/irb/2006-46_IRB/ar13.html.

This definition was refined in 2008 in Prop. Reg. §1.170A-17(a)(2), *Generally accepted appraisal standards defined*, published in the Federal Register dated August 7, 2008 (REG-140029-07).[45]

Expert Acknowledgment of the USPAP

U.S. Tax Court Judge David Laro and appraiser Shannon Pratt, authors of *Business Valuation and Taxes, Procedure, Law and Perspective (2011),* note that "although the USPAP directly influences federally related real estate transactions, it does not dictate the standard for business appraisals." But they add:

> USPAP makes good appraisal sense, is widely respected, and is frequently referred to by courts and regulatory agencies.[46]

The origin of the USPAP is explained by Gary Trugman CPA/ABV, ASA, in *Understanding Business Valuation* (2012):

> Established in 1987, The Appraisal Foundation is not an appraisal organization. This organization was set up by seven real estate organizations and ASA [*American Society of Appraisers*], which was the only multidisciplinary organization, in response to a growing problem facing the real estate appraisal world. Real estate appraisers lacked standards to provide consistency in their work product. As a result, relying on these real estate appraisals caused bad bank loans to be made, creating severe problems for lending institutions. Facing some form of regulation in the near future, The Appraisal Foundation promulgated a set of standards relative to appraisals. These standards are the USPAP. Although these were primarily intended to cover real estate appraisals, ASA used its influence to have standards included for its other disciplines as well: personal property and business valuation.…
>
> The essence of Standards 9 and 10 [*sections of USPAP related to business valuation*] is to do your job in a competent manner and communicate it properly. Several government agencies have adopted provisions requiring USPAP to be followed for all appraisals performed for their agencies. More and more courts are becoming familiar with the USPAP. Also the IRS has specifically mentioned the USPAP in Notice 2006-96, which was

[45] IRS Notice of Proposed Rulemaking (REG-140029-07), 73 Fed. Reg. 45908 (Aug. 7, 2008).
[46] Laro, David, and Shannon P. Pratt, Business valuation and taxes: procedure, law and perspective 400 (2011).

issued as a result of the Pension Protection Act of 2006 to provide guidance regarding the definition of a qualified appraiser and a qualified appraisal. As a result, business valuation appraisers are advised to follow these standards. [47]

Recommendation

The 2015 IRSAC concurs with the following conclusions in the 2011 IRSAC Report:

- Having the USPAP as an objective and widely accepted standard as a key component of OPR's due process would be mutually beneficial to both OPR and the appraisal community;
- The USPAP could serve as a guide for both judging conduct and professional practice remediation; and
- In a proceeding before an administrative law judge, the ability to reference an objective and widely accepted standard would be of great benefit. [48]

Accordingly, we recommend that the IRS encourage, and as appropriate require, application of the USPAP for judging appraiser conduct and professional practice remediation. Practical steps toward this goal would include references to the USPAP in Circular 230 governing professional conduct and also throughout the valuation provisions relating to Title 26, including the relevant provisions of the regulations and I.R.M. We recommend that the enhanced requirements incorporating the USPAP will be considered satisfied if the appraisal complies with similar standards that are at least as strict as the standards of the USPAP.

[47] Gary R. Trugman, Understanding business valuation: a practical guide to valuing small to medium-sized businesses 15, 59 (2012).
[48] http://www.irs.gov/Tax-Professionals/2011-IRSAC-Public-Meeting-Briefing-Book.

APPENDIX

References to the USPAP in the United States Code and Regulations

While not all-inclusive, below are some references to USPAP (in **bold** font).

<u>The USPAP in the United States Code</u>

<u>Title 12 U.S.C. §.3339: Functions Of The Federal Financial Institutions Regulatory Agencies Relating To Appraisal Standards.</u>

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality. These rules shall require, at a minimum—

(1) that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(2) that such appraisals shall be written appraisals; and

(3) that such appraisals be subject to appropriate review for compliance with the **Uniform Standards of Professional Appraisal Practice**.

Each such agency or instrumentality may require compliance with additional standards if it makes a determination in writing that such additional standards are required in order to properly carry out its statutory responsibilities.

[Added by Title XI of Public Law 101-73 (August 9, 1989); paragraph (3) added by Public Law 111-203 (July 21, 2010)]

<u>Title 15 U.S.C. §.1639e: Appraisal Independence Requirements</u>

(i)(2) Fee appraiser definition. For purposes of this section, the term "fee appraiser" means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the **Uniform Standards of Professional Appraisal Practice**; or

(B) a company not subject to the requirements of section 3353 of title 12 that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the **Uniform Standards of Professional Appraisal Practice**.

[Added by Public Law 111-203 (July 21, 2010)]

Title 16 U.S.C. §.6205: Appraisals

(a) Requirements for conducting appraisals

In implementing and conducting an appraisal process for determining cabin user fees, the Secretary [of Agriculture] shall—

(1) complete an inventory of improvements that were paid for by—

(A) the agency [the U.S. Forest Service];

(B) third parties; or

(C) cabin owners (or predecessors of cabin owners),

during the completion of which the Secretary shall presume that a cabin owner, or a predecessor of the owner, has paid for the capital costs of any utility, access, or facility serving the lot being appraised, unless the Forest Service produces evidence that the agency or a third party has paid for the capital costs;

(2) establish an appraisal process to determine the market value of the fee simple estate of a typical lot or lots considered to be in a natural, native state, subject to subsection (b)(4)(A) of this section;

(3) enter into a contract with an appropriate professional appraisal organization to manage the development of specific appraisal guidelines in accordance with subsection (b) of this section, subject to public comment and congressional review;

(4) require that an appraisal be performed by a State-certified general real estate appraiser, selected by the Secretary and licensed to practice in the State in which the lot is located;

(5) provide the appraiser with appraisal guidelines developed in accordance with this chapter;

(6) notwithstanding any other provision of law, require the appraiser to coordinate the appraisal closely with affected parties by seeking information, cooperation, and advice from cabin owners and tract associations;

(7) require that the appraiser perform the appraisal in compliance with-

(A) the most current edition of the **Uniform Standards of Professional Appraisal Practice** in effect on the date of the appraisal;

(B) the most current edition of the Uniform Appraisal Standards for Federal Land Acquisitions that is in effect on the date of the appraisal; and

(C) the specific appraisal guidelines developed in accordance with this chapter;

(8) require that the appraisal report—

(A) be a full narrative report, in compliance with the reporting standards of the **Uniform Standards of Professional Appraisal Practice**; and

(B) comply with the reporting guidelines established by the Uniform Appraisal Standards for Federal Land Acquisitions; and

(9) before accepting any appraisal, conduct a review of the appraisal to ensure that the guidelines made available to the appraiser have been followed and that the appraised values are properly supported.

[Added by the Cabin User Fee Fairness Act of 2000, Public Law 106-291, Title VI (October 11, 2000)]

The USPAP in the Code of Federal Regulations

Title 12 C.F.R. § 323.4 Minimum Standards For Federally Related Transactions (FDIC)[49]

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the ***Uniform Standards of Professional Appraisal Practice*** **(USPAP)** promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards.

[49] https://www.fdic.gov/regulations/laws/rules/2000-4300.html#fdic2000part323.4.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

LARGE BUSINESS AND INTERNATIONAL
SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC LB&I Subgroup (hereinafter "Subgroup") consists of four tax professionals with a variety of experience in large corporate tax departments, large public accounting firms, government, and academia. We have been honored to serve on the Council and appreciate the opportunity to submit this report.

The Subgroup has had the opportunity to discuss several topics throughout the year with LB&I management. This report is a summary of those discussions and the Subgroup's recommendations with respect to each topic. We would like to thank LB&I Commissioner Doug O'Donnell and the professionals on his staff for their time spent discussing these topics with the Subgroup and for their valuable input and feedback.

The Subgroup is reporting on the following five issues:

1. **<u>Improving Penalty Administration — General Comments and Recommendations</u>**

IRSAC believes that two general goals should undergird the enactment and the IRS' administration of the Internal Revenue Code's penalty provisions:

- Ensuring that penalties are proportionate to the taxpayer's errors or misconduct; and
- Ensuring that penalties be designed, interpreted, and applied in a manner that encourages compliance and self-correction.

To this end, IRSAC urges the IRS to limit the automated assertion (or collection) of penalties and, more broadly, to interpret and administer the statutory reasonable cause exception that exists for many penalties in a manner that strengthens rather than diminishes the fairness of the tax system. Specific recommendations are set forth in Issues Two, Three, and Four.

2. **Penalty for Erroneous Claim for Refund or Credit**

To combat IRS concerns about abusive refund claims, in 2007 Congress enacted section 6676, which imposes a penalty for excessive claims that lack a reasonable basis. While appreciating the overarching goal of the relatively new penalty, IRSAC is concerned about the potential application of the penalty in non-abusive situations. For this reason and because a forthcoming change in LB&I examination policy that will likely prompt more formal refund claims, this report makes several recommendations to reduce the likelihood of inappropriate assertion of the penalty.

3. **Application of Qualified Amended Return Rules to Regularly Examined Taxpayers in a Post-CIC Environment**

The IRS' procedures relating to qualified amended returns (including Rev. Proc. 94-69 which applies to Coordinated Industry Case (CIC) taxpayers) provide taxpayers the means to avoid potential penalties by making disclosures after the filing of an original return. Because LB&I's phasing out of the CIC program (in favor of a risk-assessment focus on issues) could effectively render Rev. Proc. 94-69 moot, the incentive to self-correct errors discovered after the filing of an original return may disappear. In this report, IRSAC recommends that LB&I develop a new procedure to preserve the benefits of Rev. Proc. 94-69 and, indeed, possibly expand them to a broader group of taxpayers that, while not part of the CIC program, could respond positively to an incentive for self-correction.

4. **International Information Return Penalties**

The Internal Revenue Code provides a $10,000 penalty for the failure to timely file certain international information returns, even when there is no underreporting of income or underpayment of tax liability. When a taxpayer files one of these forms delinquently, the IRS may assess the penalty immediately and the collection process may begin. Taxpayers may seek abatement of the penalty when the delinquency is due to reasonable cause and not willful neglect. Our recommendations concern ways to ensure that the penalties are applied to bad conduct and not to innocent errors.

5. **Implementation of the Tangible Property Regulations**

At the request of LB&I, IRSAC developed recommendations for risk assessment, examination approach, and additional guidance related to taxpayer implementation of the Tangible Property Regulations (TPR).

ISSUE ONE: IMPROVING PENALTY ADMINISTRATION — GENERAL COMMENTS AND RECOMMENDATIONS

Executive Summary

IRSAC believes that two general goals should undergird the enactment and the IRS' administration of the Internal Revenue Code's penalty provisions:

- Ensuring that penalties are proportionate to the taxpayer's errors or misconduct; and
- Ensuring that penalties be designed, interpreted, and applied in a manner that encourages compliance and self-correction.

To this end, IRSAC urges the IRS to limit the automated assertion (or collection) of penalties and, more broadly, to interpret and administer the statutory reasonable cause exception that exists for many penalties in a manner that strengthens rather than diminishes the fairness of the tax system. Specific recommendations are set forth in Issues Two, Three, and Four.

Background

In 1954, there were only 14 civil tax penalties in the Internal Revenue Code. Today, there are more than 10 times that number, with new (or increased) penalties being enacted seemingly every year.[50] While Congress in last enacting major penalty reform in 1989 embraced several principles that — if adhered to — would advance good tax administration,[51] penalty provisions continue to proliferate. Good intentions

[50] In 2008, the National Taxpayer Advocate pegged the number of civil tax penalties at more than 130, and by last year, her count reached 170. Taxpayer Advocate Service, Internal Revenue Service, *National Taxpayer Advocate: 2008 Annual Report to Congress, Vol. 2* (section entitled "A Framework for Reforming the Penalty Regime") (2008) (hereinafter "2008 Taxpayer Advocate Report"), at 4; Taxpayer Advocate Service, Internal Revenue Service, *National Taxpayer Advocate: 2014 Annual Report to Congress* (2014), at 10; *see generally* Jeremiah Coder, *Achieving Meaningful Civil Tax Reform and Making It Stick*, 27 Akron Tax Journal 153 (2012).
[51] *Improved Penalty Administration and Compliance Tax Act (IMPACT)*, Public Law No. 101-239, 101st Cong., 1st Sess. (1989) (subtitle G of the Omnibus Budget Reconciliation Act of 1989).

notwithstanding, the enactment of new or increased penalties provisions seems inevitable. Earlier this year, for example, Congress increased several information return penalties as part of the Trade Preferences Extension Act of 2015 even though those provisions have no substantive bearing on the underlying legislation.[52]

This is not to suggest that enactment of new penalties is always or even often unjustified. Far from it. The enactment of new substantive programs — such as the Affordable Care Act — invariably brings with them the need for penalties to help effectuate the purposes of those programs. Too many penalties, or overlapping, or ill-designed penalties, however, can have an adverse effect on tax administration. In recent years, there has been no shortage of reports documenting the need and making specific recommendations for streamlining and otherwise generally improving the penalty provisions of the Internal Revenue Code. In the quarter century since the Improved Penalty Administration and Compliance Tax Act was passed, the National Taxpayer Advocate, the Government Accountability Office, the Treasury Inspector General for Tax Administration, professional associations such as the American Institute of Certified Public Accountants and the American Bar Association's Section of Taxation, and the IRSAC itself have all called for an overhaul of the Code's penalty provisions.

Virtually every one of these reports has affirmed that the *sole* purpose of civil tax penalties should be to encourage voluntary compliance, not to raise revenue, punish noncompliant behavior, or reimburse the government for the cost of compliance programs. Reaching back to IRS reports that led to IMPACT, the 2008 report of the National Taxpayer Advocate effectively analyzes both the history of penalties (and

[52] § 806, Public Law No. 114-27, 114th Cong., 1st Sess. (2015) (amending I.R.C. §§ 6721 & 6722).

penalty reform) and forcefully sets forth the principles that should animate future reform efforts.[53]

Rather than repeat that discussion here, IRSAC simply reiterates its support for broad-based penalty reform and, in particular, for the paramount importance of two goals of future legislative and regulatory efforts in the area:

- Ensuring that penalties are proportionate to the taxpayer's errors or misconduct; and
- Ensuring that penalties be designed, interpreted, and applied in a manner that encourages compliance and self-correction. [54]

Providing appropriate incentives to self-correct (and reducing disincentives to do nothing when the taxpayer discovers prior noncompliance) will advance the cause of sound tax administration.

<u>Recommendation</u>

IRSAC recommends that the IRS not only continue to oppose the enactment of automatic, no-fault (or strict liability) penalties, but that it also take steps to limit the automated assertion (or collection) of penalties. In addition, IRSAC strongly recommends that the IRS interpret and administer the statutory reasonable cause exception to many penalties in a manner that strengthens rather than diminishes the fairness of the tax system.

[53] 2008 Taxpayer Advocate Report. IRSAC's 2009 report included a section captioned "Enhancing Voluntary Compliance through Civil Tax Penalty Reform." Reports issued between 2008 and 2012 are summarized in Jeremiah Coder, *Achieving Meaningful Civil Tax Reform and Making It Stick*, 27 Akron Tax Journal 153 (2012).

[54] The Taxpayer Advocate's 2008 report identified the following principles for evaluating whether penalties encourage voluntary compliance: perception of fairness, horizontal equity ("treating similarly situated taxpayers similarly"), proportionality ("the punishment should fit the crime"), procedural fairness ("don't shoot first and ask questions later"), comprehensibility, effectiveness, and ease of administration. 2008 Taxpayer Advocate Report at 7-10.

We recognize that the structure of many penalties in the Code may constrain the IRS' authority to act and, further, that the agency has been criticized for either not asserting certain penalties or for abating them.[55] That said, experience teaches that the IRS is not powerless to improve the implementation and fair administration of the Code's penalty regime.[56] IRSAC recommends that the agency both provide agents and managers with the discretion to abate (or not even assert) penalties in appropriate cases and enable the proper exercise of that discretion by providing the training necessary to achieve that goal. As the Taxpayer Advocate has noted in numerous reports, failure to do so will undermine taxpayer confidence in the fairness of the administration of the tax system.

In the ensuing sections of this report, we set forth specific examples of where IRSAC believes the IRS should act.

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[55] *See* Treasury Inspector General for Tax Administration, *Improvements Are Needed in Assessing and Enforcing Internal Revenue Code Section 6694 Paid Preparer Penalties*, Report No. 2013-30-075 (September 9, 2013); Treasury Inspector General for Tax Administration, *Systemic Penalties on Late-Filed Forms Related to Certain Foreign Corporations Were Properly Assessed, but the Abatement Process Needs Improvement*, Report No. 2013-30-111 (September 25, 2013); Treasury Inspector General for Tax Administration, *The Law Which Penalizes Erroneous Refund and Credit Claims Was Not Properly Implemented*, Report No. 2013-40-123 (September 26, 2013).

[56] For example, earlier this year, the IRS issued interim guidance limiting potential penalties for a taxpayer's failure to file Foreign Bank and Financial Account Reports (FBARs), assuaging taxpayer concerns that the IRS might penalize taxpayers in excess of the value of their unrelated accounts. *See* Memorandum for all LB&I, SB/SE, and TE/GE Employees, Interim Guidance for Report of Foreign Bank and Financial Account (FBAR) Penalties, SBSE-04-0515-0025 (May 13, 2015) (memorandum issued by Commissioners of LB&I, SB/SE, and TE/GE).

ISSUE TWO: PENALTY FOR ERRONEOUS CLAIM FOR REFUND OR CREDIT

Executive Summary

To combat the filing of abusive refund claims, in 2007 Congress enacted section 6676, which imposes a penalty for excessive claims that lack a reasonable cause. While appreciating the overarching goal of the relatively new penalty, IRSAC is concerned about the potential application of the penalty in non-abusive situations. For this reason and because a forthcoming change in LB&I examination policy that will likely prompt more formal refund claims, this report makes several recommendations to reduce the likelihood of inappropriate assertion of the penalty.

Background

A. Background of the Penalty

Congress enacted a penalty on erroneous claims for refund or credit as part of the Small Business and Work Opportunity Tax Act of 2007. Codified in section 6676 of the Internal Revenue Code, this relatively new provision provides that if "a claim for refund or credit with respect to income tax . . . is made for an excessive amount" the taxpayer making such claim "shall be liable for a penalty in an amount equal to 20 percent of the excessive amount," unless the claim for such excessive amount "has a reasonable basis." *See* I.R.C. § 6676(a). The penalty applies to claims for refund filed after May 25, 2007.

The section 6676 penalty was enacted after the IRS attributed an increase in the number of "abusive refund claims" by corporate taxpayers to the absence of such a penalty.[57] In endorsing enactment of the penalty, the Senate Finance Committee said:

> [T]he filing of erroneous refund claims is being used by some taxpayers to put a strain on IRS resources and to delay the resolution of tax matters. The Committee believes a meaningful penalty on a refund claim with no reasonable basis for the claimed treatment will deter the use of such claims for the purpose of impeding effective tax administration.[58]

Regrettably, section 6676 provides little guidance on when or how the penalty should apply, and no Treasury regulations have yet been promulgated to interpret it. The statute explains that the "excessive amount" upon which the penalty is imposed is the amount by which the claim exceeds the amount allowable,[59] but does not define the term "reasonable basis," other than to provide (by virtue of a 2010 amendment) that transactions lacking "economic substance" shall not be treated as having a reasonable basis. *See* I.R.C. § 6676(c).[60]

The Internal Revenue Manual (IRM) includes guidance on section 6676 that makes the penalty particularly severe. Perhaps most notably, the statutory reasonable cause defense does not apply to this penalty.[61] While taxpayers can avoid a penalty on a position taken in a refund claim by showing a "reasonable basis" for the position, that standard is an objective one that considers only whether the position was supported by a

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[57] See Hearing Before the Senate Comm. on Finance: A Tune-Up on Corporate Tax Issues: What's Going on Under the Hood?, 109th Cong., 2d Sess. 7, 58 (2006).

[58] S. Rep. No. 109-336, 109th Cong., 2d Sess. 65-66 (2006). The Senate Finance Committee (and full Senate) originally approved the penalty as part of the Telephone Excise Tax Repeal and Taxpayer Protection and Assistance Act of 2006, but that earlier legislation was ultimately not enacted. The formal legislative history of section 6676 contains nothing suggesting the IRS' concern about abusive refund claims had abated in the least.

[59] *See* I.R.C. § 6676(b).

[60] The penalty does not apply to a claim for refund or credit relating to the earned income credit under section 32. *See* I.R.C. § 6676(a). Nor does it apply to any portion of an excessive amount which is subject to the accuracy-related and fraud penalties set out in sections 6662 through 6664. *See* I.R.C. § 6676(d).

[61] *See* I.R.M. 20.1.5.16.5(3) (January 24, 2012).

certain level of authority (as contrasted with the "reasonable cause" standard, which has a subjective component).[62] Thus, as interpreted by the IRS, the taxpayer's effort to comply with the tax law is irrelevant to whether the penalty applies.[63] The reasonable basis/reasonable cause distinction is especially important in connection with emerging issues for which there is little authority.

In addition, the IRS has concluded that deficiency procedures do not apply to penalties imposed under section 6676.[64] Thus, to contest the penalty in court, taxpayers must first fully pay the liability and (somewhat counter-intuitively) file a refund claim before seeking review in a U.S. District Court or the U.S. Court of Federal Claims.[65]

Most of the guidance that has been issued on the penalty is summarized in the IRM and a set of 14 frequently asked questions initially made available to examiners.[66] The FAQs contain helpful guidance, including the statement that the penalty only applies

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[62] The IRS has said that it will define "reasonable basis" in the same way the term defined in Treas. Reg. § 1.6662-3(b)(3) for purposes of avoiding the negligence penalty. *See* I.R.M. 20.1.5.16.2(13) (January 24, 2012). That regulation defines "reasonable basis" as "a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim." A return position will generally have a reasonable basis if it is reasonably based on one or more of the authorities set out in Treas. Reg. § 1.6662-4(d)(3)(iii), taking into account the relevance and persuasiveness of the authorities, and subsequent developments. *See* Treas. Reg. § 1.6662-3(b)(3).

[63] In a Program Manager Technical Assistance document on the section 6676 penalty, the IRS explained "that consideration of whether a claim has a reasonable basis is different from the typical exception to many other penalties for taxpayers acting with reasonable cause and good faith." PMTA 2010-003 (February 26, 2010). The PMTA explained that unlike the reasonable cause defense, whether a claim has a reasonable basis "is not dependent on the subjective state of mind of the taxpayer presenting the claim or the actions of the taxpayer in determining the appropriateness of the claim. The statute requires an examination of the claim itself to determine whether it has a reasonable basis." *Id*. That said, the Internal Revenue Manual states that an examiner should assert the penalty only after "consideration of all the facts and circumstances," *see* I.R.M. 20.1.5.16.2(6) (January 24, 2012), which arguably is inconsistent with the other informal guidance that focuses on the legal authority for the position.

[64] *See* I.R.M. 20.1.5.16.2(12) (January 24, 2012). The IRS has stated, however, that deficiency procedures may apply to the extent the excessive amount is attributable to a refundable credit. *See* Memorandum on Implementing the Section 6676 Penalty, PRENO-137143-14 (Oct, 27, 2914), *available at* www.irs.gov/pub/irs-utl/PMTA-2014-020.pdf.

[65] *See* I.R.M. 20.1.5.16.4(4) (January 24, 2012).

[66] *See* Jeremiah Coder, "News Analysis: Behind the Scenes of the Erroneous Refund Penalty," 2010 TNT 153-1 (August 10, 2010) (including the FAQs as an attachment).

to claims for refund or credit with respect to income tax and not to other types of taxes such as excise tax. The FAQs also state that the penalty applies to both formal and informal refund claims.

The IRM puts some taxpayer protections in place. Examiners must obtain managerial approval to open a penalty examination and, as required by section 6751(b), obtain managerial approval to assert the penalty. The IRM also instructs examiners to offer taxpayers a meeting with the manager to discuss the un-agreed issue. Finally, the IRM explains that taxpayers may contest the penalty at appeals.

Many questions, however, remain unanswered, such as whether the IRS will apply the penalty on "protective" refund claims, whether it applies to claims for interest or penalties related to income tax, and whether there is a statute of limitations on the time that the IRS has to assess the penalty.

B. Application of the Penalty

In a 2013 report, TIGTA reported that the IRS "assessed only 84 erroneous refund penalties totaling $1.9 million between May 2007 and May 2012."[67] There is reason to believe, however, that the section 6676 penalty is proposed by exam in many more cases than reflected in the TIGTA report, in part because experience teaches that numerous penalties have been proposed by exam but conceded by appeals. There are several indications that the penalty may be asserted more in future exams:

- The IRM was revised in early 2012 to require examiners to document the basis for non-assertion of the penalty when claims are disallowed. *See* I.R.M. 20.1.5.16.2(13) (stating that a "standard statement such as 'Erroneous claims penalty deemed not applicable' is not sufficient."). Further, the examiner's

[67] Treasury Inspector General for Tax Administration, *The Law Which Penalizes Erroneous Refund and Credit Claims Was Not Properly Implemented*, Report **No. 2013-40-123** (September 26, 2013).

manager must sign off on the decision *not* to assert the penalty when a substantial portion of the claim for refund or credit is disallowed. *Id.*

- In response to the 2013 TIGTA report, the IRS formed a cross-representational team of affected stakeholders to determine the operational and procedural changes needed to integrate assessment of the erroneous refund penalty into the campus environment.
- In a 2013 report, the AICPA concluded that the penalty was "being imposed automatically and regularly when a claim for refund is denied, without any consideration of whether the position has a reasonable basis."[68]
- Finally, the changes announced by LB&I in draft Publication 5125 regarding requirements for refund claims, discussed immediately below, have focused the attention of affected taxpayers on such claims.

C. Refund Claims by LB&I Taxpayers

Corporate taxpayers typically file refund claims following the discovery of new facts or changes in relevant law. Regarding the former, many large taxpayers do not expect their original returns to be final because they do not have all the information necessary to accurately complete their returns when they are due. For example, information from passthrough entities may be provided to the taxpayer too late in the filing season to be reflected on the original return; similarly, information from foreign related entities with different reporting periods, or information regarding state taxes, may not be received in time to be reflected on the original returns. These corporate taxpayers anticipate they will need to make adjustments to the original return.

Most corporate taxpayers subject to continuous audit under the Coordinated Industry Case (CIC) program make refund claims "informally." An informal claim typically consists of a short explanation of the favorable adjustment without any tax computation and is provided to the exam team at the commencement of or during the audit. Corporate taxpayers prefer this process to avoid the administrative and

[68] *See* American Institute of Certified Public Accountants, *Report on Civil Tax Penalties: The Need for Reform* (April 11, 2013).

computational burdens that would be associated with filing formal refund claims on Form 1120X or Form 843, especially since such computations would likely be superseded by the final computations necessary to close an audit.

Taxpayers occasionally first report positions on refund claims for strategic reasons. Some corporate taxpayers prefer to test uncertain positions in refund claims because such claims were generally thought to be immune from penalties before the enactment of section 6676. This process does hold some benefit for the IRS, since a refund claim "must set forth in detail each ground upon which [it] is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof,"[69] a more exacting standard than applies to positions reflected on a large corporate taxpayer's original return. Moreover, in the claims context, the Treasury has the taxpayer's payment for which it is claiming a refund, whereas in the original return situation the Treasury will never obtain those funds (even temporarily) if the uncertain position escapes audit detection or is ultimately sustained.

IRSAC appreciates that some corporate taxpayers have strategically raised informal claims late in the examination process as a means of distracting the examination team. In late 2014, LB&I released a draft of new rules intended to impede taxpayers from strategically using refund claims to distract the examination team from other issues or perhaps to offset any possible deficiency that might arise out of the audit. (As noted, such concerns seemingly played a role in enacting section 6676.) LB&I explained the new procedure in draft Publication 5125 (which was released in July 2014):

[69] *See* Treas. Reg. § 301.6402-2(b)(1).

Expectations with Respect to Claims

To deploy our resources efficiently, all claims for refund should be brought to the attention of the exam team as soon as the taxpayer becomes aware of any potential overpayments of tax. LB&I will only accept informal claims that are provided to the exam team within 30 days of the opening conference. After the 30-day period, claims for refund must be filed using either Form 1120X or Form 843 with supporting documentation. Claims filed after the 30-day window create resource challenges and may result in unnecessary refund litigation which reasonably can be avoided if taxpayers act in a timely fashion.

All claims must meet the standards of Treasury Regulation Section 301.6402-2, which provides that a valid claim must:

- Set forth in detail each ground upon which credit or refund is claimed
- Present facts sufficient to apprise the IRS of the exact basis for the claim and
- Contain a written declaration that it is made under penalties

Transparent and cooperative taxpayers will provide fully documented and factually supported claims that may permit the exam team to make a tax determination of the claims without requiring the use of IDRs. This will allow the exam team to quickly determine whether to accept or examine a claim. Claims will be risk assessed in the same manner as any other audit issue. If the claim warrants examination, the exam team and the taxpayer will discuss the potential need for additional resources, and extend the examination timeline, as necessary[,] or LB&I could decide that the claim will be worked separate from the current examination. Claims will be disallowed for failing to meet the standards of Treasury Regulation Section 301.6402-2.

The Subgroup is concerned that the process envisioned by draft Publication 5125 for handling refund claims after the beginning of an examination may make assertion of the erroneous refund claim penalty more common and lead to imposition of penalties in cases where taxpayers are not trying to misdirect audit resources.

Recommendations

The IRSAC recommends that for any refund claim filed by a taxpayer within 30 days of the opening conference an examiner be required to obtain approval to assert the penalty from the pertinent Director of Field Operations, and that affected taxpayers be offered a conference with the DFO before assertion of the penalty.[70] Such a rule would not frustrate the congressional intent undergirding section 6676 (or the goal of draft Publication 5125) — deterring taxpayers from filing refund claims late in the audit cycle for strategic advantage — while both ensuring that taxpayers are not unfairly penalized and providing taxpayers with an additional incentive for filing claims early in the cycle.

Moreover, the IRSAC recommends that the IRS consider the timing of the claim in assessing whether the taxpayer had a reasonable basis for the claim. Section 6676 was clearly prompted by concern over the burden caused by late filed claims, and although neither the statute nor any Treasury regulation defines "reasonable basis" for purposes of section 6676, the IRSAC believes the IRS has discretion to define a clause intended to prevent unjustified penalties in a manner that takes account of the concerns that gave rise to the penalty. Sound tax administration is served, not undermined, when taxpayers are transparent regarding their uncertain positions and the IRSAC thus believes the IRS should encourage not discourage taxpayers from testing positions in refund claims — with the attendant level of disclosure inherent in such claims — so long as the claims are provided to the IRS in a time and manner that do not impede the audit.

Alternatively, we recommend that the IRS seek a legislative change to allow taxpayers to avoid the erroneous refund claim penalty if they acted reasonably and in good faith. The Taxpayer Advocate has endorsed this ameliorative change in her 2011 and 2014 annual

[70] To the extent express authority is required for this approval requirement, section 6751(b) prohibits the assessment of any penalty unless "the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate."

reports to Congress. In the more recent report, the Taxpayer Advocate explained that the Office of Chief Counsel (Procedure and Administration) likewise recommended that change in suggestions for the Treasury's 2012 Green Book.

ISSUE THREE: APPLICATION OF QUALIFIED AMENDED RETURN RULES TO REGULARLY EXAMINED TAXPAYERS IN A POST-CIC ENVIRONMENT

Executive Summary

The IRS' procedures relating to qualified amended returns (including Rev. Proc. 94-69 which applies to Coordinated Industry Case (CIC) taxpayers) provide taxpayers the means to avoid potential penalties by making disclosures after the filing of an original return. Because LB&I's phasing out of the CIC program (in favor of a risk-assessment focus on issues) could effectively render Rev. Proc. 94-69 moot, the incentive to self-correct errors discovered after the filing of an original return may disappear. In this report, IRSAC recommends that LB&I develop a new procedure to preserve the benefits of Rev. Proc. 94-69 and, indeed, possibly expand them to a broader group of taxpayers that, while not part of the CIC program, could respond positively to an incentive for self-correction.

Background

Rev. Proc. 94-69, 1994-2 C.B. 804, provides special procedures for taxpayers subject to the IRS' large-case program (formerly named the "Coordinated Examination Program" but currently the Coordinated Industry Case (CIC) program) to show additional tax due or make adequate disclosure with respect to an item or a position to avoid imposition of certain accuracy-related penalties. The revenue procedure treats a written statement containing certain required information provided by CIC taxpayers to the IRS within 15 days of request (or otherwise agreed time on a showing of reasonable cause) as a "qualified amended return" for purposes of the negligence, disregard of rules and regulations, and substantial understatement penalties.

A qualified amended return (QAR) is an amended return filed after the due date of the original return but before the happening of certain events, including the date the taxpayer is first contacted by the IRS concerning an examination of the return. *See* Treas. Reg. § 1.6664-2(c)(3). The effect of a qualified amended return is that the amount of tax shown on the qualified amended is included in the amount of tax shown on the original return for purposes of computing any underpayment. *See* Treas. Reg. § 1.6664-2(c)(2). The QAR rules are intended to encourage transparency by encouraging taxpayers to self-correct errors discovered after the filing of an original return.

The predecessor to Rev. Proc. 94-69 (Rev. Proc. 85-26, 1985-1 C.B. 580) explained that in the case of a large-case taxpayer, "the time of the first contact concerning an examination of the return is not an appropriate criterion" for allowing such a taxpayer to file a qualified amended return "because, generally, all returns of CEP [now CIC] taxpayers are examined." It therefore provided that a disclosure, made within the time frame specified in the revenue procedure, would be treated as having been made on a qualified amended return. Rev. Proc. 94-69 cautions, however, that the ameliorative relief provided would cease (after a safe harbor period) to any taxpayer that "no longer meets the criteria for a CEP taxpayer." The disclosure procedure set forth in Rev. Proc. 94-69 effectively encouraged a continuously audited taxpayer to disclose errors while avoiding the cost and administrative burdens entailed in filing a formal amended return, which could likely trigger correlative burdens related to state, foreign, and financial reporting requirements.

In late 2014, LB&I officials announced that LB&I intends to move away from the CIC program toward centralized risk assessments. LB&I officials have explained their expectation that the new program will stop continuous audits for some CIC taxpayers, while acknowledging that certain large taxpayers will continue to be continuously audited by virtue of their size or other demographic attributes, notwithstanding any eventual termination of the CIC program. Absent clarification, the elimination of the CIC program would concomitantly eliminate the option of making disclosures pursuant to Rev. Proc. 94-69.

Recommendation

Underlying the qualified amended return rules of Treas. Reg. § 1.6664-2(c) and Rev. Proc. 94-69 is a recognition that a large taxpayer's understanding of the operative facts underlying a transaction (or position) and the state of the governing legal rules could change between the time a return is filed and its examination. The rules also recognize that it would be unfair and even counterproductive to penalize a taxpayer in such a situation. Hence, they provide an incentive — in the form of penalty relief — for the taxpayer to self-correct erroneous return positions. Without the relief afforded by Rev. Proc. 94-69, a taxpayer discovering an error — say, upon preparing a subsequent year return or its financial statements — would have no incentive to correct or even disclose it unless it were willing to accept the burden of preparing a formal QAR.

The IRSAC is concerned that, absent the development of a new procedure, LB&I's phasing out of the CIC program would render Rev. Proc. 94-69 inapplicable and greatly diminish, if not eliminate entirely, the existing incentive for self-correction. Obviously, if the CIC program were ended, a taxpayer could still make a valid disclosure by filing an actual qualified amended return. Given the administrative burdens of filing a formal amended return (including correlative burdens related to satisfying state, foreign, and financial reporting filing requirements), the IRSAC believes there is significant potential for the number and quality of disclosures to decline. We therefore recommend that the LB&I develop a new procedure to preserve the benefits of Rev. Proc. 94-69 and, indeed, possibly expand them to a broader group of taxpayers that, while not part of the CIC program, could respond positively to an incentive for self-correction. Since the contours of LB&I's reorganization are still being formulated, it is not possible to make specific recommendations at this time. IRSAC recommends therefore that this issue be carried over to the LB&I subgroup's 2016 agenda.

ISSUE FOUR: INTERNATIONAL INFORMATION RETURN PENALTIES

Executive Summary

The Internal Revenue Code provides a $10,000 penalty for the failure to timely file certain international information returns, even when there is no underreporting of income or underpayment of tax liability. When a taxpayer files one of these forms delinquently, the IRS may assess the penalty immediately and the collection process may begin. Taxpayers may seek abatement of the penalty when the delinquency is due to reasonable cause and not willful neglect. Our recommendations concern ways to ensure that the penalties are applied to bad conduct and not to innocent errors.

Background

Section 6038 and the applicable regulations require U.S. persons with a certain level of control in certain foreign corporations to file a Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations," reporting information with respect to each of such foreign corporations. The Forms 5471 must be filed with the U.S. person's income tax return on or before the date required by law for the filing of that person's income tax return. Section 6038(b)(1) provides for a monetary penalty of $10,000 for each Form 5471 that is filed after the due date of the income tax return (including extensions) or does not include the complete and accurate information required by section 6038(a). In addition to the monetary penalty, section 6038(c) provides for a 10% reduction of the foreign taxes available for credit under sections 901, 902, and 960.

Following the enactment of FATCA, the IRS began automatically asserting section 6038 penalties on late filed Forms 1120 that had Forms 5471 attached. While taxpayer exposure to penalties for late filed Forms 5471 was not new, the IRS had not historically focused on section 6038 penalties for this type of late filed information returns. Typically, the penalty was considered under examination when an unfiled Form 5471 was discovered. However, with more Forms 1120 being electronically filed, the IRS is able to determine quickly which returns with Forms 5471 attached are late filed, and to identify late Forms 5471.

Later, the IRS added late Forms 5472, “Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business,” to the same program. Section 6038A requires U.S. corporations with a certain level of foreign ownership to file Forms 5472 to report information with respect to transactions with related parties, and section 6038C requires foreign corporations engaged in U.S. business to file Form 5472 reporting similar information.

Like Form 5471, Form 5472 must be filed with the U.S. corporation’s Form 1120 (or foreign corporation’s Form 1120-F) on or before the date required by law for the filing of corporation’s return. Similarly, there is a penalty of $10,000 for each Form 5472 that is filed after the due date of the income tax return (including extensions) or that does not include the complete and accurate information.

Unlike the penalty for the failure to file income tax returns (under section 6651(a)(1)), which is based on the tax shown on the return, the penalties for late filed Forms 5471 and 5472 apply even if no tax is due on the Form 1120. That said, taxpayers may avoid these penalties if reasonable cause exists for the failure to file timely the Forms 5471 and 5472. In addition, penalties asserted for omissions of, or errors with respect to, information contained in otherwise timely filed Forms 5471 and 5472 may be avoided if the taxpayer can show substantial compliance with the information reporting requirements.

Obtaining abatement of the penalty, however, is frequently difficult, even for benign and essentially inconsequential failures (or late filings). First, the IRS unit assigned to review the abatement request often is unable to do so in a timely manner. The present budget and resource constraints within the IRS only exacerbate this situation. Second, because the tax may be assessed immediately, the taxpayer often has to deal with IRS collection (rather than the compliance function), where the volume of work and training provided to the personnel could affect the quality of the reasonable cause review. Often, the taxpayer must request repeated stays of collection to allow for consideration of the abatement request.

Finally, there can be inconsistent consideration of the abatement requests. "Reasonable cause" can be very fact specific, and thus, there can be differing results for similarly situated taxpayers. When this happens, the taxpayer may be forced to seek an administrative appeal to seek an independent review. All of this not only lengthens the time required to resolve a matter and increases the taxpayer's cost, but it can consume considerable IRS resources.

Recommendations

1. Reconsider the automated process (or at least delay assessment until the request for abatement and appeal are final). Assessment triggers the collection process and adds additional pressure to both the IRS and the taxpayer. If the IRS delayed assessment until consideration of the abatement request is final, much of the stress on the IRS system and the taxpayer would be reduced.
2. Acknowledge innocent errors and not assert (or abate) the penalty. The purpose of the IRS program is to encourage compliance with foreign information reporting, and the assertion of the penalty for minor, often benign, non-volitional failures can be counterproductive. Encouraging voluntary compliance should properly be the sole objective of any penalty regime, and IRSAC does not believe that objective is advanced by the assertion of penalties in these situations since (1) the taxpayers involved are not non-filers, but merely delinquent (often for innocent reasons), (2) they self-correct their compliance without prompting, and (3) the late filing has no adverse effect on the IRS' need for information or payment of any tax. A few examples of benign noncompliance are —

    - Problem with Filing Extension. The taxpayer files a late or incorrect Form 7004. When it files its return on September 15th, penalties are assessed on all "untimely" Forms 5471, even though they are received by the extended due date.
    - E-filing Problems. The taxpayer has an issue with the e-filing of its return that it cannot resolve until after midnight on September 15th. Again, penalties are assessed.
    - Penalty Is Disproportionate when No (or Little) Tax Due. Common situations are:
        a. Form 5472 for unknown permanent establishment of a small U.S. entity
        b. Late return that reflects a net operating loss

3. "First Time Abate" Consideration. In many other penalty situations (*e.g.*, failure to file, failure to pay, and failure to deposit penalties), the IRS will abate penalties for a first time failure if the taxpayer has a history of compliance. *See* I.R.M 20.1.1.3.6.1 (August 5, 2014) "First Time Abate (FTA)." The same policy, i.e., the promotion of voluntary compliance, supporting FTA for those other failures should apply here.
4. Refine the training provided to agents and managers to facilitate the policy goals underlying the foregoing recommendations.

ISSUE FIVE: IMPLEMENTATION OF THE TANGIBLE PROPERTY REGULATIONS

Executive Summary

At the request of LB&I, IRSAC developed recommendations for risk assessment, examination approach, and additional guidance related to taxpayer implementation of the Tangible Property Regulations (TPR).

Background

In September 2013, the Department of the Treasury and the IRS issued final regulations on the application of section 263(a) of the Internal Revenue Code to amounts paid to acquire, produce, or improve tangible property.[71] The regulations, which are generally applicable to tax years beginning after December 31, 2013, apply to all taxpayers who acquire, produce, improve, repair, or dispose of tangible property — virtually all business taxpayers.

To implement many of the changes, taxpayers must submit Form 3115, "Application for Change in Accounting Method." Given the nearly universal application of the regulations, during the 2014 filing season the IRS received several hundred thousand Forms 3115. LB&I has requested IRSAC's recommendations on (1) how to risk assess these applications and (2) how to effectively and efficiently examine the ones selected for audit.

Recommendations

1. Risk Assessment. IRSAC recommends that LB&I take into consideration the following factors in selecting applications for accounting method changes for

[71] T.D. 9636, 78 Fed. Reg. 57686 (September 13, 2013).

examination. None of these factors should be considered dispositive, but taken collectively in light of the taxpayer's facts and circumstances, they should facilitate a better use of the IRS' resources.

a. General factors:

   i. What is the taxpayer's industry? The TPR will have a greater effect on manufacturing, retail, and utilities companies because they have many fixed assets. On the other hand, tax-exempt entities, financial services enterprises, and software companies often have fewer fixed assets, so one might expect the TPR to have a smaller effect.

   ii. What is the relative size of the taxpayer? While the TPR may significantly affect the largest companies, experience teaches that most of them have a greater awareness of, as well as more resources to implement correctly, the TPR. At the opposite end of the spectrum, smaller companies will also be affected by the TPR, but they may pose less risk to the revenue. Thus, from a risk assessment perspective, mid-sized companies may merit greater attention because they may have many fixed assets but not the wherewithal and means to comply with the many provisions of the TPR.

b. Taxpayer specific facts:

   i. Did the taxpayer file a TPR Form 3115? Because the TPR will affect almost all business taxpayers, the absence of a single Form 3115 may indicate a compliance risk.

   ii. Did the taxpayer file a repair Form 3115 before the issuance of the final TPR? Several years ago before the TPR became final, many taxpayers changed their method of accounting for repairs from capitalization to expensing. Often, these changes reflected large favorable section 481(a) adjustments (i.e., a cumulative adjustment to carve out the repair expenses). The TPR may operate to reverse some of those favorable adjustments, so IRS sensitivity to when the change-in-method application was filed may be warranted.

   iii. What type of change is included in the Form 3115? Similar to the last point, current year method changes for repairs or improvements may reflect a larger compliance risk than other changes (e.g., a change for materials and supplies).

   iv. Did the Form 3115 have a "zero" section 481(a) adjustment? Most taxpayers will have either a positive or negative cumulative adjustment. Stated generally, the TPR require the taxpayer to review its fixed assets and determine how historic costs should be treated under these new guidelines. A taxpayer's having no cumulative adjustment may suggest that the taxpayer has made a prospective-only change and not reviewed its historic costs.

v. In what year were the TPR adopted? Almost all taxpayers are required to implement the TPR no later than their 2014 return. Thus, taxpayers who do not implement the TPR in a timely manner may not be in compliance.

c. Future risk consideration: Filing of an amended return for 2014 with a more favorable section 481(a) adjustment. LB&I may wish to scrutinize future amended 2014 returns where the taxpayer has increased its section 481(a) adjustment to claim a significant refund. The claim will be made after the initial consideration of implementation of the TPR and guidance thereunder. Thus, the taxpayer's amended return may signal reliance on a new or creative position not originally anticipated when the TPR were implemented.

2. Observations about the examination of TPR implementation.

   a. Discuss the taxpayer's specific situation with them. While the TPR will apply to nearly all business taxpayers, their effect will vary broadly. There are more than 20 potential method changes to be considered in the TPR. Some will be fairly common while others will not. Consideration of questions such as the following may shed light on the level of the taxpayer's TPR compliance:

      i. Describe the process used in assessing the implications of the TPR for your business.

      ii. Which methods did you adopt (or not adopt)? Why?

      iii. How did you document this analysis?

1. Did you engage with any tax professionals to assist in the implementation?
2. Did your advisers provide you with any recommendations? In what form did you receive those recommendations?
3. If you follow the recommendations received? If not, why?

b. Review the Forms 3115 and, specifically, the section 481(a) computations. Because the TPR may affect particular taxpayers in unique ways, scrutiny of the taxpayer's implementation process and computations may be appropriate. Moreover, the quality of the taxpayer's work around the implementation may be apparent from a close review of these items.

c. Examination procedures for repairs, improvements, and dispositions where records are not readily available. The examination of adjustments made for repairs and dispositions where historical records are incomplete or not available may be a challenge. Although the TPR described how historical calculations should be performed in such cases, the specified methods may result in overstatement of costs and disparity between taxpayers in the same industry. IRSAC recommends that LB&I review and adopt some of the techniques described in the IRS' Cost Segregation Audit Technique Guide.[72] Specifically, Chapter 4 of the Guide outlines the elements of a Cost Segregation Study, and many of the areas discussed are directly relevant to the implementation of the TPR. Additionally, the Audit Technique Guide discusses the use of interviews with Subject Matter Experts (SMEs) as a

[72] Accessible at http://www.irs.gov/Businesses/Cost-Segregation-Audit-Technique-Guide-Chapter-4-Principal-Elements-of-a-Quality-Cost-Segregation-Study-and-Report.

form of support in Chapter 4.4. Further guidance on application of this concept to determination of repairs and dispositions is recommended.

d. Recommended guidance on establishing a capitalization policy that “clearly reflects income.” Section IV of T.D. 9636 addresses the *de minimis* safe harbor exception permitting a taxpayer to deduct certain amounts paid for tangible property. For taxpayers with an audit financial statement, the *de minimis* threshold is set at $5,000 per invoice (or item). For taxpayers without an audited financial statement, the amount is set at only $500 per invoice (or item), or an amount that “clearly reflects income.” IRSAC recommends that the IRS consider further guidance on the definition of “clearly reflects income” in this context. Many mid-sized companies, particularly S-corporations and partnerships, do not have audited financial statements, but nevertheless rely on the practices of companies with financial statements in adopting a $5,000 deduction policy. Although this may be appropriate for many taxpayers, it represents an increase from prior capitalization policy thresholds resulting in significant deductions and bears scrutiny.

Internal Revenue Service Advisory Council
2015 Member Biographies

Patricia Atwood	Ms. Atwood is an Accredited Senior Appraiser in the field of Personal Property and the owner of Timely Antique Appraisals, LLC, in Rockford, IL. She currently serves on the Appraisal Standards Board of The Appraisal Foundation and teaches Principles of Valuation courses for the American Society of Appraisers (ASA). A current member of ASA, Ms. Atwood was previously on the ASA International Personal Property Committee and president of the ASA Chicago Chapter. Ms. Atwood holds a B.A. from Cornell University, an M.A., from Columbia University and an M.A., from Princeton University. **(OPR Subgroup)**
Ronald D. Aucutt	Mr. Aucutt, J.D., has 40 years' experience in taxation and is a partner with McGuireWoods, LLP in Tysons Corner, VA. Mr. Aucutt's past experience includes corporate reorganizations, the investment tax credit, tax-exempt financing, TEFRA partnership audits and tax treatment of inventories, as well as tax-exempt organizations, estate and gift taxes and the income taxation of estate and trusts, which in time became his areas of concentration. Prior to joining McGuireWoods LLP he was a partner with Miller & Chevalier, where he handled tax planning matters and tax audits and appeals throughout the country. He compiled the factual background and analysis that was adopted by the Senate Finance Committee in changing the effective date of the first generation-skipping transfer (GST) tax in the Tax Reform Act of 1976 to June 12, 1976. Mr. Aucutt is a member and past President (2003-2004) of the American College of Trust and Estate Counsel (ACTEC) and the past Chair of its Washington Affairs Committee (2009-2013). He is also a member of the American Bar Association. He holds a J.D. and a BA from the University of Minnesota. **(OPR Subgroup Chair)**
F. Robert Bader	Mr. Bader, J.D., EA, is the Director of Tax Operations for the Baltimore CASH Campaign in Baltimore, Maryland. Mr. Bader was introduced to free tax preparation services while managing a partner program of the Baltimore CASH Campaign. In 2008, he became Director of its tax programs and now coordinates organizations throughout the Baltimore area that prepare returns for 8,000-10,000 low-income working families. Mr. Bader is an active member of the Taxpayer

Opportunity Network (TON), an organization that represents Volunteer Income Tax Assistance (VITA) programs and Low Income Tax Clinics (LITCs). In addition, Mr. Bader is Chair of the Maryland Board of Individual Tax Preparers and a member of the Maryland Society of Accounting and Tax Professionals. He is a member of the Maryland bar and previously represented low-income individuals as a legal aid attorney in Massachusetts and Pennsylvania. He served in the United States Peace Corps in the countries of Côte d'Ivoire and Ghana. He holds a J.D. from the University of Toledo School of Law and a B.A. in Political Science with a certificate in Peace Studies from Siena College. **(SBSE/W&I Subgroup)**

Eunkyong Choi

Ms. Choi, J.D., L.L.M, is a lecturer in law and supervising attorney for Washington University School of Law's Low Income Taxpayer Clinic (LITC) in St. Louis, MO. She is a business-oriented attorney with diverse experience in developing and delivering complex tax planning strategies. Her responsibilities include advising and representing low-income taxpayers in controversies with the IRS and before the U.S. Tax Court as well as providing on-the-job training and guidance for the tax clinic staff, volunteers, and student attorneys to ensure that members of the clinic possess the knowledge and skills necessary to effectively represent clients. Before joining the law school, she was the program director and supervising attorney for Nevada Legal Services-LITC program. Ms. Choi holds an LL.M. and J.D. from Washington University School of Law and a B.A. from the University of Akron. **(SBSE/W&I Subgroup)**

Thomas A. Cullinan

Mr. Cullinan, J.D., is a Partner with Sutherland Asbill & Brennan LLP in Atlanta, GA. Mr. Cullinan is a member of Sutherland's Tax Practice Group, who focuses his practice on tax controversies against the Internal Revenue Service (IRS). He has represented a large number of corporations, partnerships, and high net-worth individuals in all phases of tax controversy, including IRS audits, appeals, and tax litigation. Mr. Cullinan has extensive experience settling tax cases and is well-versed in tax litigation when the parties cannot agree to an administrative resolution. He has worked on cases involving the research tax credit, the foreign tax credit, corporate-owned life insurance, "tax shelters" and "listed" transactions, and transactions alleged to lack economic substance, among many others. In addition, he has extensive experience in TEFRA (i.e., partnership) audits and litigation and in defending against the imposition of accuracy-related penalties. He has practiced in front of several U.S. district courts, the U.S. Tax Court, the Court of Federal Claims, and several appellate courts, and he is a frequent speaker on tax-related topics. Mr. Cullinan is an active participant on three different committees of the Section of Taxation of the American Bar Association. He is also a fellow of the American College of Tax Counsel (ACTC) and a member of the American Association of Attorney-CPA's (AAA-CPA). Mr. Cullinan holds a B.S. from State University of New York at Geneseo, an M.S. from State University of New York at Albany, and a J.D. from Vanderbilt University Law School. **(LB&I Subgroup)**

Estarre (Star) Fischer

Ms. Fischer, CPA, is a Partner with Moss Adams LLP, in Seattle,, WA. Ms. Fischer has over fourteen years' experience in taxation as a Certified Public Accountant (CPA). Her primary responsibility is to provide clients with tax consulting services regarding the tax treatment of R&D expenditures. Mr. Fischer's specialties include R&D Tax Credit (IRC 41), R&D Expenditures (IRS 174), General Business Credits (IRC 38 & 39), IRS various state examination defense regarding R&D credits and expenditures. Her clients' base is predominately compromised of middle-market companies. Although she has been involved in R&D tax credit analyses for all entity types and sizes, the focus on middle-market companies has allowed her to gain experience in the complexities of S-corporations and Partnerships claiming the R&D Credits. She partners with the Examination and Appeals functions to help resolve complex cases. Ms. Fischer is a member of the American Institute of Certified Public Accountants (AICPA), and the Washington Society of Certified Public Accountants (WSCPA). Ms. Fischer holds a Bachelor of Science Degree (Accounting), from Central Washington University. **(LB&I Subgroup)**

Neil H. Fishman

Neil H. Fishman, CPA, CFE, FCPA, CAMS is Vice President/co-owner of Fishman Associates CPAs PA in Boynton Beach, Fl. Mr. Fishman has over 25 years' experience in taxation, specializing in the preparation of federal, state and local corporate, partnership, fiduciary, gift, estate, not-for-profit and personal income tax returns. Mr. Fishman's firm also prepares business and personal financial statements, in addition to representing clients before taxing authorities. Mr. Fishman has been a presenter at various tax seminars and has written several articles on occupational fraud which have appeared in various CPA Journals. He is a licensed CPA in both New York & Florida, and is also a Certified Fraud Examiner, Forensic Certified Public Accountant and Certified Anti-Money Laundering Specialist. Mr. Fishman is a member of the National Conference of CPA Practitioners (NCCPAP), and have served in many capacities on the National Board since 2004, including Chairman of the Tax Policy Committee from 2008-2011. Currently he is serving as Vice-President of NCCPAP. Mr. Fishman holds a BA from the State University of New York College at Oneonta. **(SBSE/W&I Subgroup)**

Cheri H. Freeh

Ms. Freeh, CPA, CGMA, is a principal with Hutchinson, Gillahan & Freeh, P.C. in Quakertown, PA. Ms. Freeh has over 30 years' experience in the field of accounting for privately held businesses, non-profit organizations, local governments, estates, trusts and individuals. Her firm specializes in small businesses (most gross receipts under $1 million), mostly middle class individuals, small estates and trusts, governments, non-profits and overall the CPA practitioner community. She is a Past President of the Pennsylvania Institute of CPAs (PICPA) and the governing council of the AICPA. She currently serves on the AICPA Internal Revenue Service Advocacy and Relations Committee and the PICPA State Taxation and Legislation Committees. She also serves as a member of the Pennsylvania State Department of Community and Economic Development's Act 32 advisory committee and the advisory committee on the local earned income tax register for the Governor's Center for local Government. Ms. Freeh serves as a director on several boards including a bank board and several non-profit organization boards. Ms. Freeh is one of the few individuals invited by the Pennsylvania House of Representatives to provide private training sessions to both the Republican and Democratic caucuses and is regularly consulted by legislators and Department of Revenue officials regarding tax law and policy issues for Pennsylvania. Ms. Freeh was named one of the 25 most powerful women in accounting in the United States for both 2012 and 2014 by the CPA Practice Advisor magazine in conjunction with the American Society of

Women Accountants. Ms. Freeh holds a BS in Business Administration with an accounting specialization from Thomas A. Edison State College. **(SBSE/W&I Subgroup)**

Michele J. Gaines

Michele J. Gaines, the owner of Jackson, Jackson & Jackson in Pittsburgh, Pennsylvania, has more than 40 years of experience in taxation. Gaines specializes in tax preparation for individuals, businesses and organizations which includes the preparation and filing of all federal, state and local tax returns, which she highlights in her tax books, ***Top Ten Tax Series***: ***Know the Game and Save on taxes.*** Michele's practice includes providing the Pittsburgh community with tax information and ways to monitor and manage one's tax life through her TV show, ***Tax Central***. As a Tax Professional, Jackson, Jackson & Jackson handles all aspects of taxation especially business, corporate, partnerships and Pennsylvania inheritance tax returns. Gaines also represents clients before the IRS on the Examination level and provides strategies that reduce tax debt. Prior to owning and operating Jackson, Jackson, & Jackson, Gaines' professional work experience included teaching, grant writing, negotiating federal contracts in addition to the preparation of individual/business taxes and preparing clients for tax audits. Gaines is a member of the Allegheny County Bar Association, (ACBA) the National Association of Tax Professionals, (NATP), National Society of Accountants (NSA) and is a Court Appointed Special Advocate (CASA). Michele J. Gaines holds a B.A., from Shaw University, Raleigh, NC. **(SBSE/W&I Subgroup)**

Jennifer MacMillan

Ms. MacMillan, EA, is the owner of Jennifer MacMillan EA in Santa Barbara, CA. Ms. MacMillan has over 25 years' experience in taxation and became an Enrolled Agent in 1994. She specializes in representation services, which includes audit, collections, appeals, compliance issues, as well as individual income tax preparation and planning, and is licensed to represent taxpayers before the Internal Revenue Service. She has been an instructor at the National Association of Enrolled Agents (NAEA) National Tax Practice Institute for many years, teaching advanced representation skills to Circular 230 practitioners. In addition, she teaches two-hour ethics courses for many practitioner groups, giving hundreds of Enrolled Agents and tax preparers in-depth interpretations of Circular 230 and real-world applications that relate to the daily challenges that arise in their practices. Ms. MacMillan has written numerous articles for NAEA's EA Journal, California Enrolled Agent magazine, and is contributing author for a variety of tax-related publications. Ms. MacMillan has appeared on NBC's Today Show, offering last-minute tax tips to viewers, and has been a panelist on Tax Talk Today (IRS' monthly webcast) on two occasions. She is a member of the NAEA Government Relations Committee and a Past President of the California Society of Enrolled Agents**. (Vice Chairperson and OPR Subgroup)**

Timothy J. McCormally

Mr. McCormally, J.D., is the Director in the Washington National Tax practice of KPMG, LLP, in Washington, DC. He has nearly 40 years' experience as a tax attorney. Before joining KPMG, he spent 30 years on the staff of Tax Executive Institute, first as General Counsel and then as Executive Director. At TEI, his responsibilities included the overall administration of the professional association of 7,000 in-house tax professionals from around the world. He also participated in the Institute's extensive advocacy program, contributing to comments submitted to the IRS, Treasury Department, Canada Revenue Agency, the Canadian Department of Finance, and the Organisation for Economic Co-operation and Development. Mr. McCormally is a contributor to numerous publications and has recently written or co-written articles on Circular 230, tax whistleblowing, FBAR reporting, and IRS efforts to risk-assess taxpayers. He is a member of ABA, Section of Taxation (Administrative Practice and Employment Tax Committees) and the American College of Tax Counsel. Mr. McCormally holds a J.D. from Georgetown University Law Center, and a B.A. from the University of Iowa. **(LB&I Subgroup)**

John F. McDermott

Mr. McDermott, J.D., LLM, is an Attorney/Partner with Taylor, Porter, Brooks & Philips, LLP, in Baton Rouge, LA. He has 34 years' experience in taxation. His primary area of practice is tax planning and advice, including business and individual income tax, payroll tax, franchise tax, excise tax, ad valorem tax, sales and use tax, and gift and estate tax. He has assisted tax exempt organizations make application for and obtain status under IRC section 501(c). He has represented individuals, business entities, trusts and estates with controversies before the IRS at the examination level, with appeals, in Tax Court and U.S.

District Court. He has made applications to the Taxpayer Advocate, assisted clients in collections, and with preparation and presentation of offers in compromise, installment payment arrangements, and with tax liens and levies. He has also represented clients in BLIPS transactions and has applied for and obtained PLR's. In addition to his primary practice of taxation, Mr. McDermott handles succession, probate, and estate administration matters. Mr. McDermott has been a CPA since 1985. He is a member of the Baton Rouge and Louisiana State Bar Associations, National Lawyers Association, Baton Rouge Estate and Business Planning Council, and The Society of Louisiana Certified Public Accountants. Mr. McDermott holds a B.S. in Business Administration and a J.D. from Louisiana State University and an L.L.M. from Georgetown University. **(SBSE/W&I Subgroup)**

Mark S. Mesler (Sr.)

Mr. Mesler, J.D., has over 25 years' experience in taxation, and is a Principal with Ernst and Young LLP, in Atlanta, Georgia. He leads EY's Southeast Tax Policy and Controversy group and represent taxpayers before the IRS at all levels of tax controversies. His responsibilities include both large global companies and middle market. He has assisted them on a variety of dispute resolution tools and processes ranging from the Quality Examination Process, Fast Track Settlement, preparing for litigation, Pre-Filing Agreements, Private Letter Rulings, etc. In addition, he served on teams tasked with implementing major IRS policy initiatives, such as the disclosure of reportable transactions by taxpayers and material advisors, implementation of Schedule M-3, Schedule UTP, and changes to Circular 230. He is the author and presenter of various legal and accounting education seminars. Previously, he was a trial attorney for the IRS' Office of Chief Counsel, where he specialized in complex litigation and bankruptcy matters. Mr. Mesler holds a J.D. from Georgia State University College of Law and a B.S. from Baptist University of America. **(LB&I Subgroup Chair)**

Fred F. Murray

Mr. Murray, JD, CPA, is a Managing Director, Tax Accounting, Risk Advisory, and International Tax Services, at Grant Thornton, LLP, U.S. member of Grant Thornton International, a major international accounting network with more than 500 offices in 113 countries, in its Washington, DC office. He is a member of the Firm's international tax services team (Withholding Taxes Team Leader) and is responsible for leading, resolving and coordinating Firm's technical international taxation positions and advice. His responsibilities also include FATCA and CRS and CbC reporting and filings, disputes and controversies with US and other tax authorities; private wealth and global mobility services. He is also a member of the tax accounting practice team (responsible for technical positions and advice on FAS 109 / FIN 48 (ASC 740) financial accounting matters, and corporate governance, global compliance, and tax risk advice relating to Sarbanes-Oxley Act and Dodd-Frank Act, SEC, GAO and PCAOB and related matters). He is a recipient of the 2010 Grant Thornton Tax Outstanding Performance Award. His experience includes both public law and accounting practice and previous government service as Special Counsel to the Chief Counsel for the Internal Revenue Service and as Deputy Assistant Attorney General in the Tax Division at the Department of Justice. He is an Adjunct Professor of Law at Georgetown University Law Center. He is 2015 Chair of the U.S. Internal Revenue Service Advisory Council (formerly Commissioner's Advisory Group); former Advisor to the International Tax Working Group of the United States Senate Finance Committee; and a former member, Commissioner's Advisory Council, Department of Taxation and Finance, State of New York. He is a member of the American Bar Association (ABA) Section of Taxation, (Council Director (2012-2015), and Chair, Committee on Administrative Practice (2009-2011). In addition, he is an Elected Life Member of the American Law Institute, a Fellow of the American College of Tax Counsel, a member of the AICPA, and a member of the Council of the Federal Bar Association Section of Taxation (former Chair (twice)). Mr. Murray holds a J.D. from the University of Texas at Austin Law School and a B.A. from Rice University. **(Chairman IRSAC)**

Walter Pagano

Mr. Pagano, CPA, has worked in the tax field for more than 35 years and is a Tax Partner with EisnerAmper LLP, Accountants and Advisors in New York City, NY. Mr. Pagano concentrates his practice in tax controversy examinations and investigations, commercial and civil litigation, accounting investigations, internal investigations, financial statement omissions, misrepresentations and fraud, with an emphasis on civil and criminal tax controversy, white collar defense, corruption, professional conduct and tax standards, accounting errors and irregularities, post-closing adjustments, management and employee fraud, and third party asset misappropriation. Mr. Pagano has successfully negotiated agreed upon civil closings in federal and state civil and criminal tax controversies, assisted attorneys in a wide variety of white-collar financial and accounting investigations, commercial litigation, public corruption, IRS practice and procedure, corrupt practices, GAAP and accounting representations and warranties cases. He has been associated for a number of years with the Forensic & Valuation Services section of the AICPA as well as the Tax Section of the ABA's annual Criminal Tax and Tax Controversy Institute, Georgia Southern University's Fraud and Forensic Accounting Conference and EisnerAmper University's Tax College as a speaker of tax ethics and professional standards governing CPAs. A common denominator shared by these diverse organizations with respect to tax ethics and professional standards is their concern and commitment for each tax professional's obligation to follow the authoritative guidance for practitioners found in Treasury Circular 230, Internal Revenue Code sections 6694, 6713, 7216, and the AICPA's Statements on Standards for Tax Services. Mr. Pagano holds a B.S. (Accounting), St. Joseph's University, Philadelphia, PA and a Master of Public Administration (MPA), New York University, New York, NY. **(OPR Subgroup)**

Luis R. Parra, EA

Mr. Parra, EA, is the owner of Key Accounting of New York, in Bronx, NY. He has over 25 years of professional experience in accounting, auditing and taxation. He prepares tax returns for individual tax clients, small business and non-profit organizations. He previously served as a VITA instructor and he is the founder and President of the Latino Association of Tax Preparers, Inc (LATAX). The LATAX is a non-profit organization providing education and support to Latino Tax Preparers in the United States. It has over 200 members in ten states that provide tax preparation services. In addition, he is the founder of the first tax school in the Bronx, NY (English and Spanish classes) and over 1,200 have participated in classes. Mr. Parra is a member of NATP and NAEA. He holds a BA degree in accounting from Inter-American University in San Juan, PR. **(SBSE/W&I Subgroup)**

Andre' L. Re

Mr. Re has worked in the field of taxation for over 41 years and is the owner of Andre' L. Re, in McDonough, GA. Mr. Re worked for the Internal Revenue Service (IRS) for over 30 years, 12 as an Executive. He is a tax consultant and has represented large and medium size corporations before the IRS regarding complex issues at the group and Appeals level. His responsibilities include research and development, travel and entertainment, insurance, tax exempt status, large partnership, and many other issues. Prior to owning his own business he worked for Ernst & Young where his responsibilities included IRS income tax examinations, Service Center processes, employee plans and exempt organizations, tax controversy, and collection matters. He has had numerous opportunities to work with IRS Service Center Campuses to resolve issues with account records, sub S elections, collection procedures, entity elections, and AUR notices. In addition, he worked as a VITA volunteer and has assisted taxpayers with offers in-compromise, installment agreements and other individual and small business tax issues. Mr. Re holds a BS in accounting from Ferris State University, Big Rapids, MI, and an MA in Public Administration from Syracuse University. **(SBSE/W&I Subgroup Co-Chair)**

Donald H. Read

Mr. Read, J.D., LLM, is an attorney and is certified as a taxation law specialist by the Board of Legal Specialization of the State Bar of California. He has worked in the tax field for more than 40 years. A former Attorney-Adviser in the Treasury Department's Office of Tax Legislative Counsel, he has been a tax partner in law firms in Honolulu, San Diego and San Francisco. He is currently the owner of the Law Office of Donald H. Read, in Berkeley, CA and tax counsel to both Lakin-Spears in Palo Alto and Severson & Werson in San Francisco. His recent practice focuses on advising family law attorneys on tax issues related to divorce and the tax problems of same-sex couples. In 2010 he obtained a landmark private letter ruling in which the IRS first recognized community property rights of registered domestic partners. Mr. Read also advises clients on general individual and business tax matters and has obtained private letter rulings for his clients in areas as diverse as partnerships, S corporations, stock redemptions, like-kind exchanges, stock options, deferred compensation and community property income of registered domestic partners. He is a former adjunct professor at the USF School of Law, former chair of the

Taxation Committee of Family Law Section of the American Bar Association, and former vice-chair of the Domestic Relations Committee of the ABA's Taxation Section. He is a member of the East Bay Tax Club and QDRONES. A graduate of Deep Springs College (of which he was later a member of the Board of Trustees), Mr. Read holds a B.A. from the University of California at Berkeley; a J.D. *cum* laude, from Columbia University and an LL.M. (in taxation) from New York University. **(OPR Subgroup)**

Karen Salemi

Ms. Salemi, CPP, FLMI, is Learning Consultant with Zero Chaos, which provides high-quality contingent workforce solutions. Previously, she was a Global Training Leader at International Business Machines (IBM) Corporation, in Pepperell, MA, where she created and delivered payroll related courses including COBRA, 401k, Stock options, accounting, balancing and reconciling, year-end W-2c, multistate issues and local tax classes. Prior to working at IBM, Ms. Salemi, was a Solutions Consultant and Training Manager at Kronos, Inc., a management software and services company, where she helped define their work requirements and building the technical specifications document that is used to configure the HR and payroll systems. She also worked as a Practice Leader of the Employment Tax Consulting group in Ernst & Young's Dallas office, assisting small business and other clients with various process and tax compliance issues, as well as systems implementations. Ms. Salemi is a member of the American Payroll Association (APA) and currently serves as its treasurer. She also serves on APA board of contributing writers, where she publishes and reviews articles dealing with payroll tax and compliance issues, and the Government Affairs Task Force (GATF) for Paycards subcommittee. Ms. Salemi holds a MBA from Seton Hall University, South Orange, NJ and a BA in Accounting from William Paterson University, Wayne, NJ. **(SBSE/W&I Subgroup)**

Sherrill L. Trovato

Ms. Trovato, EA, is the Principal/Owner of Sherrill L. Trovato, MBA, MST, EA, USTCP in Fountain Valley, CA. Ms. Trovato has over twenty-five years of compliance expertise in tax preparation and consulting for her small business and individual tax clients. Her firm specializes in tax controversy representation before the IRS and in the Tax Court and provides other financial and business services. She has authored published articles and has been interviewed numerous times for print and on air for radio. Three times she was a guest on Tax Talk Today, and twice on NBC's Today Show where she was part of a panel offering last minute tax tips to viewers. Since 2002 she has been a regular speaker at the National Association of Enrolled Agents' (NAEA) National Tax Practice Institute where she teaches on a variety of representation related topics. She also speaks nationwide on various topics for other professional groups. On her first attempt, in 2000 she passed the difficult Tax Court nonattorney admission exam; in 2002 she developed and still teaches a program that successfully assists other tax professionals who also want to be admitted to practice before the US Tax Court. Ms. Trovato is a past president of NAEA, where she was recognized with their lifetime achievement Founder's Award for her exemplary volunteer leadership. Ms Trovato holds a Master of Science Degree in Taxation, a Master of Business Administration in Finance, and a BA in Business Administration with an accounting specialization, all from California State University, Fullerton. (**SBSE/W&I Subgroup Co-Chair**)