Internal Revenue Service Advisory Council

Annual Report

November 2012

Publication 5316 (Rev. 11-2012) Catalog Number 71824A Department of the Treasury **Internal Revenue Service** www.irs.gov

Internal Revenue Service Advisory Council 2012 Public Report
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ADVISORY COUNCIL

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NOVEMBER 15, 2012

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. The purpose of the IRSAC is to provide an organized public forum for Internal Revenue Service (the "IRS") officials and representatives of the public to discuss relevant tax administration issues. The IRSAC reviews existing tax policy and recommends policies regarding 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 has 24 members with substantial, disparate experience and diverse backgrounds. The members represent large and small firms from urban and rural settings across all regions of the United States. Members include representatives from the taxpaying public, educators, the tax professional and appraisal community, volunteer income tax community, as well as small and large businesses. In addition to representing different industries and geographic regions of the United States, members also represent several occupations that interact with the IRS in a variety of ways. Current members include accountants, lawyers, enrolled agents, and academics. Each member has a unique

tax policy perspective and is committed to providing meaningful input and feedback to the IRS.

The IRSAC is organized into four subgroups - the Wage and Investment (W&I) Subgroup, the Small Business/Self-Employed (SBSE) Subgroup, the Large Business and International (LB&I) Subgroup, and the Office of Professional Responsibility (OPR) Subgroup. The members recognize 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; Rose J. Smith, NPL; Anna Millikan, NPL; Maria Jaramillo, NPL; Brian Ward, NPL; Johnnie Beale, W&I; Tonjua Menefee, SB/SE; and Kate Gregg, LB&I. The IRSAC appreciates the invaluable assistance provided by the IRS executives and support personnel throughout the year. We also thank you for the discussions and dialogue that each subgroup held on current and emerging tax policy and procedural issues. The IRSAC members were honored and privileged for the opportunity to be able to work with each of these truly remarkable individuals! Their dedicated service to the IRSAC and IRS should be recognized as truly exemplary.

Issues selected for inclusion in the 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 and include issues that IRS personnel brought to our attention. Nearly all issues involved extensive research efforts.

We acknowledge the many challenges that the IRS has recently experienced and, knowing the demands of the IRS executives and operating division representatives, we sincerely appreciate the time and effort extended to the IRSAC during the year.

The 2012 W&I Subgroup, chaired by Ann Esarco, prepared the attached report that reviews and provides recommendations for: enhancing the promotion of educational opportunities available to practitioners regarding the Earned Income Tax Credit; increasing e-filing of employment tax returns; creating a better awareness of e-services to practitioners; and suggesting formatting and definitional changes to Forms 1099-B and 8949.

The 2012 LB&I Subgroup, chaired by Ameek A. Ponda, prepared the attached report which provides recommendations for streamlining the audit process; focusing audit resources on areas with a permanent tax impact; and developing knowledge management of the newly created Issue Practice Groups and International Practice Networks.

The 2012 SBSE Subgroup, chaired by Madeleine Townes, prepared the attached report that reviews and provides recommendations for reducing taxpayer burden by allowing for efficient Forms 1099 & W-2 corrections; raising awareness of tax filing requirements and outreach to non-filers; and providing illustrations on ways to improve and promote the increased use of technology by the IRS for the benefit of the IRS and the taxpayer.

The 2012 OPR Subgroup, chaired by Charles J. Muller, prepared the attached report that reviews and provides recommendations for the publishing of additional guidance respecting a tax practitioner's ethical and professional obligations under Circular 230; and promulgating proposed amendments to Circular 230 which further

define the competency standard and provide expedited suspension procedures for practitioners who persist in a pattern of willfully failing to file federal tax returns.

The IRSAC also desires to make the point that the IRS must receive consistent, adequate, and appropriate funding to achieve the proper administrative balance between service, compliance, and tax enforcement. With the ever-increasing list of responsibilities, and most notably the implementation and administration of the Affordable Care Act, taxpayers and the tax system will suffer without appropriate levels of funding by Congress.

The following discussion point was not assigned to a specific IRSAC subgroup but is being presented due to its importance throughout our system of tax administration.

ISSUE: THE IRS MUST CONTINUE TO COMBAT REFUND FRAUD AND IDENTITY THEFT WHILE CONTINUING TO BALANCE COMPLIANCE AND TAX ENFORCEMENT

Executive Summary

The IRS must continue to diligently look for ways to combat identity theft which leads to tax fraud. The IRSAC commends the IRS on its two-pronged effort, but is concerned that both taxpayers and the tax system will suffer if appropriate measures are not taken quickly and effectively to control this fraud.

Background

Identity thieves continue to become more proficient in devising schemes to steal identities in their attempt to file fraudulent refund claims. The thief uses stolen social security numbers to prepare fraudulent Form W-2s, file tax returns and obtain refunds based on the fraudulently prepared Forms W-2 and 1040, generally very early during the

filing season. Populations that have no tax filing requirements such as the elderly, children and the deceased are often the targets, making this particularly difficult to identify as an accurate return is often never required to be filed. Thieves may obtain jobs with hospitals, schools or nursing homes in order to acquire thousands of SSNs and market this information or use it themselves. Despite the fact that these thieves steal the information from sources outside of the tax system, the IRS is sometimes the first to inform an individual that identity theft has occurred, and in some cases the IRS and the individual are never aware of the fraud, leading to multiple years of fraudulent returns being filed.

The IRS has the goal of preventing identity theft and detecting refund fraud prior to its occurrence, as well as assisting taxpayers who are victims. A number of enhanced fraud protection processes for the 2012 filing season were implemented, including filters developed to stop suspect returns and contact the taxpayer before the return is processed, new tools to identify taxpayers with changed circumstances (e.g. a new job, a new bank account or debit card for the refund deposit), and enhanced use of the functionality of the Identity Protection Personal Identification Numbers (IP PINs). The IRS also developed procedures for handling taxpayer personal information that law enforcement officials discover in the course of investigating identity theft schemes or other criminal activity and is accelerating the matching of information returns to identify mismatches earlier.

In 2011, the IRS identified and prevented the issuance of over $14 billion in fraudulent returns. Identity theft is a subset of this total. From 2008 through the middle of 2012, the IRS has identified more than 600,000 taxpayers who have been affected by identity theft. With respect to these taxpayers, during 2011 the IRS protected $1.4 billion

in refunds from being erroneously sent to identity thieves. Through mid-April 2012, the IRS had stopped over 325,000 questionable returns with $1.75 billion in claimed refunds using filters specifically targeting refund fraud.

IRSAC applauds the continued efforts to assist individuals who have been impacted by identity theft. The IP PIN program began as a pilot in 2010, and was expanded in 2011. Under this program, a six-digit number is assigned to many taxpayers who are identified as identity theft victims, and had their account issues resolved. In addition, the IRS has trained 35,000 public contact employees to be able to help taxpayers who are victims of identity theft to speed up their case resolution. Taxpayers can also self-report that they are victims before their tax accounts are affected by contacting the Identity Protection Specialized Unit.

Taxpayer outreach has continued with a new section on IRS.gov dedicated to identity theft matters, outreach to educate return preparers about the IP PIN and identity theft, as well as working with software developers on inclusion of the IP PIN on the tax form.

Recommendations

1. The IRS should strongly consider delaying refunds until after verification of the taxpayer's identity. For taxpayers that rely on an early refund in January, the IRS should consider a process under which 25 percent of the refund is issued prior to verification, and the remaining 75 percent issued after verification. The increased use of refund anticipation loans needs to be considered if refunds are delayed.
2. The IRS should continue to work with the banking industry to find and prosecute the perpetrators who use debit cards.

3. Authentication procedures should continue to be studied so that refunds can be processed more quickly for those taxpayers whose identity is authenticated. It may be possible to allow authentication to be made by a third party. Consideration should be given to requiring fingerprints or other unique identifiers that can be associated with the social security number on the income tax return as authentication. This could be done by local police or other approved groups and included by the taxpayer on the signature line of the return.
4. It may be possible to publicize the protections that the IRS has in place and the need to slow down refunds until information returns can be matched or verification can occur. This could be used in conjunction with requiring Form W-2s and Form 1099s to be filed with the IRS by January 31, the same date that forms are furnished to taxpayers. In addition, the IRS can publicize the importance of properly estimating taxes payable each year to avoid significant overpayments that may be delayed due to a verification process.
5. The IRS should consider continued expansion of the IP PIN for taxpayers who have had their identity stolen, and perhaps for all taxpayers who request refunds before verification. There also needs to be a method of connecting a child's identity to their parent's return to protect the child's SSN from identity theft.
6. The IRS needs to continue its Criminal Investigation Division work with and prosecution by the Justice Department, making results public so that the consequences of identity theft are understood by the public.

Identity theft is an ongoing issue, which the IRS must deal with in order to protect the tax system. With the landscape continuously changing, identity thieves continue to create

new ways of stealing personal information and using it for their gain. The IRS must continue to look for ways to improve its return processing to ensure potentially false returns are screened out at the earliest possible stages of processing. With the integrity of the tax system at stake and budgets struggling, it appears that the easiest way to combat identity theft tax fraud is to delay refunds until verification of identity can be made. While the cost of this will be taxpayer frustration with delayed refunds, the gains achieved by stopping fraudulent returns from being filed and fraudulent refunds from being issued far outweigh this frustration. By aggressively controlling this risk now, the integrity of the tax system will be less of a target in the future.

Conclusion

The IRSAC members are grateful for the opportunity to serve the Internal Revenue Service and taxpayers. It is readily apparent that the IRS is continually required to "do more with less" resources while operating in a complex, ever changing environment throughout the world. The IRS is to be highly commended for its historical and continued efforts, and vast accomplishments, on behalf of tax administration.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

OFFICE OF PROFESSIONAL RESPONSIBILITY SUBGROUP REPORT

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NOVEMBER 15, 2012

INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC OPR Subgroup (hereafter "Subgroup") is comprised of a diverse group of tax professionals, including lawyers, CPAs and an enrolled agent. This year has been very rewarding from a professional standpoint because of the OPR Subgroup participation in the promulgation of new guidance for practitioners. This new guidance was the direct result of recommendations made by the 2011 IRSAC.

The Subgroup has always enjoyed a very good working relationship with the Director of the Office of Professional Responsibility and this year was no exception as all the personnel from OPR were extremely cooperative and forthcoming.

IRSAC was asked to provide feedback and recommendations on the following three topics included in this report. Please find following a brief summary regarding each of these three issues, followed by a more complete analysis of each issue.

1. **Guidance Respecting Obligations of Tax Practitioners Under Treasury Circular 230 and of Preparers Under The Internal Revenue Code**

With the extension of the application of Treasury Circular 230 to paid tax return preparers, an additional 500,000 unlicensed individuals who have registered as tax return preparers are now subject to the conduct rules of Treasury Circular 230 Subpart B. As we noted in our 2011 IRSAC Report, many of these newly designated practitioners may be unfamiliar with the ethical and professional obligations under Treasury Circular 230 and the Internal Revenue Code. We believe that the IRS should continue its efforts to expand and improve the guidance available to all tax practitioners concerning their ethical and professional obligations under both Treasury Circular 230 and the Internal Revenue Code. We also believe that the *For Tax Pro* section of the www.irs.gov website should

more prominently display the links to information concerning practitioner obligations under Treasury Circular 230 and the Internal Revenue Code. We recommend that the IRS consider the addition of an acknowledgement of the applicability of Treasury Circular 230 to certain application and renewal forms for preparer tax identification numbers and for enrollment before the IRS as an enrolled agent or an enrolled retirement plan agent.

2. **Practitioner Competency**

Proposed Regulations to Treasury Circular 230 were issued on September 17, 2012 (hereafter "Regulations"). For the first time, the Regulations will impose a separate competency requirement upon all practitioners covered by Treasury Circular 230. The requirement that representatives be competent is found in 31 U.S.C. § 330(a)(2)(D). We support this addition which now aligns Treasury Circular 230 with ethical rules governing certified public accountants and attorneys. While the concept of competency is to a certain extent embodied in the due diligence requirements described in Section 10.22 of the current version of Treasury Circular 230, we believe that a separate section in Treasury Circular 230 specifically addressing competency is warranted. Section 10.35 of the Proposed Regulations provides a much needed requirement of competency and we urge the IRS to adopt it in final form.

3. **Expedited Suspension Procedures For Practitioners who Demonstrate a Pattern of Failing To File Required Federal Tax Returns**

The IRS has also proposed changes to Treasury Circular 230 which would permit the expedited suspension of a practitioner who has a pattern of not complying with federal tax filing obligations and who persists in that disreputable conduct after contact by OPR. We believe the proposed safeguards to the expedited suspension process are sufficient to

provide adequate due process while protecting the public from possible harm. We therefore recommend that the proposed changes be adopted in the Final Regulations.

ISSUE ONE: GUIDANCE RESPECTING OBLIGATIONS OF TAX PRACTITIONERS UNDER TREASURY CIRCULAR 230 AND OF PREPARERS UNDER THE INTERNAL REVENUE CODE

Executive Summary

With the extension of the application of Treasury Circular 230 to paid tax return preparers, an additional 500,000 unlicensed individuals who have registered as tax return preparers are now subject to the conduct rules of Treasury Circular 230 Subpart B. As we noted in our 2011 IRSAC Report, many of these newly designated practitioners may be unfamiliar with the ethical and professional obligations under Treasury Circular 230 and the Internal Revenue Code. We believe that the IRS should continue its efforts to expand and improve the guidance available to all tax practitioners concerning their ethical and professional obligations under both Treasury Circular 230 and the Internal Revenue Code. We also believe that the *For Tax Pros* section of the www.irs.gov website should more prominently display the links to information concerning practitioner obligations under Treasury Circular 230 and the Internal Revenue Code. We recommend that the IRS consider the addition of an acknowledgement of the applicability of Treasury Circular 230 to certain application and renewal forms for preparer tax identification numbers and for enrollment before the IRS as an enrolled agent or an enrolled retirement plan agent.

We are pleased to note that the IRS has implemented the recommendation in our 2011 IRSAC Report to develop a publication which will provide practitioners subject to a disciplinary proceeding under Treasury Circular 230 with information concerning the notice and review procedures under the enforcement provisions of Treasury Circular 230.

We commend the IRS for completing this publication as an important step in providing information to practitioners.

Background

Tax practitioners have ethical obligations to their clients under Treasury Circular 230, as well as obligations to the tax system under the Internal Revenue Code. Taxpayer confidence in the tax system and sound tax administration are enhanced when tax practitioners understand and fulfill their ethical and professional obligations. The first step toward promoting compliance with these obligations is to ensure that affected professionals are aware of and understand them.

As we noted in our 2011 IRSAC Report, the changes to Treasury Circular 230 that became effective in 2011 greatly expanded the reach of the conduct rules in Subpart B to apply to registered tax return preparers and to individuals meeting the definition of a "tax return preparer" under Treasury Regulation §301.7701-15.[1] Approximately 500,000 individuals who are not attorneys, certified public accountants, or enrolled with the IRS have registered as tax return preparers. Because they were not subject to Treasury Circular 230 prior to 2011, many of these individuals do not yet fully understand their obligations under Treasury Circular 230 and the Internal Revenue Code. And there remain licensed practitioners who are not fully aware of their obligations under Treasury Circular 230.

The IRS has begun taking steps to increase awareness of Treasury Circular 230 obligations among tax practitioners:

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[1] Circular 230 § 10.2(a) (8).

- A significant portion of unlicensed tax return preparers will be required to pass a competency examination to maintain their status as registered tax return preparers after 2013, and they will be exposed to Treasury Circular 230 in preparing for and taking this examination.
- Many unlicensed tax return preparers, as well as individuals enrolled to practice before the IRS, are subject to continuing education requirements under Treasury Circular 230, including a requirement to complete two hours of ethics training each year.
- Presentations regarding practitioner obligations under Treasury Circular 230 have been offered at the annual IRS Nationwide Tax Forums.
- OPR in collaboration with SB/SE, has filmed a 75-minute webinar on Treasury Circular 230 which has aired twice with 35 minutes of live Q&A with the Director, OPR. The webinar will be presented with live Q&A on a quarterly basis into 2012 and has been archived for independent viewing by practitioners.

One recommendation in our 2011 IRSAC Report was that the IRS provide practitioners subject to a disciplinary proceeding under Treasury Circular 230 with information concerning the notice and review procedures under the enforcement provisions of Treasury Circular 230. We are pleased to note that the IRS has developed such a publication. This publication will be made available on the www.irs.gov website, and it will be provided in printed form together with communications from OPR informing a practitioner of the initiation of a disciplinary proceeding. We commend the IRS for completing this publication as an important step in providing information to practitioners.

Recommendations

1. We recommend that the IRS continue its efforts to inform practitioners regarding Treasury Circular 230 at the IRS Nationwide Tax Forums and through presentations in the SB/SE webinars. We also support the recording and archiving of these presentations in order to make them available to the entire population of tax practitioners.

We note that while the steps described above will reach many practitioners, they are not likely to reach all the practitioners subject to Treasury Circular 230. A significant number of practitioners are exempt from the Treasury Circular 230 competency examination and continuing education requirements, and not all practitioners will attend either a tax forum or an SB/SE webinar.

2. Accordingly, we continue to recommend that the IRS develop a publication that enumerates in reasonable detail the obligations of practitioners under Treasury Circular 230 and of "tax return preparers" under the Internal Revenue Code. This publication should be available in both *.html* and *.pdf* format at the www.irs.gov website. The publication should describe in reasonable detail both ethical responsibilities and administrative obligations, including due diligence, PTIN requirements, tax return preparation and signing, tax advice (and the limitations on tax advice by registered tax return preparers), confidentiality, conflicts of interest, contingent fees, client records, solicitation, and the responsibilities under §§ 6060, 6107, 6109, and 6695. The publication should also describe in general terms the possible sanctions under the Internal Revenue Code or Treasury

Circular 230 for violating these standards. We recommend that the IRS allow tax professionals to subscribe to changes in this publication via RSS feed or other means.

We recognize that the development of this proposed publication constitutes a significant undertaking for the IRS. Our recommendation is based on our belief that the first step in promoting compliance with practitioners' obligations under Treasury Circular 230 and the Internal Revenue Code is to ensure that all practitioners are aware of these obligations and can readily access guidance to help practitioners understand them.

In our 2011 IRSAC Report, we noted that the links to information concerning Treasury Circular 230 and Internal Revenue Code section 7216 at the *Tax Information for Tax Professionals* section on the IRS' website were not effective in attracting a viewer's attention, due both to location on the site and to the terminology used. The *For Tax Pros* section of the website has been redesigned, and it now features prominent links to information concerning testing, continuing education, and maintaining a PTIN. However, the link to Treasury Circular 230 remains at the bottom of the page under the heading "Responsibility and Oversight." We reiterate our belief that tax practitioners would be far more likely to locate (and therefore read) important guidance concerning ethical and professional obligations if the links to the guidance were displayed more prominently and used descriptions that more readily identified the subject matter to less experienced or unlicensed practitioners (*e.g.*, "Ethical and Professional Obligations of Tax Professionals").

3. We recommend that the IRS consider adding an acknowledgement of the applicability of Treasury Circular 230 to the following forms:
    - Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal;*
    - Form 23, *Application for Enrollment to Practice Before the Internal Revenue Service*;
    - Form 23-EP, *Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent;*
    - Form 8554, *Application for Renewal of Enrollment to Practice Before the Internal Revenue Service;* and
    - Form 8554-EP, *Application for Renewal of Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent*.

Forms 23 and 23-EP each instruct the applicant to read Treasury Circular 230 before completing the application, and the instructions to both Form 8554 and 8554-EP state that a false statement on the form are grounds for disbarment under Treasury Circular 230. But none of the forms listed above include an affirmative acknowledgement by the applicant that Treasury Circular 230 will apply to their activities as practitioners or tax return preparers.

Requiring an affirmative acknowledgement of the applicability of Treasury Circular 230 to their activities in tax practice should prompt applicants to review Treasury Circular 230 at the time of an original application and at renewal. A regular review of Treasury Circular 230 would be expected to raise awareness of, and compliance with, the ethical and professional obligations in tax practice.

There is a precedent for the inclusion of such an affirmative acknowledgement. Form 2848, *Power of Attorney and Declaration of Representative*, contains a declaration by the representative indicating awareness of regulations contained in Treasury Circular 230 concerning practice before the IRS. We suggest an approach similar to the Form 2848, but one which specifically enumerates tax return preparation and tax advice as constituting "practice before the IRS." Including this express enumeration of activities may be helpful to the many practitioners who are as yet unfamiliar with the scope of the Treasury Circular 230 definition of "practice before the IRS" in section 10.2(a)(4). We offer the following as an example of the affirmative acknowledgement contemplated by our recommendation:

> I am aware of the regulations contained in Treasury Circular 230 (31 CFR, Part 10), as amended, concerning practice before the Internal Revenue Service. I understand that my activities in preparing federal tax returns, in providing written advice concerning federal tax matters, in representing taxpayers before the Internal Revenue Service, and in other activities constituting "practice before the IRS" under Treasury Circular 230 section 10.2(a)(4) are subject to the requirements of Treasury Circular 230.

ISSUE TWO: PRACTITIONER COMPETENCY

Executive Summary

Proposed Regulations to Treasury Circular 230 were issued on September 17, 2012. For the first time, the Regulations impose a separate competency requirement upon all practitioners covered by Treasury Circular 230. The requirement that representatives be competent is found in 31 U.S.C. § 330(a)(2)(D). We support this addition which now aligns Treasury Circular 230 with ethical rules governing certified public accountants and attorneys. While the concept of competency is to a certain extent embodied in the due diligence requirements described in Section 10.22 of the current version of Treasury Circular 230, we believe that a separate section in Treasury Circular 230 specifically addressing competency is warranted. Section 10.35 of the Proposed Regulations provides a much needed requirement of competency and we urge the IRS to adopt it in final form.

Discussion

The United States system of income taxation is based on voluntary compliance and self-assessment. Each taxpayer has the responsibility to assess his or her proper tax liability annually. In determining his or her tax liability, the taxpayer is hampered by the complexity and uncertainty of the tax law. Taxpayers not only must ascertain the correct provisions of the tax law that apply to them, but also must properly apply those provisions to their individual situations. The intricate nature of the tax law and the uncertainty of applying what appear to be clear legal provisions to complicated facts make this process difficult if not impossible for many taxpayers. Therefore, many taxpayers look to tax practitioners for assistance in complying with the tax laws and assessing their tax liability. In order to protect the integrity of the system, it is crucial that tax practitioners achieve a minimum level of

competence in order to satisfy their duties to their clients and to the system. In fact, 31 U.S.C. § 330(a)(2)(D) imposes a competency requirement upon all persons who represent taxpayers before the Department of Treasury. The statute requires that all such representatives be competent to advise and assist persons in presenting their cases. The Regulations, by providing guidance and reinforcing this statutory requirement, properly recognize the importance of competency in the practitioner community by the addition of a specific competency requirement in Section 10.35, thereby aligning Treasury Circular 230 with the ethical standards governing certified public accountants and attorneys.

Section 52 of The Restatement of the Law—The Law Governing Lawyers imposes a competency standard upon attorneys. The comments to the section define competence as the skill and knowledge normally possessed by members of the trade or profession in good standing. The comments note that competency must be reasonable in the circumstances.

The AICPA Code of Professional Conduct, (hereafter "AICPA Code") ET Section 56 Article V—Due Diligence acknowledges a competency standard for certified public accountants. The AICPA Code notes that a certified public accountant must discharge his or her duties with competence and diligence. The AICPA Code further provides that competency is a synthesis of education and experience. Competence, in the view of the AICPA Code, represents the attainment and maintenance of a level of understanding and knowledge that enables a member to render services with facility and acumen. Accordingly, the AICPA Code notes that it may be appropriate in certain circumstances that a consultation or referral may be required if a professional engagement exceeds the

personal competence of a member. The AICPA Code provides that each member is responsible for assessing his or her own competence.

Section 10.22 of Treasury Circular 230 imposes a due diligence obligation upon practitioners in (a) preparing tax returns (b) determining the correctness of oral or written representations made by the practitioner to the Department of Treasury and (c) determining the correctness of representations made by the practitioner to clients regarding any matter administered by the IRS. Arguably, the concept of competence is imbedded in the due diligence obligation imposed upon practitioners; the practitioner must be competent in order to properly achieve the required level of due diligence. However, Section 10.22 does not specifically impose a competency requirement upon practitioners and we firmly believe Treasury Circular 230 should do so.

Section 10.35 as revised in the Regulations clearly imposes a separate competency requirement upon practitioners. The section, in our view, adopts a sensible, proportional and workable definition of competence. Rather than attempting to narrowly establish a competency standard, the Regulation broadly defines competence to include "knowledge, skill, and thoroughness of preparation necessary for the matter for which the practitioner is engaged." The proposed standard properly notes that competence is a function of the matter the practitioner is handling. Accordingly, complex matters require a higher degree of competence than routine matters. The proposed standard also implicitly acknowledges that through adequate preparation, a practitioner can achieve the required level of competence. Requiring that practitioners acquire the necessary knowledge to properly advise clients is vital to protect the integrity of our tax system.

Recommendation

We strongly endorse of the proposed revision to Section 10.35 of Treasury Circular 230 and urge the IRS to adopt it in final form.

We also recommend that the IRS continue its efforts to provide additional guidance respecting competency. The guidance should include specific examples of minimal competency requirements similar to the examples which now exist explaining the due diligence requirements under Reg. § 1.6694-1(d)(3).

ISSUE THREE: EXPEDITED SUSPENSION PROCEDURES FOR PRACTITIONERS WHO DEMONSTRATE A PATTERN OF FAILING TO FILE REQUIRED FEDERAL TAX RETURNS

Executive Summary

The IRS has also proposed changes to Treasury Circular 230 which would permit the expedited suspension of a practitioner who has a pattern of not complying with federal tax filing obligations and who persists in that disreputable conduct after contact by OPR. We believe the proposed safeguards to the expedited suspension process are sufficient to provide adequate due process while protecting the public from possible harm. We therefore recommend that the proposed changes be adopted in the Final Regulations.

Background

Proposed changes to § 10.82 of Treasury Circular 230 provide for expedited suspension of a practitioner who has demonstrated a pattern of willful disreputable conduct by failing to make an annual federal income tax return for four of the five tax years immediately preceding the issuance of a show cause order by the Director of OPR. A practitioner is also subject to expedited suspension procedures if the practitioner has failed to make a return required more frequently than annually during five of the seven periods preceding the institution of proceedings.

The Proposed Regulations clearly limit the expedited suspension procedures to practitioners who remain noncompliant with any of the practitioner's federal tax filing

obligations at the time of the issuance of a show cause order[2]. Thus, a practitioner may avoid the expedited suspension procedures by promptly filing all delinquent federal tax returns after an initial contact by OPR. Based upon past practices by OPR, it is anticipated that a practitioner who indicates a willingness to promptly become compliant will be given a reasonable period to file delinquent returns before the issuance of the show cause order.

A practitioner suspended under the expedited suspension procedures may, within two years of the suspension, demand that the IRS institute a proceeding under § 10.60 and issue a complaint described in § 10.62. This complaint procedure provides the practitioner with the full administrative due process proceedings, including a hearing before an administrative law judge and the opportunity for an appeal to the Treasury Appellate Authority.

Discussion

The proposed changes to § 10.82 are consistent with federal criminal law and with the statutory requirements for practice before the Treasury, 31 USC 330. Under Section 7203 of the Internal Revenue Code willful failure to file a federal tax return at the time required by law is a misdemeanor criminal violation, subject to imprisonment upon conviction, for up to one year for each violation.

The requirement of a pattern of failures to file is also consistent with federal criminal law. The courts have held that a pattern of conduct, generally consisting of failing to file for two or three consecutive years, is sufficient to establish an inference that

[2] A show cause order must give a plan and concise description of the allegations that constitute the basis of the proposed suspension.

the failure to file was willful. *United States v. Greenlee*, 517 F.2d 899, 903 (3rd Cir. 1975); *See also United States v. Turk,* 722 F.2d 1439, 1441 (9th Cir. 1983) (failure to file income taxes in two years prior admissible to show intent); *United States v. Street*, No. 06-659-1, 2008 WL 4560678 (E.D. Pa. Oct. 10, 2008) (failure to file taxes from 2002-2004 was sufficient to establish willfulness citing *United States v. Smith* 698 F.Supp. 589, 592-92 (E.D. Pa. 1988)); and *United States v. Hartmann*, 86 F.3d 1153 (4th Cir. 1996) (court found evidence that the defendant did not file taxes in the years 1990, 1991 and 1992 sufficient to establish that he "voluntarily and intentionally violated his known legal duty to make and file tax returns….").

Other pertinent factors to be considered include the practitioners' knowledge and experience, including the preparation of returns for others. The courts would consider these factors as a further indication of willfulness. *See e.g., United States v. Ostendorff*, 371 F.2d 729, 731 (4th Cir. 1967); *United States v. MacLeon*, 436 F.2d 947, 949 (8th Cir. 1971); *United States v. Lord*, No. 09-4924, 2010 WL 5129152 (4th Cir. Dec. 13, 2010) (experience as an accountant for almost 20 years and testimony that defendant was in charge of ensuring the filing of previous employers' payroll taxes demonstrated willfulness).

It should be noted that many courts have held that a failure to file tax returns is an offense involving moral turpitude. For example, in *The Board of Law Examiners of the State of Texas v. Stevens,* 828 S.W.2d 773 (Tex. 1994), the Texas Supreme Court held that the Law Examiners' denial of petitioner's application for admission to the State Bar due to lack of good moral character was supported by evidence of the petitioner's

persistent failure to meet his financial obligations, including the petitioner's failure to file his federal tax returns for 14 years.

> A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation *that legitimately could call a lawyer's overall fitness to practice into question.*

The court also noted that failure to file a tax return is generally recognized as a crime of moral turpitude in disbarment proceedings, citing *In re Pohlman*, 248 N.W.2d 833, 835 (N.D. 1976); *State Bd. of Law Exam. v. Holland*, 484 P.2d 196, 197 (Wyo. 1972); *In re McKechnie*, 214 Or. 531, 330 P.2d 727, 728 (1958); *Attorney Grievance Comm. v. Barnes*, 286 Md. 474, 408 A.2d 719, 723 (1979); *State v. Fitzgerald*, 165 Neb. 212, 85 N.W.2d 323 327 (1957); *In re Norrid*, 100 N.M. 326, 326, 670 P.2d 580, 580 (1983); *In re Rohan*, 21 Cal.3d 195, 578 P.2d 102, 104 (1978); and *People v. Borchard*, 825 P.2d 999, 100 (Colo. 1992).

The explanation to the proposed changes to § 10.82 reflects that in 2006 an expedited suspension procedure were proposed but not finalized because of practitioner concerns that the proposed procedures would erode due process rights. The explanation reflects, however, that the Treasury and the IRS continue to encounter practitioners who repeatedly fail to comply with their tax obligations.

The current proposal differs from the 2006 proposed rule in several respects. First, the current proposed rule does not apply to delinquent payment obligations. Second, the current rule requires a pattern of non-compliance extending to four of the five tax years immediately preceding the show cause order. Importantly, the expedited procedures will not apply if a practitioner files all delinquent federal tax returns after the

initial contact by OPR and before the issuance of the show cause order. Finally, within two years of an expedited suspension, the practitioner has the opportunity to request the full due process procedure by demanding that the IRS institute a proceeding under § 10.60.

As indicated in our previous discussion regarding competency to practice, the statutory authority for the regulation of practitioners requires that a practitioner demonstrate good character, good reputation, the necessary qualifications to provide a valuable service and competency to advise and assist persons in representing their cases before the IRS. 31 USC 330. Thus, the proposed changes are consistent with the statutory requirements set forth in Title 31 of the United States Code.

In the final analysis, the question is whether a practitioner's persistent failures to file Federal tax returns are a sufficient indication of poor moral character to justify expedited suspension procedures. For otherwise, the expedited suspension procedures could be viewed as overreaching by the IRS, a mere use of Treasury Circular 230 as a tax compliance enforcement tool.

We think it is clear from the above cases that persistent failure to file one's own federal tax returns is a clear indication of a lack of good character. Whether such failures arise from psychological impediments, fear of the IRS, mere negligence or fraud, this moral defect is a clear indication that the person does not have the judgment and moral capacity to provide tax advice and prepare federal tax returns for the public, especially where that person persists in noncompliant behavior after contact by OPR.

Furthermore, the public expects more from a practitioner and a registered tax return preparer. It is reasonable to expect that the IRS would not permit a disreputable

person to hold himself out to the public as a person competent to give tax advice and prepare tax returns for others. These considerations, in our view, justify the proposed expedited suspension procedures.

We also believe that the safeguards in the present proposed amendment to § 10.82 are sufficient to balance due process concerns with the IRS reasonable concerns that disreputable persons are not continuing to give tax advice and prepare returns for others.

Recommendation

We believe the proposed change to § 10.82 balances the need to protect the public from practitioners who demonstrate a lack of good character, while providing adequate due process procedures. We, therefore, recommended adoption of the proposed changes to § 10.82 of Treasury Circular 230.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

WAGE AND INVESTMENT SUBGROUP REPORT

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NOVERMBER 15, 2012

INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Wage & Investment Subgroup (hereafter "Subgroup") is comprised of a diverse group of tax professionals including Certified Public Accountants, Enrolled Agents, educators, and (Volunteer Income Tax Assistance) VITA site managers. The members of this group 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 would like to thank W&I Commissioner Peggy Bogadi for her recognition of the value of the Subgroup as an integral part of her leadership team. The Subgroup has had the privilege of working with the professionals within the W&I operating division of the IRS and found them to be extremely 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 who do a masterful job at navigating the IRS and ensuring that we have access to the necessary information to develop our analysis and issue our report.

The Subgroup has researched and is reporting on the following four issues:

1. Reporting of Dispositions of Capital Assets on Forms 1099-B (Proceeds from Broker and Barter Exchange Transactions), 8949 (Sales and Other Disposition of Capital Assets), and Schedule D (Capital Gains and Losses) (Form 1040)

The W&I Subgroup of IRSAC was asked to assist the IRS by reviewing the 2012 Form 8949 "Sales and Dispositions of Capital Assets" and Form 1099-B "Proceeds From Broker and Barter Transactions," including their respective instructions. These forms provide data that flow into Schedule D "Capital Gains and Losses" (Form 1040).

The forms and processes are well thought out and can be expected to increase the efficiency of the information-matching program. We offer suggestions, such as formatting changes, clearer use of terminology, and consistent reporting requirements for dollars that are pertinent in capturing the proper gain or loss on each transaction. We also suggest that the IRS change some of the 2011 format standards, for example, landscape mode, single spacing, and the required reporting of number of shares sold per transaction.

2. Increase BMF Electronic Filing

The IRS requested that the W&I Subgroup of IRSAC provide recommendations to increase electronic filing of business tax returns. In addition to recommending ways of increasing e-filing of business tax returns, the subgroup was also asked for assistance in communicating with the practitioner and business communities the advantages of e-filing business tax returns.

3. Practitioner Priority Service (PPS) — Redirecting Practitioners to IRS Automated Applications

The W&I Subgroup of IRSAC was asked to provide assistance with recommendations for exploring options to encourage more practitioners to utilize automated services. The IRS would like to increase practitioner reliance on e-service tools and decrease reliance on one-on-one contact through the IRS Practitioner Priority Service (PPS). Transferring practitioners to e-services when appropriate can increase assistor availability for issues that require an assistor's support.

4. EITC Central — Electronic Toolkit

The W&I Subgroup of IRSAC was asked to provide recommendations on how to best market EITC (Earned Income Tax Credit) Central to the practitioner community and

specifically increase the use of the Spanish version of the Due Diligence Training Module. We find that EITC Central and the Return Preparer Toolkit are excellent resources for the practitioner. We offer suggestions on making these resources more easily accessible and available in both English and Spanish.

The report also suggests changes to the continuing education requirements for practitioners and offices that prepare more than ten EITC returns annually, outreach strategies to those that self-prepare returns with EITC, and exploring other avenues of validating EITC claims.

ISSUE ONE: REPORTING OF DISPOSITIONS OF CAPITAL ASSETS ON FORMS 1099-B (PROCEEDS FROM BROKER AND BARTER EXCHANGE TRANSACTIONS), 8949 (SALES AND OTHER DISPOSITION OF CAPITAL ASSETS), AND SCHEDULE D (CAPITAL GAINS AND LOSSES) (FORM 1040)

Executive Summary

The Subgroup was asked to assist the IRS by reviewing the 2012 Form 8949 "Sales and Dispositions of Capital Assets" and Form 1099-B "Proceeds From Broker and Barter Transactions", including their respective instructions. These forms provide data that flow into Schedule D "Capital Gains and Losses" (Form 1040).

The forms and processes are well thought out and can be expected to increase the efficiency of the information-matching program. We offer suggestions, such as formatting changes, clearer use of terminology, consistent reporting requirements for dollars that are pertinent in capturing the proper gain or loss on each transaction. We also suggest that the IRS change some of the 2011 format standards, for example, landscape mode, single spacing, and the required reporting of number of shares sold per transaction.

Background

Form 1099-B and Schedule D were substantially revised for the 2011 tax year. Form 8949 was also developed and released for 2011. The purpose of these revisions and form development was to provide the IRS with more accurate computer matching outcomes for transactions reported on Schedule D.

Based on feedback from taxpayers, practitioner focus groups, and organized public forums like IRPAC, the IRS plans to require additional information on Form 8949 along with substantial revisions to the layout of the form beginning with tax year 2012.

The W&I operating division of the IRS has requested feedback from the Subgroup on the proposed changes.

Recommendations

Form 8949

1. Format Form 8949 in landscape mode to accommodate easier reporting of additional information.
2. Format at single-space to allow for more transactions per form. Double-spacing would not be necessary with columns for stock symbol and number of shares in addition to description of property column. Adequate information to identify the transaction would be readily available with the multi-column description format.
3. Provide for reporting of both short-term and long-term on one page, which can be accomplished with the form design remaining at single-space.
4. Add column for gain or loss calculation per transaction. This provides valuable output data for the taxpayer.
5. Add separate columns for stock symbol and number of shares per transaction. This provides for more consistent data input and provides an audit trail for both the taxpayer and tax return preparer.
6. Move exception code cell next to adjustment cell that the code is defining instead of at the beginning of transaction line. This assists the taxpayer with understanding the purpose and meaning of the code.
7. Change last sentence of Part 1 and Part 2 NOTE by deleting “or more of the boxes” since at this time, only one box can be checked per Form 8949. (Reference Form 8949, 2012 draft as of May 22, 2012)

8. Change last sentence of asterisk note under boxes A, B, and C to read, “Basis is required to be reported by *brokerage firm*s to the IRS for most stock you bought in 2011 or later.” (Reference Form 8949, 2012 draft as of May 22, 2012)
9. Change Part II, line 1, to Part III, line 3. (Reference Form 8949, 2012 draft as of May 22, 2012)
10. Edit wash sale instructions, last paragraph (d-4) to state “with the appropriate box A, B, or C, checked” rather than “with the appropriate box checked.”
11. Require filing of Form 8949 with tax returns only when 1099-B forms do not include basis for all transactions reported.

Form 1099-B

1. Remove option for box 2a to report either gross proceeds or gross proceeds less commissions and options premiums. Require that all sales are reported net of commissions and premiums.
2. Change labeling of “covered and non-covered securities” to “covered and non-covered transaction dates.” The term “covered securities” has a particular definition within the financial securities industry. The IRS use of the term “covered securities” creates confusion because the IRS definition does not agree with the industry standard.
3. Require brokerage firms to report quantity of shares sold for each transaction.
4. Edit the instructions to 1099-B, boxes 13-15 to state, “shows state income tax information” rather than “shows state income tax withheld.”

5. Refer to IRPAC the development of guidelines to brokerage firms to consistently handle reporting of employee stock options, brokerage stock options (covered and non-covered), and wash sales.

ISSUE TWO: INCREASE BMF ELECTRONIC FILING

Executive Summary

The IRS requested that the Subgroup provide recommendations to increase electronic filing of business tax returns. In addition to recommending ways of increasing e-filing of business tax returns, the Subgroup was also asked for assistance in communicating with the practitioner and business communities the advantages of e-filing business tax returns.

Background

While there continues to be an increased percentage in individual e-filed returns, the percentage of electronically filed employment tax returns is somewhat stagnant; see Table 1: Statistic of E-filed Tax Returns from 2009 through 2011. Most businesses file five employment tax returns per year (four quarterly Forms 941 and one annual Form 940). The Subgroup believes that by increasing e-filing employment tax returns, there will be an increase in e-filing of other business tax returns. Focusing on employment tax returns has the potential to affect a larger portion of the business population than focusing on other business tax returns. Some businesses (e.g., sole proprietorships) file employment tax returns, but not business income tax returns that are separate from Form 1040.

Table 1: Statistics of E-Filed Tax Returns from 2009 through 2011

Return Type	Processing Year	Total Returns Filed	% e-filed
Individual – Form 1040 Series	2009	143 million	67%
	2010	141 million	70%
	2011	143 million	78%
Employment – Forms 941	2009	23.3 million	23.2%
	2010	23.2 million	24.5%
	2011	23.0 million	26.8%
Employment – Forms 940	2009	5.9 million	21.6%
	2010	5.7 million	23.1%
	2011	5.6 million	24.9%

The Subgroup encourages the IRS to provide a better, more streamlined system for e-filing employment tax returns. With a streamlined system in place, the IRS can promote the value of e-filing these returns.

Recommendations

1. Encourage software vendors to include e-filing in their employment tax preparation software and link to Electronic Federal Tax Payment System (EFTPS) to electronically file returns, as an alternative to printing and mailing.

2. Link the e-filing of the Forms 941 and 940 to EFTPS to simplify the process of e-filing employment tax returns. At present, many small companies prepare the forms online or manually; and then mail rather than file online. Since employers are required to pay using EFTPS, incorporating the employment tax returns into the payment processing system would allow both (payment and filing) to be accomplished through one web portal.
3. Pursue a mandate for e-filing of employment tax returns through Modernized e-file (MeF), retaining the current minimum paper filing exception and payment amount of $2,500 per quarter. Consideration should be given to coordinate with states that already mandate e-filing of business tax returns, especially employment tax returns.
4. Provide a secure and safe method at time of set-up for signature verification of employment tax returns.
5. Develop a simple free-file way to e-file. Because many businesses that paper file may not use software or practitioners to prepare the forms, this would not be financially harmful to software vendors or practitioners.
6. Coordinate with MeF, as necessary, to limit or eliminate the name control function to allow efficient processing of new e-filed returns without unnecessary rejections.
7. Promote the advantages of e-filing business tax returns. Use email, media, social media, IRS.gov and letters to businesses and practitioners to publicize the time and effort saved by e-filing business tax returns. Practitioners and individuals know the benefits of e-filing individual tax returns. Thus, the IRS should emphasize that the

same benefits of simplification and time and money savings will apply with e-filing of all business tax returns.

ISSUE THREE: PRACTITIONER PRIORITY SERVICE (PPS) — REDIRECTING PRACTITIONERS TO IRS AUTOMATED APPLICATIONS

Executive Summary

The Subgroup was asked to provide recommendations for exploring options to encourage more practitioners to utilize automated services. The IRS would like to increase practitioner reliance on e-service tools and decrease reliance on one-on-one contact through the IRS Practitioner Priority Service (PPS). Transferring practitioners to e-services when appropriate can increase assistor availability for issues that require an assistor's support.

Background

Each year, Accounts Management answers 1.3 million calls annually on the PPS telephone line. The Level of Service (LOS) provided in FY2011 was 78 percent. In FY2012 due to budgetary constraints on IRS resources, the goal for LOS on the PPS line is 66 percent. Accounts Management is aware that this will cause longer practitioner wait times, increased practitioner abandons, reduced practitioner satisfaction, and an increased number of practitioners redialing the IRS toll-free lines for service.

Recommendations

1. Establish a priority Centralized Authorization File (CAF) fax number for submitting Form 2848 "Power of Attorney and Declaration of Representation" that will be used on the e-services system so that in one to two days the 2848 would be posted and available for e-services. Currently this process takes approximately ten days. It is recognized that Forms 2848 submitted through e-services is instantly available for use; however, all of the required information is

not always available to the practitioner to submit through e-services. In these instances, the practitioner may not be able to utilize the e-services method for submitting the Form 2848, for example, when the taxpayer is new to the practitioner and prior year tax returns are not available.

2. Create a scan-able Form 2848. This would allow an alternative to faxing the Form 2848 and permit electronic entry of Form 2848 into the CAF.
3. Update the message on the initial PPS greeting explaining the alternatives for obtaining information from e-services and other sources. Add to the message a reminder that recently filed returns and amended returns are not available for an extended period of time (that time period to be noted and updated as necessary).
4. Issue advisories and informational reports on systemic and/or procedural issues and their solutions or temporary fixes similar to e-file alerts.
5. Provide a notation for the first assistor to record that a valid Form 2848 was faxed and that it will be recorded in the CAF. This will eliminate the need for re-faxing the Form 2848 when a practitioner is transferred to a different assistor working the same case.
6. Provide the option for a practitioner to leave a message requesting a return call rather than being placed on hold for extended periods of time. Both the Department of Veterans Affairs and the Social Security Administration currently employ this callback method.
7. Upgrade the training of the assistors on the PPS line so that they can address issues and help solve problems on the first call. Oftentimes the practitioner has to make several calls to find an assistor that understands the problem and can

provide a solution. Also, many of the assistors say they do not have the power to solve a problem, and they will not cooperate in finding a solution. When the practitioner places a second call to PPS and is connected to a different assistor, the practitioner may find someone who is more receptive to finding a solution.

8. Allow additional authorized persons, such as persons with a valid Form 8821 "Tax Information Authorization," access to the TDS (transcript delivery system).
9. Establish a methodology/procedure for practitioners to revoke a power of attorney through e-services.
10. Create a shortcut, one-click way for practitioners to get to e-services on IRS.gov.
11. Expand the promotion of e-services capabilities, through multi-media and print methods. A slick one-to-two page color flyer should be sent to all practitioners informing them of all the capabilities of e-services and its ease and efficiency of use.
12. Enhance all forms of practitioner education about e-services by using all available communication methods including the IRS Nationwide Tax Forums, emails, e-alerts, and printed copy to expound on the benefits of e-services.
13. Create a YouTube video explaining how to register with and use e-services.
14. Set up e-service accounts for practitioners at the IRS Nationwide Tax Forums. Showcase e-services at the forums.

ISSUE FOUR: EITC CENTRAL — ELECTRONIC TOOLKIT

Executive Summary

The Subgroup was asked to provide recommendations on how to best market EITC (Earned Income Tax Credit) Central to the practitioner community and specifically increase the use of the Spanish version of the Due Diligence Training Module. We find that EITC Central and the Return Preparer Toolkit are excellent resources for the practitioner. We offer suggestions on making these resources more easily accessible and available in both English and Spanish.

The report also suggests changes to the continuing education requirements for practitioners and offices that prepare more than ten EITC returns annually, outreach strategies to those who self-prepare returns with EITC, and exploring other avenues of validating EITC claims.

Background

Census data indicate that the EITC lifted 6.6 million individuals out of poverty in 2009, including more than three million children. The EITC lifts more children out of poverty than any other program (*Earned Income Tax Credit – Overpayment and Error Issues*, Center on Budget and Policy Priorities, April 19, 2011). To claim the credit, the taxpayer must determine eligibility by deciding if they have a qualifying child, their filing status and their income. This results in two types of errors: (1) failure to claim the credit when eligible; and (2) erroneously claiming or over-claiming the credit based on eligibility level. It is estimated that 20 percent of those eligible do not claim or receive the credit, leaving as much as $1 billion unclaimed. The estimate of improper payments for fiscal year 2011 is approximately 21 percent to 26 percent, or nearly $15.2 billion

(*The Department of the Treasury Annual Financial Report, Fiscal Year 2011*, November 2011).

The most common errors that result in improper payments are: (1) claiming a child who does not meet the age, residency or relationship tests or claiming a child who is a qualifying child of someone with a higher AGI (36 percent); (2) claiming single or head of household when not eligible for that filing status (18 percent); and (3) under-reporting or over-reporting income (ten percent) (*Compliance Estimates for Earned Income Tax Credit Claimed on 1999 Returns*, February 2002).

Paid preparers complete 62 percent of EITC returns, while 36 percent of the returns are self-prepared, and three percent are prepared by volunteers or the IRS (due to rounding, total is greater than 100 percent) (*EITC After Math Error*, EITC Office, Tax Year 2010). The IRS considers tax professionals essential partners in helping individuals and families understand the complex EITC laws. The IRS has developed numerous online tools to educate preparers and taxpayers about EITC and EITC due diligence. These online solutions are located at EITC Central, www.eitc.irs.gov.

Recommendations

1. Add an EITC icon to the IRS.gov homepage to assist in providing easy access to the Return Preparer Toolkit.
2. Add a prominent EITC icon or a direct link from the "For Tax Pros" page to the Toolkit. Currently, access is provided under "other tools and information." From there, one clicks "basic tools for Tax Pros" and then "EITC Electronic Toolkit for Tax Preparers," which requires the user to leave the IRS website to finally access the Tax Preparer Toolkit.

3. Leverage social media to market EITC Central and the Return Preparer Toolkit. Using a multi-channel strategy, promotional material should be transmitted via Facebook, Twitter, LinkedIn, etc. Facebook entries could have short video clips like the "must do" video series. Twitter can have reminders on the "must do" concepts. LinkedIn could have a discussion on the EITC.
4. Edit PowerPoint presentation located at www.eitc.irs.gov/rptoolkit/toolsandtips/commonduediligencesituations.
    a. Revise numbering of examples in the five PowerPoint presentations under Handling Common Situations. These are excellent, but apparently were part of one larger PowerPoint presentation. The examples within each presentation are numbered continually from presentation to presentation. Each presentation's examples should start with its own numbering.
    b. Provide an example of what a diligent reconstruction of income may entail on presentation titled "Self-Employed House Cleaner."
    c. Add scenarios for "Social Security Card" presentation to provide scenario for the Permanent Resident Card and the Social Security Card Not Valid for Employment.
    d. Acknowledge the illegal practice of selling of dependents for tax benefits in presentation titled "Additional Qualifying Child."
    e. Update the tax years in Scenarios 1 and 2 under "Qualifying Child Scenarios."
5. Provide access to all due diligence video clips located at www.eitc.irs.gov/rptoolkit/ddvideos on YouTube. Currently the video clips must

be downloaded, and then played. Access on YouTube would permit sharing of the videos on social media platforms and playing on tablets and smart phones.

6. Increase prominence of the Due Diligence video clips. These clips are both educational and entertaining. Place an EITC icon on the For Tax Pros landing page, as well as on the IRS.gov homepage, announcing free continuing education credits. Make it one click from the For Tax Pros landing page to the video clips.
7. Create modules using the Due Diligence video clips and the PowerPoint presentations. For example, the "Self-Employed House Cleaner" PowerPoint could be grouped with the "Recordkeeping," "Audit" and "Schedule C Recordkeeping" video clips. These two educational delivery methods presented in one place for quick review provide for better understanding of these complex matters.
8. Translate all of the video clips and PowerPoint presentations into Spanish. The video clips could be dubbed over to reduce cost of re-production.
9. Create a Spanish section on EITC Central. Provide a folder icon at the top, along with the EITC Central, Tax Preparer Toolkit, Partner Toolkit, and Marketing Express folder tabs. Duplicate the learning modules that are available in English on this section. Currently, English and Spanish are interspersed throughout.
10. Create a multicultural team that would develop a strategic plan for outreach to the Spanish community. According to statistics, Latinos utilize social sites 26.8 percent more frequently as compared to other minorities (Hispanics More Active On Social Media Than Other Minorities (2012), retrieved September 16, 2012, from http://www.emarketer.com/Article.aspx?R=1008877). Tax professional organizations may be able to provide initial outreach strategies.

11. Create “share” link on all press and news releases allowing for ease of sharing information through social media sites (e.g., Facebook and LinkedIn).
12. Generate all educational materials in Spanish and distribute through social media and other channels targeted specifically to the Spanish population. Incorporate “share” link.
13. Provide free CPE, in Spanish, on IRS.gov, targeting the Latino practitioner community.
14. Require all practitioners (including those who do not sign the return) that prepare more than ten EITC returns to complete one hour of EITC continuing education credit per year. This can be a self-declared attestation similar to the annual two hours of ethics required of Enrolled Agents and Registered Tax Return Preparers. Place the notice of this requirement on both the homepage of IRS.gov and the landing page of For Tax Pros.
15. Require all firms that prepare ten or more EITC tax returns to maintain documentation of compliance with the one hour of EITC continuing education training requirement for those who prepare more than ten EITC returns.
16. Promote the free one-hour continuing education credit provided for completing the EITC due diligence training module. Use the “Welcome to the Tax Preparer Toolkit” graphic as an entrance to EITC training modules. Currently the graphic is a group of individuals gazing at a computer. Change the graphic to a door or entranceway to “FREE EITC CPE!” or “EITC Café.” Run banner similar to IRS.gov homepage that suggest videos and PowerPoint presentations are available.

Make certain that it is only two clicks from IRS.gov to “For Tax Pros” to EITC portal.

17. Reach out to tax professional organizations and ask them to provide a link from their association website to EITC Central and the Due Diligence Training aids.
18. Distribute to all self-preparers who have claimed EITC with a Schedule C, a pre-filing season, one-page summary of IRS documentation requirements for income and expense items. Include a web link to examples that would further clarify these requirements. Incorporate this information in a prominent (first page) location in the filing instructions.
19. Distribute to all self-preparers who have claimed EITC with a Schedule C, a pre-filing season, one-page summary of audit issues related to Schedule C and EITC audits.
20. Clarify last bullet point in “What techniques can be used to obtain information from your client?” section of the “Schedule C and Record Reconstruction Training Module” dated June 13, 2012. The last three sentences read:

> Taxpayer claims of having supporting documentation is not sufficient to meet tax preparer due diligence. (If a taxpayer comes in with an income statement that appears, to a reasonable person to be correct and complete, documentation would not be requested). Preparers should inquire how income and expenses were compute and document the responses. In circumstances where you feel

the information is not accurate or the supporting material is sufficient, you may ask to see the supporting material.

Perhaps the first and last sentences should be reversed. The current last sentence should state, “supporting material is insufficient.”

21. Provide a disclaimer in The Schedule C and Record Reconstruction Training module that states the techniques and practices contained therein are not standards but suggested methods and best practices, and under all circumstances, the practitioner is subject to the provisions of IRC Sec. 6695(g), the regulations there under and the provisions of Circular 230. This is required to avoid any confusion that the materials impart different standards to Schedule C which are mandatory and necessary to meet due diligence.
22. Revise Form 8867 “Paid Preparer’s Earned Income Credit Checklist” to be applicable to all returns and require the submission of the form for all EITC returns including returns that are self-prepared or prepared by volunteers.
23. Continue collaborating with Taxpayer Advocate Service on the pilot program testing the use of standardized third party affidavits to substantiate a child’s residency for EITC.
24. Test other methods to pre-certify that qualifying children are claimed on the allowable tax return.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

SMALL BUSINESS/SELF EMPLOYED SUBGROUP REPORT

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NOVEMBER 15, 2012

INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Small Business/ Self-Employed Subgroup (hereafter "Subgroup") consists of six tax professionals from a wide-range of backgrounds. Its members comprise of certified public accountants, attorneys, and attorneys that act as both, all of whom serve the tax system in public and private industries, and education. The Subgroup's membership represents a vast range of taxpayers served by the Small Business/ Self-Employed Operating Division of the Internal Revenue Service (hereafter "SB/SE").

The Subgroup enjoys a close working relationship with the professionals within SB/SE. This relationship has granted the Subgroup the opportunity to consult with SB/SE leadership on many issues over the past year. The Subgroup focused on reducing taxpayer burden, bringing non-filers into the tax system and improving technology to improve operational efficiency. The Subgroup and SB/SE consulted both formally and informally on all issues contained in this report. The Subgroup respectfully recommends the following based upon the overarching working goals of the Subgroup. We recommend the following seven issues:

I. Reduce Taxpayer Burden

1. **How Lien Withdrawal Processing Should Be Made More Efficient to the Benefit of the IRS and Taxpayers**

Concerns have been raised by practitioners over the lack of a consistent approach taken on lien withdrawals between IRS offices on routine lien withdrawal matters. Streamlining decisions on such requests can provide a more consistent approach for

taxpayers while freeing up IRS personnel resources to work on more complex lien withdrawal requests.

2. **Electronic Completion and Filing Should Be Available for Form 1099-Misc**

Currently, the Form 1099-MISC cannot be filed on-line from the IRS website. Businesses that do not have a large number of these forms to complete have limited options. The ability to complete and file the Form 1099-MISC on-line would simplify a business taxpayer's compliance with this tax requirement.

3. **Encourage Taxpayers to Correct Form 1099 and Form W-2 Underreporting**

Often times a taxpayer is unsure as to what form to file. Additionally, given the volume of forms filed, some of these forms have incorrect information. In a voluntary compliance tax system, taxpayers should be encouraged not only to report and pay the proper amount of tax on originally filed information returns, but also have the ability to efficiently correct errors discovered after returns have been filed.

4. **The IRS Should Provide for a Central and Accessible Information Source so Taxpayers can Understand Required Information Reporting Rules**

Despite new statements contained in annual income tax forms (e.g., Form 1040 Schedules C, C-EZ, E, and F, and Forms 1120, 1120S and 1065) that require taxpayers to affirm their compliance with Form 1099 information reporting, there is no entry point or checklist on the IRS website or in any of the publications that allows a taxpayer to easily determine its reporting requirements. While there is information available, much of it is form specific and thus researching the specific form to file is difficult as it is really a process of trial and error.

II. IRS Non-Filer Compliance, Sustenance and, Enforcement

5. **Efficiencies in IRS Outreach Can Be Created to Bring More Taxpayers into Filing and Paymanet Compliance**

The IRS should consider expanding its educational outreach program to non-filer and delinquent taxpayers by focusing on small businesses and ethnic communities through a combination of public and social media, print and internet announcements, and personal contacts that will encourage filing of delinquent returns and payment of tax through (education involving) a better awareness and understanding of available installment plans, offers in compromise, penalty abatement programs, and by tax preparation assistance.

III. Opportunities for Technology Improvements

6. **Use of Accounting Software During Examinations Reduces Burdens to Taxpayers and the Service, But Should Be Carefully Limited in its Implementation**

Use of electronic data is an efficient examination tool for the IRS as it reduces the amount of paper generated and in some cases the time required to complete them. However, IRS requests for electronic client backup files from commercially available business software programs (e.g., QuickBooks and Peachtree) have heightened concerns by affected taxpayers and their advisers about the breadth of information requested by the IRS and the use of that information.

7. **Html Pages on irs.gov Should Be Able to be Converted into PDF Format for Retention, Storage and Transfers to Clients**

Generally, the information on IRS.gov is only available in HTML format which makes it difficult to share the information with others and to archive or save the

information in a file. As the website becomes the primary source and in some cases the only repository of information, the inability to easily retain and transfer the information becomes problematic.

I. Reduce Taxpayer Burden

ISSUE ONE: HOW LIEN WITHDRAWAL PROCESSING SHOULD BE MADE MORE EFFICIENT TO THE BENEFIT OF THE IRS AND TAXPAYERS

Executive Summary.

Taxpayers are hindered by having tax liens on their credit record even after the liens have been satisfied, after the taxpayer has entered into a direct debit payment arrangement, or after a determination has been made that withdrawing the lien would benefit both the IRS and the taxpayer. This is especially problematic for small business taxpayers. IRS lien procedures have been evolving quickly over the past few years, but they can be further improved by implementing better efficiencies for both the IRS and the taxpaying public.

Background

In 2011, the IRS issued over 1 million Notices of Federal Tax Lien ("NFTL").[3] In 2012, this number dropped by 41 percent.[4] Once the NFTL is filed, the taxpayer must deal with credit issues that impact him personally and, if a small business is involved, harm the taxpayer's ability to continue effectively transacting business.

In its 2009 and 2010 Public Reports, IRSAC suggested how to make the IRS lien procedures more effective. Since then the IRS has created efficiencies to the tax process by lessening the use of automatic liens and giving more discretion to its employees to decide when a NFTL is or is not appropriate, and when it should be released or

[3] Taxpayer Advocate Service 2011 Annual Report to Congress, Vol. 2., page 93.

[4] Taxpayer Advocate Service – Fiscal Year 2013 Objectives, citing IRS Collection Activity Report NO-5000-25 Lien Report (Apr. 2012).

withdrawn. In addition, more liberal decision making with regard to NFTL releases and withdrawals has allowed the rigors of tax collection in a harsh economy to facilitate the collection of tax dollars while aiding the taxpayers it serves. We applaud the IRS for the strides it has made since these last reports, but more remains to be done.

The focus of the 2010 IRSAC Report was on training and education. Such training should include when discretion should be used to impose a NFTL, when the NFTL should be properly released, and when the NFTL should be withdrawn.[5] In February 2011, the IRS' *Fresh Start* program made it easier for taxpayers to obtain NFTL withdrawals.[6] In the first year of the program, *Fresh Start* accounted for 40 percent of the withdrawal certificates issued; in the first part of 2012, the number has increased to 61 percent of total withdrawal certificates.[7]

Currently, the first step in the process of requesting the withdrawal of an NFTL is for a taxpayer or his representative to submit a letter requesting a withdrawal, or to fill out and submit Form 12277 "Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien" to the IRS office assigned to the taxpayer's account. The IRS office then submits Form 13794-W, "Request for Withdrawal or Partial Withdrawal of Notice of Federal Tax Lien" to the Advisory Group office. If there is no IRS office assigned, the taxpayer's request should be mailed directly to an advisory group manager at the

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[5] IRSAC 2010 Report, Page 9-10 (Issue No. 5, Recommendations #1, #3)

[6] Treasury Inspector General for Tax Administration, "Procedures for Withdrawals and Releases of Notices of Federal Tax Lien Were Not Always Followed," Aug. 22, 2012. No. 2012-30-096, page 4.

[7] Id. at page 6.

addresses listed in Publication 4235 "Advisory Group Addresses." Only an advisory group manager or insolvency group manager can authorize withdrawal of a NFTL.

Per IRC Section 6331, Form 12277 allows for consideration of a lien withdrawal in the following circumstances:

1. The Notice of Federal Tax Lien was filed prematurely or not in accordance with IRS procedures.
2. The taxpayer entered into an installment agreement to satisfy the liability for which the lien was imposed and the agreement did not provide for a Notice of Federal Tax Lien to be filed.
3. The taxpayer is under a Direct Debit Installment Agreement (DDIA).
4. Withdrawal will facilitate collection of tax.
5. The taxpayer or the Taxpayer Advocate acting on behalf of the taxpayer, believes that the withdrawal is in the best interest of the taxpayer and the government.

If the taxpayer is requesting a withdrawal because a lien was already released[8], the taxpayer must meet the following requirements:

1. Tax liability has been satisfied;
2. Taxpayer is in compliance for the past three years filing all returns;
3. Taxpayer is current on all estimated tax payments and federal tax deposits, as applicable.[9]

[8] This request would fall under #5 of the Form 12277 list of considerations for withdrawal.

[9] Article: Fresh Start Notice of Federal Tax Liens – http://www.irs.gov/businesses/small/article/0,,id=23905,00.html

If the taxpayer is requesting a withdrawal because he has entered into a DDIA, he must meet the following requirements:

1. Current amount owed must be less than $25,000;
2. The DDIA must be payable within 60 months or before the collection statute expires, whichever is earlier;
3. Full compliance with all other filing and payment requirements;
4. Must have made three consecutive DDIA payments;
5. Cannot have previously had a lien withdrawn for the same taxes unless it was due to an improper filing;
6. Cannot have defaulted on any DDIA.[10]

If, upon receipt of Form 12277 or a letter requesting an NFTL withdrawal, it can be ascertained that all three criteria for withdrawal have been met with regard to an NFTL that has already been released, or that all six criteria have been met with regard to such withdrawal request due to a DDIA, there should be an approval of the request. Only if the requisite criteria are not met should it continue on for a manager's review.

Concerns have been raised by practitioners over the lack of a consistent approach taken on lien withdrawals between IRS offices on routine lien withdrawal matters, such as described above. Streamlining decisions on such requests can provide a more consistent approach for taxpayers while freeing up IRS personnel resources to work on more complex lien withdrawal requests.

Recommendations

[10] Id.

1. Upon receipt of Form 12277 or an appropriate letter request, authorize withdrawal of an NFTL for taxpayers who meet the requisite criteria for:
    a. already released NFLTs, and
    b. Direct Debit Installment Payment Agreements.
2. Implement consistent training on when and how to authorize such “automatic” withdrawals of NFTLs.

ISSUE TWO: ELECTRONIC COMPLETION AND FILING SHOULD BE AVAILABLE FOR FORM 1099

Executive Summary

Small business owners are required to file Forms 1099 for payments made to non-incorporated businesses, vendors, and contractors. Form 1099-MISC is usually required. Currently, this form cannot be filed on-line from the IRS website. Businesses that do not have a large number of these forms to complete have limited options. The ability to complete and file the Form 1099-MISC on-line would reduce taxpayer burden by simplifying a business taxpayer's ability to comply with this tax requirement.

Background

When third party information is available to the IRS, tax compliance is significantly higher than when third party information is not provided. Additionally, the IRS has asked for IRSAC's input on opportunities for areas of improvement to reduce taxpayer burden without compromising compliance programs. Currently business owners who have a small number of Forms 1099-MISC to file have limited options:

1. They must pay their tax professional to prepare what is deemed a simple form;
2. order the forms from the IRS and wait for delivery;
3. purchase the forms at an office supply store and then complete the forms;
4. purchase a software program to complete the forms;
5. research and use one of the various commercial on-line 1099 preparation websites.

Although it may not seem an obvious issue, if the forms are purchased, the business owner still must find a way to complete them as prescribed by the IRS.

Completion of the forms is burdensome because most preparers prefer the forms to be typewritten even though, typewriters are no longer standard equipment in an office; and haphazardly, handwritten forms are considered unprofessional in a highly competitive business environment. There are on-line companies that offer this service for a small fee; however, in the current environment of tax fraud, scams from sites that look exactly like financial institutions, IRS phishing emails, and etc. business owners are hesitant to engage an unfamiliar company. Unfortunately, what should be one of the easier aspects of tax law to comply with becomes unnecessarily complicated and time consuming, discouraging businesses with less than twenty (20) Forms 1099-MISC from filing.

Currently business owners go on-line to research and complete a task immediately. This option is not available for Form 1099-MISC filters. Currently, the Tools menu path on www.irs.gov provides a Form 1099-MISC for informational purposes, but the form is not fillable. The IRS should facilitate the process of preparing small numbers of information returns for business owners. This will reduce taxpayer burdens and increase compliance as more taxpayers receive the appropriate Forms 1099-Misc for income earned.

Recommendations

1. Business owners go on-line to research and complete their task immediately. This option is not available for Form 1099-MISC. Currently through the Tools menu path on www.irs.gov the form for 1099-MISC is available to complete for informational purposes, but the form is not fillable. The IRS should allow taxpayers who have less than 20 Forms 1099-MISC to complete and file the

forms on www.irs.gov, similar to the Social Security Administration's process for Form W-2s.

2. Alternatively, similar to filing a Form 990-N postcard or the free-file program, the IRS should provide a link on the IRS website to approved Form 1099-MISC preparation providers with the appropriate warning that the taxpayer is leaving the IRS website.

ISSUE THREE: ENCOURAGE TAXPAYERS TO CORRECT UNDERREPORTING ON FORMS 1099 AND W-2

Executive Summary

Matching third party reporting of income is the most efficient audit technique available to the IRS. For that reason, it is important that information reporting be accurate. Too often, a taxpayer is not sure of what form to file. Given the volume of forms filed, some of these forms will have incorrect information. In a voluntary compliance tax system, taxpayers should be encouraged not only to report and pay the proper amount of tax on originally filed information returns, but also have the ability to discover and voluntarily correct errors as efficiently as possible. Administrative guidance, such as an announcement or revenue procedure, should be released that details how an information return preparer can efficiently correct returns, while opting to pay a compliance fee that satisfies any tax liability that the payee might have. With this, the Internal Revenue Manual should be revised accordingly.

Background

The third party information return filing system serves as a vital tool to both insure proper tax compliance and to combat fraud and identity theft. In 2010, the IRS reported that it closed 4.3 million cases in which a discrepancy was identified between the taxpayer return and third-party information, resulting in more than $7.2 billion in additional assessments.[11] Further, Commissioner Shulman's "Real-time Tax System

[11] 2010 IRS Data Book

Initiative" envisions embedding "this core third-party information into our pre-screening filters, and would immediately reject any return that did not match up with our records."

Undoubtedly, third party information return reporting has and will play an increasingly important role in tax administration and compliance enforcement. Currently, the IRS utilizes the Automated Underreporter (AUR) program to identify mismatches between tax returns and corresponding information returns. Three times a year, the AUR program matches the more than 140 million tax returns to a corresponding 1.8 billion information returns filed every tax year. The importance of this is highlighted by the new question on business information reporting forms. Taxpayers will now be required to sign under penalty of perjury that all filings have been made contained in tax forms (e.g., Form 1040 Schedules C, C-EZ, and F, and Forms 1120, 1120S and 1065) that require taxpayers to affirm their compliance with information reporting that must be completed on Forms 1099.

Even though there are inherent systemic ambiguities with determining which information returns are required to be completed and where and how to report different types of compensation on the forms, third parties nonetheless face the possibility of harsh penalties for getting it wrong. For example, for each timely filed return that does not include all required information or includes incorrect information, Section 6721 imposes a $100 penalty per occurrence (up to $1.5 million). Similar penalties apply under Section 6722 for failure to furnish taxpayers with complete and accurate information returns.

While Section 6721(c) provides penalty relief for inaccurate or incomplete information returns if such errors are de minimis,[12] more administrative correction programs are needed. If an error affects a handful of taxpayers in a significant way, it makes sense to issue a corrected Form W-2 or Form 1099, prompting the recipient to file an amended Form 1040 and pay the proper amount of tax. However, sometimes, an error affects hundreds or even thousands of taxpayers, each in an insignificant way, but with a significant aggregate effect. In those situations, it is inefficient to issue corrected Forms W-2 or Forms 1099 and require a large number of taxpayers to file amended Forms 1040 to make insignificant changes to their returns. Nevertheless, these errors should be corrected, not only because they are often significant in the aggregate, but because most taxpayers in our voluntary tax system want to be confident that the IRS forms filed are correct.

Given the finite resources available for IRS enforcement efforts and the voluntary nature of the U.S. tax system, entities responsible for the information reporting errors should be encouraged to discover and correct them. Upon discovering an underreporting error affecting a large population, each in a minor way, it should be possible for an entity to bring the error to the attention of the IRS and pay a negotiated sanction that approximates the actual tax liability the affected population would have paid if the error had not occurred. This approximation could be based on data from the Statistics of Income Bulletin, for example, or other information available to the taxpayer or the IRS.

[12] Limitations on deminimis relief include: (1) correcting the failure on or before August 1 in the required filing year, (2) for any calendar year the number of failed information returns shall not exceed 10 or one-half of 1 percent of the total number of information returns required to be filed by the person during the calendar year.

Under these circumstances unfortunately, the Internal Revenue Manual and taxpayers' anecdotal experiences are more discouraging than encouraging. For example, Internal Revenue Manual Exhibit 8.13.1-12 contains a pattern information reporting program closing agreement for understatement of income on Forms 1099 and states that "[i]n cases of underreported income brought to the attention of the Service by a payer, a rate of 28 percent will be applied to the total amount of the understated reportable income." In addition, Internal Revenue Manual Section 4.23.8.8 provides that the supplemental wage withholding rates (currently either 25 percent or 35 percent) generally should be used unless the employer can establish each employee's allowable number of exemptions from Form W-4. Because errors may be discovered years after they occurred, information regarding the Form W-4 is often not readily available and the supplemental rate would need to be used. These rates seem high, given that 94.2 percent of returns had marginal tax rates below 28 percent in 2009, (the last year for which data is available). *Kyle Mudry, Individual Tax Rates and Shares, 2009, in* STATISTICS OF INCOME BULLETIN *20, at 25 (Winter 2012), available at http://www.irs.gov/pub/irs-soi/12inwinbulratesshare.pdf.* Likewise, employers have anecdotally found that the IRS has been increasingly unwilling to allow Form W-2 underreporting to be resolved by the employer without furnishing Forms W-2c or involving the affected employees, even when very small amounts of underreporting per employee are involved and the only change that needs to be reported once the issue has been resolved is a change in social security wages. Most employers want to provide the Social Security Administration with updated wage information if this could affect an employee's social security benefits, but

are reluctant to confuse their workforce with these forms when no amended returns need to be filed.

Recommendation

1. Issue administrative guidance and revise the Internal Revenue Manual to allow closing agreements to be entered into to correct underreporting errors on Forms 1099 and W-2 by having the entity responsible for the error pay a negotiated sanction approximating the actual tax liability the affected population would have paid if the error had not occurred. Also require Form W-2c to be prepared and filed with the Social Security Administration, only for those employees who have an increase in social security wages as a result of the additional reported income.
2. Publicize the ability of employers to use this closing agreement process to correct errors in both open and closed years, perhaps through issuance of a news release.

ISSUE FOUR: PROVIDING FOR A CENTRAL AND ACCESSIBLE INFORMATION SOURCE FOR TAXPAYERS, PARTICULARLY SMALL BUSINESS TAXPAYERS, TO UNDERSTAND THEIR INFORMATION REPORTING

Executive Summary

Despite new statements contained in tax forms (e.g., Form 1040 Schedules C, C-EZ, E, and F, and Forms 1120, 1120S and 1065) that require taxpayers to affirm their compliance with Form 1099 information reporting, there is no entry point or checklist on the IRS website or in any of the publications that allows a taxpayer to easily determine its reporting requirements. While there is much information available, much of it is form specific and thus researching the specific form to file is difficult as it is really a process of trial and error.

Background

An increasing demand for third party information increases the taxpayer's reporting compliance burden. There are currently more than thirty (30) types of tax information returns required by the federal government.[13] Those returns include Form W-2, which reports wages and other forms of compensation paid to employees. Completing Form W-2 often requires the third party to determine where and how on the form to report multiple types of compensation.[14] In addition to the complexities of completing Form W-2, there are also other information reporting requirements imposed on third

[13] IRS Publication - A Guide to Information Returns

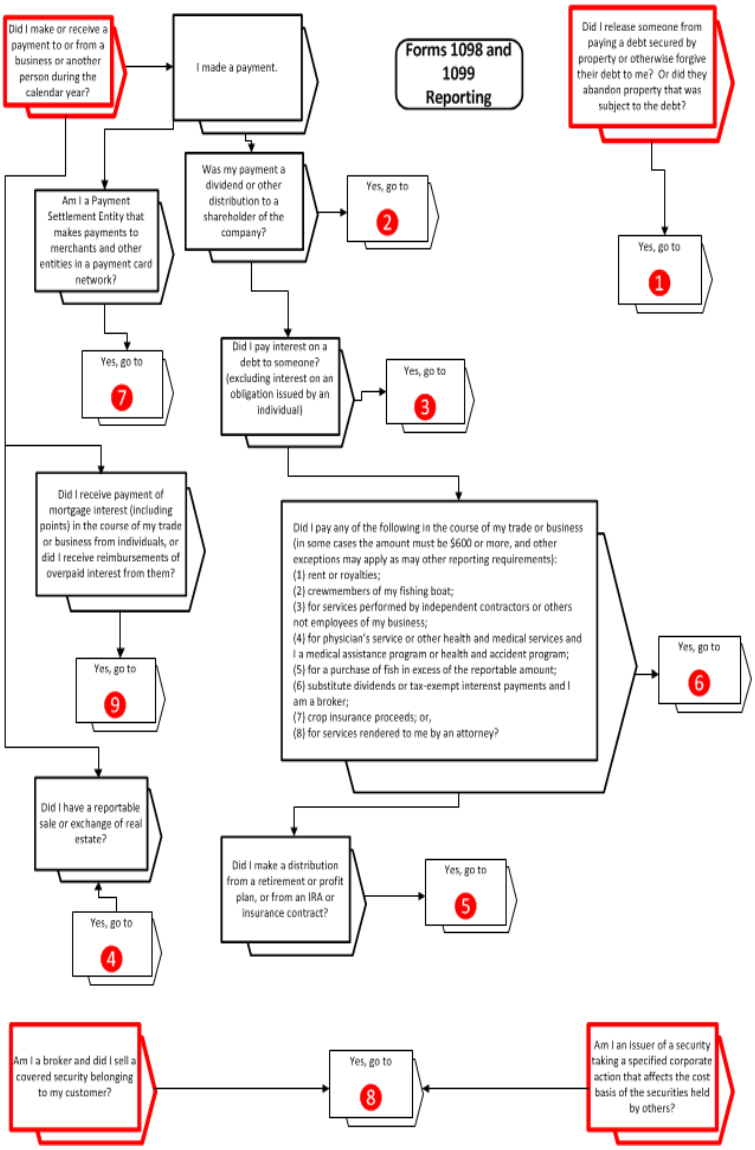
[14] Other forms of compensation that may trigger added Form W-2 reporting efforts, such as adding special codes, include: healthcare costs; dependent care; reimbursements; deferred compensation; sick pay; combat pay.

parties regarding non-wages. For example, those non-wage reporting requirements include, completing various Forms 1099 (16 types), Forms 1098 (four types), and Forms 5498 (three types). There are also forms that employees must complete and submit to an employer regarding withholding.

Recommendation

1. The IRS should publish flow charts and similar aids which can be used to determine what information return should be filed. Such aids should be available in IRS regulations or publications and on a central information reporting website.
2. The material below may provide a starting point for further development of consolidated information reporting library resource.

TAXPAYER INFORMATION REPORTING CENTER



Types of Payments

Below is an alphabetic list of some payments and the forms to file and report them. However, it is not a complete list of all payments, and the absence of a payment from the list does not indicate that the payment is not reportable. For instructions on a specific type of payment, see the separate instructions in the form(s) listed.

Type of Payment	Report on Form
Abandonment	1099-A
Accelerated death benefits	1099-LTC
Acquisition of control	1099-CAP
Advance health insurance payments	1099-H
Agriculture payments	1099-G
Allocated tips	W-2
Alternate TAA payments	1099-G
Annuities	1099-R
Archer MSAs:	
Contributions	5498-SA
Distributions	1099-SA
Attorney, fees and gross proceeds	1099-MISC
Auto reimbursements, employee	W-2
Auto reimbursements, nonemployee	1099-MISC
Awards, employee	W-2
Awards, nonemployee	1099-MISC
Barter exchange income	1099-B
Bond tax credit	1097-BTC
Bonuses, employee	W-2
Bonuses, nonemployee	1099-MISC
Broker transactions	1099-B
Cancellation of debt	1099-C
Capital gain distributions	1099-DIV
Car expense, employee	W-2
Car expense, nonemployee	1099-MISC
Changes in capital structure	1099-CAP
Charitable gift annuities	1099-R
Commissions, employee	W-2
Commissions, nonemployee	1099-MISC
Commodities transactions	1099-B
Compensation, employee	W-2
Compensation, nonemployee	1099-MISC
Contributions of motor vehicles, boats, and airplanes	1098-C
Cost of current life insurance protection	1099-R
Coverdell ESA contributions	5498-ESA
Coverdell ESA distributions	1099-Q
Crop insurance proceeds	1099-MISC
Damages	1099-MISC
Death benefits	1099-R
Accelerated	1099-LTC
Debt cancellation	1099-C
Dependent care payments	W-2
Direct rollovers	1099-Q, 1099-R, 5498
Direct sales of consumer products for resale	1099-MISC
Directors' fees	1099-MISC
Discharge of indebtedness	1099-C
Dividends	1099-DIV
Donation of motor vehicle	1098-C
Education loan interest	1098-E
Employee business expense reimbursement	W-2
Employee compensation	W-2
Excess deferrals, excess contributions, distributions of	1099-R
Exercise of incentive stock option under section 422(b)	3921
Fees, employee	W-2
Fees, nonemployee	1099-MISC
Fishing boat crew members proceeds	1099-MISC
Fish purchases for cash	1099-MISC
Foreclosures	1099-A
Foreign persons' income	1042-S
401(k) contributions	W-2
404(k) dividend	1099-DIV
Gambling winnings	W-2G
Golden parachute, employee	W-2
Golden parachute, nonemployee	1099-MISC
Grants, taxable	1099-G
Health care services	1099-MISC
Health insurance advance payments	1099-H
Health savings accounts:	
Contributions	5498-SA
Distributions	1099-SA
Income attributable to domestic production activities, deduction for	1099-PATR
Income tax refunds, state and local	1099-G
Indian gaming profits paid to tribal members	1099-MISC
Interest income	1099-INT
Tax-exempt	1099-INT
Interest, mortgage	1098
IRA contributions	5498
IRA distributions	1099-R
Life insurance contract distributions	1099-R, 1099-LTC
Liquidation, distributions in	1099-DIV
Loans, distribution from pension plan	1099-R
Long-term care benefits	1099-LTC
Medicare Advantage MSAs:	
Contributions	5498-SA
Distributions	1099-SA
Medical services	1099-MISC
Merchant card payments	1099-K
Mileage, employee	W-2
Mileage, nonemployee	1099-MISC
Military retirement	1099-R
Mortgage insurance premiums	1098
Mortgage interest	1098
Moving expense	W-2
Nonemployee compensation	1099-MISC
Nonqualified deferred compensation:	
Beneficiary	1099-R
Employee	W-2
Nonemployee	1099-MISC
Original issue discount (OID)	1099-OID
Patronage dividends	1099-PATR
Pensions	1099-R
Points	1098
Prizes, employee	W-2
Prizes, nonemployee	1099-MISC
Profit-sharing plan	1099-R
Punitive damages	1099-MISC
Qualified plan distributions	1099-R
Qualified tuition program payments	1099-Q
Real estate transactions	1099-S
Recharacterized IRA contributions	1099-R, 5498
Refund, state and local tax	1099-G
Rents	1099-MISC
Retirement	1099-R
Roth conversion IRA contributions	5498
Roth conversion IRA distributions	1099-R
Roth IRA contributions	5498
Roth IRA distributions	1099-R
Royalties	1099-MISC
Timber, pay-as-cut contract	1099-S
Sales:	
Real estate	1099-S
Securities	1099-B
Section 1035 exchange	1099-R
SEP contributions	W-2, 5498
SEP distributions	1099-R
Severance pay	W-2
Sick pay	W-2
SIMPLE contributions	W-2, 5498
SIMPLE distributions	1099-R
Student loan interest	1098-E
Substitute payments in lieu of dividends or tax-exempt interest	1099-MISC
Supplemental unemployment	W-2
Tax refunds, state and local	1099-G
Third-party network payments	1099-K
Tips	W-2
Transfer of stock acquired through an employee stock purchase plan under section 423(c)	3922
Tuition	1098-T
Unemployment benefits	1099-G
Vacation allowance, employee	W-2
Vacation allowance, nonemployee	1099-MISC
Wages	W-2

3. See the general instructions at http://www.irs.gov/uac/General-Instructions-for-Certain-Information-Returns.

	Form	Title	Subject Area	Dollar Threshold	Due Date to IRS	Due Date to Payee
❶	1099-A	Acquisition of Abandonment of Secured Property	File Form 1099-A, if in full or partial satisfaction of your trade or business debt, you acquire an interest in property that is security for the debt, or you have reason to know that the property has been abandoned. You need not be in the business of lending money to be subject to this reporting requirement. The requirements for this form are coordinated with the requirements for Form 1099-C. For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1099ac/ar01.html	All reportable amounts.	February 28	January 31
	1099-C	Cancellation of Debt	Cancellation or discharge of a debt owed to a financial institution, the Federal Govt., credit union, etc. or any organization in a significant trade or business of which is lending money For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1099ac/ar01.html	$600 or more	February 28	January 31
❷	1099-DIV	Dividends and Distributions	Distribution, such as dividends, capital gain distributions, or nontaxable distribution, that were paid on stock and liquidation distributions For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1099div/index.html	$10 or more, except $600 or more for liquidations	February 28	January 31

❸	1099-INT	Interest Income	Interest income For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1099int/index.html	$10 or more ($600 or more in some cases)	February 28	January 31
❹	1099-S	Proceeds from Real Estate transaction	Gross proceeds from the sales or exchange of real estate from reportable transactions. For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1099s/index.html		February 28	January 31
❺	1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.	Distributions from pensions and annuities, retirement or profit-sharing plans, any IRA, or insurance contracts, and IRA recharacterizations For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1099r/index.html	$10 or more	February 28	January 31
❻	1099-MISC	Miscellaneous Income	For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1099msc/ar01.html		Generally February 28	Generally January 31
			Rent or royalty payments; prizes and awards that are not for services (such as winnings on TV or radio shows)	$600 or more, except $10 or more royalties		
			Payments to crewmembers by owners or operators of fishing boats including payments of proceeds from sale of catch	All amounts		
			Payments for services performed for a trade or business by people not treated as its employees. (For example, fees to subcontractors or directors, accountants, or for items like business equipment repairs)	$600 or more		

			Payments to physicians, physicians' corporation, or other supplier of health and medical services. Issued mainly by medical assistance programs or health and accident insurance plans	$600 or more		
			Fish purchases for cash	$600 or more		
			Crop insurance proceeds	$600 or more		
			Substitute dividend and tax-exempt interest payments reportable by brokers (Due date to payee is February 15)	$10 or more		
			Gross proceeds paid to attorneys (Due date to payee is February 15)	All amounts		
❼	1099-K	Merchant Card and Third Party Network Payments	Beginning in January, 2012, payment settlement entities (PSEs) are required by the Housing Assistance Tax Act of 2008 to report on Form 1099-K the following transactions: All payments made in settlement of payment card transactions (e.g., credit card); Payments in settlement of third party network transactions IF: -Gross payments to a participating payee exceed $20,000; AND -There are more than 200 transactions with the participating payee. For more information on what must be reported and who must file, go to: http://www.irs.gov/businesses/article/0,,id=251489,00.html See also: http://www.irs.gov/taxpros/article/0,,id=225080,00.html			
❽	1099-B	Proceeds From Broker and Barter	Sales or redemptions of securities, futures transactions, commodities, and barter exchange transactions. Section 403 of the Energy Improvement and Extension Act			February 15

		Exchange Transactions	of 2008 amended the Internal Revenue Code to mandate that every broker required to file a return with the IRS reporting gross proceeds from the sale of a covered security additionally report a customer's adjusted basis in the security and whether any gain or loss on the sale is classified as short-term or long-term. Additionally, the amendments direct brokers to follow customers' instructions and elections when determining adjusted basis. The amendments also provide that, when a broker transfers securities to another new broker before their sale, the transferring broker must furnish to the receiving broker a statement containing sufficient information about the transferred securities for the receiving broker to determine the customer's adjusted basis and whether any gain or loss is short-term or long-term when the transferred security is eventually sold. Finally, the amendments require issuers of securities to file a return with the IRS and furnish a statement to holders of the securities after taking a corporate action that affects the basis of the security to explain the corporate action and its quantitative effect upon the basis of the security. For more information on what must be reported and who must file, go to: http://www.irs.gov/taxpros/article/0,,id=237099,00.html See also: http://www.irs.gov/taxpros/article/0,,id=225080,00.html			
❾	1098	Mortgage Interest Statement	Mortgage interest (including points) you received in the course of your trade or business from individuals and reimbursements of overpaid interest For more information on what must be reported and who must file, go to: http://www.irs.gov/instructions/i1098/index.html	$600 or more	February 28	To Payer or Borrower by January 31
	W-2	Wage & Tax Statement	Wages, tips, other compensation, social security, Medicare, withheld income taxes. See Publication 15 for additional info.	See form instructions.	Only to SSA.	January 31
	W-2G	Certain Gambling Winnings	Gambling winnings from horse racing, dog racing jai alai, lotteries, keno, bingo, slot machines, etc.	Generally, $600 or more. $1200 or more from	February 28	January 31

				bingo or slot machines. $1500 or more from keno.		
	W-3	Transmittal of Wage & Tax Statements	Used to transmit Copy A of Forms W-2, Wage & Tax Statement.	Summary of W-2 amounts.	February 28	N/A
	945	Annual Return of Withhold Federal Income Tax	Federal tax withheld on Forms 1099 and W-2G must be reported on Form 945.	All amounts withheld from nonpayroll payments.	January 31 following the tax year (or by Feb. 10, if deposits were timely paid in full for the year).	N/A
	1042	Annual Withholding Tax Return for US Source Income of Foreign Persons	Tax withheld of certain income of nonresident aliens, foreign partnerships, foreign corporations, and nonresident alien or foreign fiduciaries of estates or trusts, and to transmit paper Forms 1042-S For more information on what must be reported and who must file, go to: http://www.irs.gov/formspubs/article/0,,id=242311,00.html	All amounts	March 15	N/A
	1042-S	Foreign Person's US Source Income Subject to Withholding	Payments subject to withholding under Chapter 3 of the Code, including interest, dividends, royalties, pensions and annuities, gambling winnings, and compensation for personal services	All amounts	March 15	March 15
	1042-T	Annual Summary and Transmittal of Forms 1042-S				

	1096	Annual Summary and Transmittal of US Information Return	Used to transmit paper Forms 1099, 1098, 5498, and W-2G For more information on what must be reported and who must file, go to: http://www.irs.gov/formspubs/article/0,,id=239516,00.html	Uses information taken from Forms 1099, 1098, 5498 & W2-G	February 28	N/A
	FinCEN Form 104	Currency Transaction Report	Each deposit, withdrawal, exchange of currency, or other payment or transfer by, through, or to financial institutions (other than casinos).	Over $10,000.	15 days after date of transaction.	Not required.
	5754	Statement by Person Receiving Gambling Winnings	Amount of gambling winnings you received for someone else or as a member of a group of winners on the same winning ticket.	Name, taxpayer ID, address, amount won, & winnings from identical wagers for each winner.	N/A.	To be given to payer of winnings.
	8027	Employer's Annual Information Return of Tip Income & Allocated Tips	Large food and beverage establishments when the employer is required to make annual reports to the IRS on receipts from food or beverage operations and tips reported by employees.	If applicable, form must be completed using the employer's records of tips.	February 28	N/A
	8300	Report of Cash Payments Over $10,000 Received in a Trade or Business	Payment in cash or foreign currency received in one transaction, or two or more related transactions, in the course of a trade or business. Does not apply to those required to file Form 4789; casinos required to file Form 8362; or, generally, transactions outside of the U.S.	Over $10,000	15 days after date of transaction	To Payer by January 31

	FinCEN Form 103	Currency Transaction Report by Casino (CRTC)	Each transaction involving either currency received (cash-in) or currency disbursed (cash-out) of more than $10,000 in a gaming day.	Over $10,000.	15 days after date of transaction.	N/A

In addition to information required on returns that compute a liability for a tax, other information reporting may be required instead of or in addition to those provided above:

- Form 1065, U.S. Return of Partnership Income (including Schedules K-1);
- Form 1120S, U.S. Income Tax Return for an S Corporation (including Schedules K-1);
- Form 5500, Annual Return/Report of Employee Benefit Plan;
- Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues;
- Form 8038-G, Information Return for Government Purpose Tax-Exempt Bond Issues;
- Form 8038-GC, Consolidated Information Return for Small Tax-Exempt Government Bond Issues;
- Form W-8BEN, Beneficial Owner’s Certificate of Foreign Status for U.S. Tax Withholding;
- Form SS-8, Determination of Worker Status;
- Form 990, Return of Organization Exempt from Income Tax;
- Form 990-EZ, Short Form Return of Organization Exempt From Income Tax;
- Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ;

- Form 1040-ES, Estimated Tax for Individuals;
- Form 1120-W, Estimated Tax for Corporations;
- Form 2350, Application for Extension of Time to File U.S. Income Tax Return;
- Form 2350 (SP), Application for Extension of Time to File U.S. Income tax Return (Spanish Version);
- Form 4137, Social Security and Medicare Tax on Unreported Tip Income;
- Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes;
- Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return;
- Form 4868 (SP), Application for Automatic Extension of Time to File U.S. Individual Income Tax Return (Spanish Version);
- Form 5558, Application for Extension of Time to File Certain Employee Plan Returns;
- Form 7004, Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns;
- Form 8109, Federal Tax Deposit Coupon;
- Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips;
- Form 8809, Application for Extension of Time to File Information Returns;
- Form 8868, Application for Extension of Time To File an Exempt Organization Return;

- Form 8892, Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax;
- Form 8919, Uncollected Social Security and Medicare Tax on Wages;
- Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts;
- Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b));
- Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations;
- Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code);
- Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax;
- Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities;
- Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships;
- Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests;
- Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests;
- From 8938, Statement of Specified Foreign Financial Assets;
- Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation;

- Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund;
- Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships;
- Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities;
- Form 5713, International Boycott Report.

Other information reports outside the Internal Revenue Code and associated regulations that are also required include the Form 90-22.1, Report of Foreign Bank and Financial Accounts.

For these and other forms, see http://www.irs.gov/instructions/index.html.

II. IRS Non-Filer Compliance Sustenance and Enforcement

ISSUE FIVE: EFFICIENCIES IN IRS OUTREACH CAN BE CREATED TO BRING MORE TAXPAYERS INTO FILING AND PAYMENT COMPLIANCE.

Executive Summary

The IRS should consider expanding its educational outreach program to non-filer and delinquent taxpayers by focusing on small businesses and ethnic communities through a combination of public and social media, print and internet announcements, and personal contacts that will encourage filing of delinquent returns and payment of tax through a better awareness and understanding of available installment plans, offers in compromise, penalty abatement programs, and by tax preparation assistance.

Background

Individual and small business non-filers and delinquent taxpayers who potentially contribute to the tax gap range from those who have simply stopped filing for unknown reasons, to those who know they owe taxes but might be afraid of the consequences of filing or contacting the IRS, to those who attempt to evade the payment of tax altogether. Non-filers and taxpayers who are delinquent, but who otherwise want to get back into the system, would benefit from outreach programs since they offer a way to help the taxpayers comply sooner, allowing them to reduce accruing penalties and interest and take advantage of outstanding refunds, while bringing in tax dollars and making future compliance more likely. Successful approaches to these different groups may vary.

Identifying the non-filers. The first problem is how to identify the non-filers. The IRS has existing data and programs that can assist in identifying such persons and businesses, such as:

1. Matching programs through 1099s and W-2s, IMF[15] and BMF[16]
2. Whistleblower program
3. Report of Foreign Bank and Financial Accounts (FBAR)
4. Currency transaction reports
5. Estate tax returns
6. K-1 reporting

Other sources the IRS should consider that may deem effective in identifying non-filers are:

1. State sales tax and unemployment tax filings
2. Credit card information
3. Professional license renewals
4. Loan applications
5. Lists of membership in chambers of commerce or trade groups

Communication with Targeted Communities. Appropriate and effective communication to taxpayers often depends on the community being targeted, whether it is an individual or a small business within an ethnic group, those in lower or upper income groups in general, or professional/trade groups. For instance, communication to the ethnic communities varies depending on the culture. Many of these groups use tax preparation services with employees who can communicate in their language. Outreach to such qualified tax preparers with their involvement in community education would assist in the goal of educating the non-filing taxpayer into filing and payment compliance.

[15] Individual Master File

[16] Business Master File

Much information can be spread by word of mouth in these communities. In addition, low budget advertising on trains, buses or billboards in the community is a cost effective way to bring the outreach program into the public eye on a daily basis.

Various other targeted groups of taxpayers can be targeted based on outreach to trade and professional groups, by advertising at schools, health clinics, churches, public transportation, and by radio and internet. Private tax assistance companies have been effective in getting their ads to the taxpayers desperate for assistance with their compliance needs in these ways. The IRS could reach its targeted markets in the same manner.

Voluntary Compliance. Voluntary compliance programs have been suggested as a possible answer to bringing non-filers and otherwise delinquent taxpayers back into filing and payment compliance by offering a way to pay past due taxes, while reducing penalties and possibly interest. For a successful example, in 2010, the state of Illinois publicized a tax program that allowed taxpayers to reduce the penalties and interest due on their past due tax balances if such balances were paid in full. To add a level of urgency to the program, the acceptance period was available for only a short period of time (5 weeks). If delinquent taxpayers chose to not avail themselves of the program, their penalties and interest then doubled after the expiration of the program period. Many taxpayers took advantage of the program and the state of Illinois realized approximately 25 percent more revenue than it had originally anticipated.[17] The IRS offshore FBAR program had great success with graduated penalty programs publicity that brought many

[17] Chicago Tribune, "More deadbeats pay up during Illinois' tax amnesty than expected." December 6, 2010.

delinquent taxpayers into the system and into compliance. The IRS first time and reasonable cause penalty abatements should also be publicized to attract taxpayers to contact the IRS to discuss their compliance issues.

Personal Outreach. According to the Taxpayer Advocate's 2011 Annual Report to Congress, one of the most serious identified problems was that the IRS does not emphasize the importance of personal taxpayer contact as an effective tax collection tool. Its studies showed that personal contact from the IRS was more effective than alternative collection activities in bringing in tax dollars. A phone call from the IRS is hard to ignore and taxpayers generally respond quickly, either by returning the call themselves, or by contacting a tax professional to assist them. The Taxpayer Advocate suggests that a simple phone call early on in the collection process can be more cost effective than other approaches such as the Substitute for Return (SFR) system for non-filers discussed below.[18]

Enforcement of Non-Filers. Once non-filer taxpayers have been identified, "soft notices" such as the CP 59[19] or CP259[20] are sent notifying the taxpayer that a return(s) has not been filed. As to the individual taxpayer, the notice informs the non-filer that he will need to contact the IRS if he doesn't believe a tax return is due, or to seek assistance with filing and payment of tax if one is due. Once the soft notice letter is sent with no response received, a second letter or notice similar to (Letter 4903) is sent prior to an SFR being prepared and a tax assessed. These soft notices are not particularly

[18] National Taxpayer Advocate's Report to Congress, December, 2011, page 344.

[19] For individual taxpayers

[20] For business taxpayers

threatening, but they do not address the concern that the taxpayer will often have – how to file a tax return that is most likely several years old. Therefore, it would be beneficial to list a primary source of assistance under "What to do immediately" rather than under "Additional information" on the second page.

If the IRS does not hear from the taxpayers, and it already has information available, through Forms W-2, 1099, etc., it may create an SFR as the next step[21], it may attempt to contact the taxpayer by telephone, or it may assign the case to the field. The SFR should be the last alternative only after making attempts to contact the taxpayer by phone or in person since those approaches may be more effective (IRS and TAS studies are on-going).

When the SFR is sent to the taxpayer, it may prompt the taxpayer to create his/her own return since an SFR does not allow for deductions, exemptions, credits, etc., and simply shows the income that the IRS has confirmed from third party input. Sometimes overinflated numbers provided by creating an SFR will be the impetus for the taxpayer to come to talk to the IRS. If the SFR has been prepared and the taxpayer is still not in contact with the IRS, the IRS has other programs that can be used to assist in developing and maintaining taxpayer compliance to pay the tax assessed by the SFR, including the Withholding Compliance and the Refund Hold programs. In combination, the SFR, Withholding Compliance and Refund Hold programs not only provide a way to pay the assessment, but further encourage the taxpayer to contact the IRS or to file a return in hopes of obtaining a refund based on actual deductions and credits that are not available through the SFR program.

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[21] IRM 4.12.1.1.3 (10-5-2010); IRM 4.12.1.8.2.2 (10-5-2010)

Recommendations

1. Solicit the taxpayer's voluntary cooperation with filing or securing a delinquency by providing additional information in the soft notices. The soft notices should be solution-based.
2. Direct the taxpayer, through both soft notices and outreach, to contact a local income tax clinic, local bar association or accounting group for filing assistance since many delinquent taxpayers require such assistance. Taxpayers should be cautioned to seek out a reputable tax preparer, such as one listed as a qualified preparer on www.irs.gov, and not turn to questionable tax preparation companies for assistance.
3. Direct the taxpayer to contact the IRS help line for further direction by placing the phone number in "how to file" and "how to pay" sections of all soft notice letters.
4. Consider sending a soft notice when an SFR is generated, explaining how to potentially reduce the assessment.
5. Provide outreach for the non-filing compliance program and payment arrangement programs for delinquent accounts. Low budget advertising such as billboards in ethnic communities, prominent spots on the IRS web page, internet banners or margin ads on major community newspaper sites, print flyers in community advertisement mailing, and recorded messages played on the IRS customer service lines while the taxpayer is on hold are low cost ways to get the program in front of the targeted groups.

6. Combine internal IRS programs so that information can be better accessed, more easily shared; provide a one source approach to the taxpayer and tax professional communities and cut costs.
7. First time and reasonable cause penalty abatement programs and non-filer tax days at IRS centers should be publicized to bring taxpayers in to discuss their tax accounts with a representative.

ISSUE SIX: USE OF ACCOUNTING SOFTWARE DURING EXAMINATIONS REDUCES BURDENS TO TAXPAYERS AND THE SERVICE, BUT SHOULD BE CAREFULLY LIMITED IN ITS IMPLEMENTATION

Executive Summary

Taxpayers and their advisers are inherently cautious when confronted with an IRS request for records and other data in the context of an examination of the taxpayer's return for a particular period. This may be because of concerns about defining the scope of the audit or for other reasons. Similarly, the IRS has concerns about obtaining all relevant information and its integrity.

Use of electronic data is an efficient examination tool for the IRS as it reduces the amount of paper generated for examinations and in some cases the time required to complete them. But IRS requests for electronic client backup files from commercially available business software programs (e.g., QuickBooks, and Peachtree) now used by many small businesses have heightened concerns by affected taxpayers and their advisers about the breadth of information requested by the IRS and the use of that information. The chief concerns among these are:

- The wide range of data included in the electronic file, including nonaccounting information such as customer data;
- The number of years of data, outside those under examination, that are potentially available to the examiner; and,
- Use of metadata in the files that may indicate access and modification of the data in the file – particularly where those modifications are performed outside the

accounting period in question (e.g., those modifications may indicate improper activity, but are much more likely to indicate simple error corrections or adjustments made necessary by circumstances in a later period that are somehow related to the transaction in question).

- Meeting the record retention requirements of Rev. Rul. 71-20, 1971-1 C.B. 392 and Rev. Proc. 98-25, 1998-1 C.B. 689 with respect to electronic books and records, particularly in a small business context.

These concerns limit taxpayer willingness to adopt the new approaches and should be accompanied by reasonable safeguards.

Background

The IRS announced in October, 2010 that it was expanding its audit capabilities by training agents to be proficient in auditing information from files of accounting software commonly used by small businesses. In addition to training examiners on use of the software, the IRS moved forward with increased requests of electronic files from taxpayers and practitioners. Practitioners had indicated that they wanted the IRS to be more efficient in examining records and to reduce the volume of paper involved in audits.

On May 27 and on August 9, 2011, the IRS modified IRM 4.10.4.3.7.5 to provide guidance and rules on how revenue agents should evaluate taxpayers' electronic books and records. The IRS description of electronic books and records also includes taxpayer websites, e-commerce activities and web marketing material, which the IRS finds useful in evaluating audit trails and for tracing income, such as e-payments.

On September 1, 2011, SB/SE issued a field directive (SBSE-04-0911-086) for examiners with respect to requests to review backup files and how to protect them. It also updated a set of frequently asked questions (FAQs).

The directive generally instructs examiners to request a copy of the taxpayer's original software backup file but to use professional judgment when determining which records to request. For example, agents would likely request electronic files in larger-scope audits (e.g., to verify items like gross income), but would not likely request files in an audit of one expense item. The memo and FAQs state that agents will limit their review to information relevant to the year under examination. However, if the IRS is examining certain issues, such as accrual accounting or reconstruction of income, then it might review relevant data from other tax periods. Based on the results of an examination, the IRS also might expand the scope of an audit. In that case, the IRS would notify the taxpayer and use the available records.

The directive states that agents would not use the files for any purposes other than the examination and that the information is not subject to disclosure to the public. When taxpayers or practitioners assert they cannot comply because the backup file contains "privileged information," such as information protected under the Health Insurance Portability and Accountability Act of 1996, the taxpayer representative should speak to the IRS agent about redaction. The directive suggests examiners contact their local IRS counsel for assistance.

Redactions to requested files can be an issue. IRS examiners review and assess original books of entry—not translated or interpreted or redacted versions. In addition to the financial information provided in the electronic file, the original file may also contain

metadata including audit trails that can be used to assess the reliability of the records. Audit trails allow the examiner to view original transactions, subsequent changes, and the user name of the person who entered or changed a transaction. This information may be directly relevant to the evaluation of the taxpayer's accounting system and internal controls.

The IRS has commented publicly about taxpayers' providing redacted prior-year files. On April 20, 2011, then SB/SE Commissioner Wagner addressed the redaction issue in a letter to the AICPA. The letter confirmed the long-standing position of the IRS to have original documentation in an audit.

It is important an exact copy of the original electronic data file be provided to the examiner and not an altered version. Only an exact copy of the original file includes the unaltered metadata which allows examiners to properly consider the integrity and veracity of the electronic files through use of such means as reports generated by the software program that may help to identify deleted or altered entries.

The letter stated that it's acceptable for practitioners to "condense" prior-year information "as long as the condensed data does not include transactions created or changed for time periods under audit, or for transactions from prior years that have an effect on the years under audit." The IRS published its approval of this position in its FAQs, where the IRS also pointed out that, if the audit scope is expanded, the agent might request a backup file created before the file was condensed or a copy of the archive file created during the condensing process.

The letter also noted a software limitation best solved by software companies—allowing users to create backup files for a specified time period. However, many small

business persons are unaware of the availability of the redaction features found in the current commercial accounting software. This unawareness leads the small business taxpayer to be burdened with the notion they must provide more information to the IRS than is needed for the examination; all while being burdened with client privacy issues.

Recommendations

Reasonable safeguards should be available to protect small business taxpayers from turning over more data in an electronic format than is necessary for the IRS to perform an examination. A taxpayer should have the right to **"**redact**"** the software file and turn over only the data that is responsive and relevant to the examination. IRS should continue to work with taxpayers and taxpayer groups to refine these procedures and provide more definitive guidance responsive to these concerns.

1. On-going outreach to the AICPA, ABA Tax Section, and other practitioner groups and software manufacturers to identify means on limiting information to data requested by the IRS should be made possible.

ISSUE SEVEN: HMTL PAGES ON IRS.GOV SHOULD BE CONVERTED INTO PDF FORMAT FOR RETENTION, STORAGE, AND TRANSFERS TO CLIENTS

Executive Summary

The IRS Office of Online Services and other IRS offices have made enormous progress in making www.irs.gov a very important source of taxpayer guidance on many topics of concern to taxpayers and their advisers. The information is generally only available in Html format. That makes it difficult to share the information with others and to archive the information in a file or as a file. As the website becomes the primary source and in some cases the only repository of information, the inability to easily retain and transfer information become problematic.

Background

The pages on www.irs.gov contain general information about many IRS programs and offices, filing issues of concern to taxpayers, information about tax law enforcement programs, guidance on specific technical tax law issues and other critical guidance. Guidance may take the form of Frequently Asked Questions (FAQs) or other statements on particular pages related to an issue or return. These statements may be updated and changed from time to time or entirely deleted without warning.

Taxpayers and their advisers need a mechanism to share the information with others, and in many cases to archive the statements with an expectation to refer to them if particular actions resulting from reliance upon them are questioned at a later time.

The format of the pages on the IRS public internet website is the customary html page as ubiquitously used in almost all public websites. Most of the information is therefore available only in that format. It is difficult to archive the information. To store

the information in an electronic format often requires saving the page in a file as a web page rather than in some other storage format such as a Portable Document Format file (PDF) or a word processing program file. Further, printing the html pages may not work well in some circumstances (e.g., some headers or other page elements may not print or may be distorted or out of position in the printed copy of the page).

Because a file saved as a web page file in the Windows operating system contains html programming code, the email transmission of such a file may be quarantined by many corporate and Internet Service Provider spam filters as a possible threat to the security of the system.

The IRS should consider other sources that have adopted the mechanism that have the capabilities for converting document formats. As an example of a website system that has adopted such an approach, one might consider the (PDF) links on most informational pages of the Tax Analysts web service available to its subscribers. Another approach was adopted by Bloomberg BNA in its tax services available to subscribers that allows the page to be printed in a "printer friendly version for full-screen viewing and printing from the browser" (including printing in some .pdf file creation software programs) or in a "rich text format for importing into a word processing program" (*e.g.*, Microsoft Word). Some blended approach of these two is preferable: all pages should be capable of being saved as a .pdf file in at least the format in which the words appear on the page, but for documents such as revenue procedures, revenue rulings, regulations, division field directives and other memoranda, most users would prefer to be able to download and save the document in a .pdf that captures the document in its original formatting (i.e., on

IRS letterhead, etc. as it was released to internal offices and to external organizations like the Federal Register or press agencies).

Recommendations

1. Provide a facility on each page of www.irs.gov, or at least those pages that contain information that taxpayers or advisers are likely to want to archive, to download or convert the page to .pdf format.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

LARGE BUSINESS AND INTERNATIONAL
SUBGROUP REPORT

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NOVEMBER 15, 2012

INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC LB&I Subgroup (hereinafter "Subgroup") consists of six dedicated tax professionals with experience in large corporate tax departments, large public accounting and law firms, and academia. We have been honored to serve on the IRSAC 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 Heather Malloy and the professionals on her 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 three issues:

1. **Streamlining the Audit Process**

Regarding audit procedures, LB&I management asked the Subgroup for suggestions on how to streamline the audit process so that LB&I could maintain its audit coverage on Coordinated Industry Case (CIC) taxpayers and at the same time increase its audit coverage of other taxpayers. Current Internal Revenue Manual (IRM) audit procedures can be time consuming and inefficient with regard to information requests, audit scope and risk assessments. The Subgroup recommends that LB&I increase auditing efficiency through limiting the scope of review for taxpayers under constant IRS examination, reducing the examination of consistently compliant taxpayers to a maintenance program, extending centralized risk assessment to as many LB&I taxpayers as possible, leveraging off the work of private sector attest firms when formulating risk

assessment, and focusing information requests on items that have been identified by the risk assessment.

2. **Spending Time on Issues That Matter**

The IRS can increase audit efficiency through initially assessing the control environment of a taxpayer, and then allocating resources to the most complicated issues that have a permanent tax impact. For example, the IRS currently spends valuable audit time and resources examining taxpayers' temporary differences with a short turn-around period, which are simply issues of when an item is included on a tax return (e.g., this year versus next year), but not how an item is treated (e.g., deductible versus disallowed deduction). That is, the potential dispute pertains only to the correct reporting period, and will "reverse out" over time. In most cases, identifying and challenging temporary differences is not a fruitful or efficient use of IRS and taxpayer resources, especially where there is a short-term adjustment that will reverse out the following year. Rather, examiners should focus on identifying items with permanent impact, i.e., items where there is a potential dispute regarding the proper amount and character of an item. With regard to routine temporary items, the IRS should exercise its authority to offer safe harbors and provide for more consistent reporting rules and treatment. Additionally, for recurring factually intensive issues identified by risk assessment, such as R&D expenses, the IRS should increasingly rely on bright lines and rules of thumb, and not delve into subjective and time consuming analyses.

3. **Managing Knowledge in the Issue Practice Groups and International Practice Networks**

LB&I is developing knowledge management websites for its issue practice groups and international practice networks, and the Subgroup has offered its design and

implementation suggestions on these throughout the year. The intended advantages and benefits of a remotely accessible central knowledge management database include: a comprehensive database for technical information, internal policies, and commercial background; a forum for collaborating with colleagues; and a tool for better achieving consistent and uniform approaches to issues. The Subgroup recommends that a "knowledge manager" is appointed to oversee each website and ensure that all data is accurate, updated, and complete. Also, the Subgroup recommends additional website functions such as frequently asked questions, links to relevant articles and publications, and a robust search function.

ISSUE ONE: STREAMLINING THE AUDIT PROCESS

Executive Summary

The IRS can significantly reduce time spent on audits of LB&I taxpayers by preparing a pre-examination risk assessment that determines which taxpayers and issues to examine, and by relying on other audits by attest firms. These changes would decrease IRS time spent on detailed review of financial and tax records (and taxpayer time in producing such records), and instead reallocate the audit time to the review of material items. Both the IRS and the LB&I taxpayer community would benefit from this streamlining.

Background

LB&I is faced with the challenge of doing more with less. The Subgroup was asked to suggest ways of streamlining the audit process so that LB&I could increase its audit coverage of smaller taxpayers but at the same time maintain its current coverage of CIC taxpayers. (For CIC taxpayers under continuous IRS audit, it is not feasible to stop auditing them altogether because of their size and the complicated tax issues they present.) A reduction in time taken to audit each tax year is important. This can be accomplished most effectively with a shift from auditing the return to auditing discrete issues that have been identified as meriting attention.

The Sarbanes-Oxley Act (SOX) became law in 2002. In order to comply with SOX, publicly held LB&I taxpayers have in the last decade undergone a significant internal transformation, including: increased documentation of internal corporate governance; corporate board oversight over tax management; and expanded overall internal controls. Public companies accomplished this internal transformation at great

effort and cost, including ongoing compliance costs; the transformation also represented a major internal culture change around tax management. Accounting firms, in their audits of public companies post-SOX, have undergone a complementary transformation regarding their attest clients with a significant increase in auditing tax information and the tax function itself. Accounting firms now employ independent thought in planning and performing their audits in a different way from the pre-SOX environment. We believe these transformations are game changers. The IRS should take advantage of the heightened control environment in planning overall examination focus and risk assessment, with a view to increasing overall examination quality and lowering examination cost.

Under current procedures outlined in the IRM, significant information is requested from taxpayers prior to the opening meeting with the IRS, including: access to general ledgers; a complete audit trail from the general ledgers and financial statements to taxable income; identification and full description of all significant Schedule M-3 book/tax differences and the requisite supporting documentation; breakdown of all general ledger accounts aggregated in Schedule M-3; and reconciliation of Schedule M-3 items to disaggregated general ledger accounts.[22] All this information is requested from the taxpayer, and is to be made available by the opening conference.

The IRM further provides that the goals of the opening conference include: discussion of the accounting system (whether centralized or decentralized, kind of cost controls and internal controls used, whether fully or partially automated, etc.), and

[22] IRM Section 4.46.3.2.1.2, LMSB Guide for Quality Examinations, Planning the Examination, Preliminary Meetings and Discussions (Jul. 26, 2011).

arrangements for taxpayer-provided training on these topics; arrangements for review of tax return work papers and examination reports, including internal audit reports and other available internal financial information; and issuance of mandatory information document requests (IDRs).[23] Curiously, the preliminary IDR includes most of the information that is to be discussed at the opening conference. Asking for this information at or prior to the opening conference is premature since discussions with the taxpayer at the conference may eliminate the need for much of the information being requested. For example, the standard IDR issued prior to the opening conference often includes a request for electronic copies of all general ledger detail and documentation of all book/tax differences. This request is burdensome because many LB&I taxpayers have numerous accounting systems and thousands of book/tax differences. It is not easily achievable for taxpayers to supply these materials prior to the opening conference, and once these materials are reviewed by the IRS, they likely will not inform the IRS about the key risk areas of a particular taxpayer.

The IRM contemplates that the information gathered at or by the opening conference, plus subsequently requested information, be reviewed to plan the audit and make an initial risk assessment. It describes this preliminary audit work as including, at a minimum, a review of the tax return, Schedule M, corporate minutes, annual reports, internal controls, internal management reports, and accounting manuals and systems.[24] Once the initial plan is formulated, the IRM

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[23] IRM Section 4.46.3.2.3.3, LMSB Guide for Quality Examinations, Planning the Examination, Preliminary Meetings and Discussions (Jul. 26, 2011).

[24] IRM Section 4.46.3.3.1.

specifies examination techniques used to gather evidence, including: interviews, tours of business sites, evaluation of internal controls, examining books and records, balance sheet analyses, testing gross receipts, and testing expenses.[25]

For LB&I taxpayers that have audited financial statements, many of the audit steps outlined in the IRM would be enormously time consuming and unnecessary. For example, there is no need to review the internal controls of a taxpayer if the attest firm has already performed that review, especially in light of the expanded control requirements of SOX. (Concededly, a detailed IRS review is more appropriate for taxpayers that have never been the subject of a financial audit or a prior IRS audit.)

The IRM also requires that risk analysis be performed initially and at mid-point in the audit process.[26] It is not clear how the review of documents and examination techniques noted above will help in formulating risk assessment. In particular, most of the information listed above should be requested only for those items for which risk analysis merits a review.

It should be noted that LB&I has recently introduced two new risk assessment tools. First, effective for 2010 tax returns, positions taken on tax returns for which a reserve has been established on a taxpayer's financial statements must be disclosed on Schedule UTP.[27] It is intended that the Schedules UTP be used as an audit screen for both

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[25] IRM Section 4.46.4.2.

[26] IRM Section 4.46.3.2.2.2.

[27] The Subgroup provided comments on Schedule UTP in its prior reports in 2011 and 2010. The requirement to file the schedule is currently limited to taxpayers with assets in excess of $100 million and also includes disclosure of those positions for which no reserve was established because of intent to litigate.

taxpayer identification and issue identification. Second, LB&I has recently implemented a Compliance Management Operations (CMO) pilot, which is a centralized risk assessment tool used for taxpayers smaller than CIC taxpayers, i.e. those classified as Industry Cases (IC). Under the CMO approach, tax returns and specific issues are selected for audit centrally and then assigned to an examiner.

The IRS uses the Compliance Assurance Process (CAP) to keep audits current. It is a very resource-intensive program from both the IRS and taxpayer perspectives, as it involves a real time audit of the taxpayer's activity as it occurs. The concept of CAP maintenance has been introduced where historically compliant CAP taxpayers would be subjected to limited audit in future years. The Subgroup applauds this development as an effective method of reallocating IRS audit resources away from areas with limited risk.

Recommendations

1. Risk assessment is critical to selecting taxpayers and issues to be audited. Current risk assessment focuses on detailed review of tax return work papers and accounting records. Risk analysis can be done more efficiently, for example, by: (a) a more general review of publicly available data regarding the taxpayer, to identify significant transactions where tax treatment may be subject to varying interpretations; or (b) a more focused review of particular accounts in the general ledger or line items in the tax return. In general, there should be a shift in focus from auditing the tax return for a year to auditing transactions that occurred in the year. The IRS should take advantage of the heightened control environment in planning the overall examination focus and risk assessment. LB&I should

leverage the new control and attest firm environment in a way that increases overall examination quality and lowers examination cost.

2. Risk assessment should take into account whether a taxpayer has been subject to financial or other audit by an attest firm and may result in a decrease in IRS exam steps.
3. Limited Issue Focused Examination (LIFE) should be more aggressively used for taxpayers who have been under constant IRS exam. LIFE offers an excellent blueprint for focusing on areas with the highest risk while at the same time foregoing standard compliance checks.
4. The IRM should be amended so that detailed tax return and accounting documentation are not requested until both an initial taxpayer meeting and a preliminary risk assessment are conducted. The IRM should prescribe a standard summary audit memo that contains a description of the taxpayer, audited areas, and proposed material adjustments, such that an audit team in future years can use this as a basis for beginning its risk assessment.
5. Compliant taxpayers that have been on CAP for a number of years should be moved to a CAP maintenance program, which would free up significant IRS audit hours to reallocate to new taxpayers and new issues. Given the prestige of the CAP program, agents may be reluctant to be transferred from a CAP taxpayer, so incentives and processes should be introduced such that agents are not incented to impede CAP taxpayers from moving to CAP maintenance.

6. An analysis of issues disclosed on the Schedule UTP versus those uncovered in audit, if any, should be undertaken to see if future audits can simply be limited to issues disclosed on Schedule UTP.
7. Centralized risk assessment, similar to that being done for certain IC taxpayers under the CMO pilot, should be expanded to include as many LB&I taxpayers as possible in order to aid in the selection of which taxpayers and which of their particular issues should be audited. Even if audits are waived after such a risk assessment, the assessment itself should be included in IRS statistics when compiling the number of taxpayers that have been subject to IRS review and scrutiny.

ISSUE TWO: SPENDING TIME ON ISSUES THAT MATTER

Executive Summary

Examiners should first assess the overall control environment of the taxpayer. From that assessment, they should focus resources on the resolution of issues that have a permanent (as opposed to temporary) impact on the amount of taxes owed. That is, internal IRS metrics should not view adjustments related to temporary (previously known as "timing") items with the same weight as those that have a permanent impact. Also, the IRS should view short-term temporary items—those that will reverse within the next taxable year or two—with less weight than longer term temporary items. In addition, with regard to factually thorny issues that come up repeatedly, the IRS should increasingly rely on bright lines and rules of thumb, sparing both taxpayers and the IRS the chore of resolving difficult facts.

Background

At the start of an examination, the IRS examiner should review the control and governance policies of the taxpayer. We believe that IRS examiners will generally find these policies to be very thorough and robust, particularly with regard to public and other companies whose financial statements are audited by an outside attest firm. Once the IRS examiner understands the taxpayer's control environment, he or she should apply the so-called "80/20 rule", which suggests that 80 percent of the potential issues and resources are likely to yield only 20 percent of the potential dollars at stake, whereas the key 20 percent of the potential issues and resources will likely yield about 80 percent of the potential dollars at stake. In other words, the IRS examiner as a self-diagnostic should constantly ask, "Is this the best use of my time? Does it make sense to spend significant

time running down these issues or pushing this data further when all that will result in the end is an adjustment to a temporary item or an adjustment to a small, permanent item?" If this self-diagnostic and business-like approach is widely adopted, the attendant resource savings can be redirected to taxpayer populations previously untouched (or only lightly touched) by the IRS.

One concrete application of the 80/20 rule is with respect to temporary items. Temporary differences occur when the time period for an income or expense item is different as between tax and book reporting. The overall tax treatment is generally not in dispute, and the only potential issue is the correct tax reporting period. But public companies for financial statement purposes generally do not artificially inflate or accelerate their costs, nor do they delay the proper time period to report revenues and income; rather, public companies are incented to report on their financial statements as much correctly accounted for profit as soon as is permitted, so that public capital markets view them favorably. Particularly for revenues and expenses where the income tax treatment closely parallels the financial statement treatment, but even in instances where this book and tax timing is temporarily different, IRS resources are simply misdirected if temporary differences are given the same weight and attention as permanent differences. On a net present value basis, for both the government and for the taxpayer, a temporary adjustment has a far smaller dollar impact than a permanent adjustment of comparable amount. That is, a temporary adjustment of this type provides no significant benefit to the Treasury over the course of a larger block of tax years outside of the single taxable year under examination.

Thus, we recommend that, for a taxpayer where post-SOX internal controls and outside attest firm audits are in place, the IRS generally assumes that the treatment of temporary items is acceptable for federal income tax purposes where one or more of the following features is present:

(1) the timing treatment for federal income tax purposes is generally consistent with the timing treatment for financial statement purposes;

(2) the taxpayer has made a good faith attempt to comply with applicable income tax laws regarding issues of timing; or

(3) a timing adjustment, even if proposed by the IRS and accepted by the taxpayer, would reverse itself out within a few taxable years.

In short, the IRS should spend audit resources only on issues where the taxpayer's federal income tax reporting of income (expense) significantly lags (leads) the financial statement reporting of that item, where internal controls and outside attestation are absent or demonstrably weak, and where the proposed adjustment would not reverse itself out for a long time.

A second application of the 80/20 rule is with respect to factually intensive inquiries, whether these inquiries ultimately lead to (less valuable) temporary adjustments or (more valuable) permanent ones. These inquiries can absorb significant time and resources (for both the taxpayer and the IRS), and even then the ultimate determinations may be very subjective and open to differing interpretations. In tax administration as in life, it is often better to undo the knot by cutting it (a quick solution) than untying the knot thread-by-thread (a time consuming solution). Accordingly, when factually intensive issues are involved, the Subgroup believes that the IRS should utilize its administrative

flexibility to introduce safe harbors and other bright line tax elections. The archetype for this approach is Rev. Proc. 2011-29, which addresses the deductibility versus capitalization of mergers and acquisitions and investment banker fees.

Recommendations

Employing the principles above, Recommendations 1 – 3 are the Subgroup's suggestions with respect to specific temporary adjustments, and Recommendations 4 – 6 are the Subgroup's suggestions with respect to factually intensive matters that arise with some frequency.

1. The IRS should apply the Uniform Capitalization (UNICAP) rules in a more practical fashion, such as the introduction of safe harbors for taxpayers who employ appropriate control and governance policies. Inventory accounting methods are intended to match, as closely as practicable, the costs of production of goods with their ultimate sales revenue, so that taxpayers fairly calculate income.[28] The UNICAP rules specify taxpayer calculation methods for determining the cost of goods sold and require that certain costs be capitalized as part of ending inventory notwithstanding that those costs are not capitalized under the book accounting method used by the taxpayer.[29] Taxpayers most commonly use the FIFO (first-in-first-out) and LIFO (last-in-first-out) methods to account for inventory, and generally a taxpayer's choice between these two methods for income tax purposes must match its book method. Use of the LIFO method can create large income deferrals when inventory prices are unpredictable, but this

[28] IRC Section 263A; Treas. Reg. Sec. 1.263A-1.

[29] Id.

deferral does not occur with the FIFO method. (This observation regarding the FIFO method is particularly true in the modern era of "just-in-time" inventory management, pursuant to which businesses can and do keep small inventories that turn over quickly.) Consistently applied UNICAP rules can create a timing difference from year to year that "turns" or "washes through" as the underlying FIFO inventory is sold. Where good corporate governance is present, appropriate safe harbors can relieve taxpayers and the IRS from spending time/resources on capitalizing amounts that will be imminently recovered when the inventory is sold. For example, any reasonable attempt to apply the UNICAP rules, in the context of a business whose FIFO inventory turns within a short period (say, 12 to 30 months), should be presumed correct in an examination context. Similarly, the IRS could permit, as a safe harbor, the taxpayer to do a one-time comprehensive computation of the additional costs required to be capitalized under section 263A and determine a UNICAP ratio equal to the amount of additional section 263A costs divided by its book ending inventory. This ratio would then be applied to ending inventory in all future years and used as a proxy for actual additional UNICAP costs as long as inventory turned at least once a year.

2. The IRS should allow LB&I taxpayers with audited financial statements to follow book treatment for income tax purposes in determining whether an expense is a deductible repair versus a capital improvement. Recently proposed regulations, despite good intentions, fail to adequately guide taxpayers on the historically

confusing issue of what is a deductible repair versus a capital improvement.[30] Even with several examples, the proposed regulations continue to define the repair versus capital improvement distinction on largely subjective factors.[31] The inconsistent application and lack of clarity in this area expends valuable taxpayer and IRS resources, often for only modest, temporary differences in the computation of taxable income. Safe harbors or bright line distinctions between improvements and repairs, particularly if they more closely hewed to the standards adopted for financial accounting purposes, would benefit both taxpayers and the IRS.

3. The IRS should allow LB&I taxpayers with audited financial statements to follow consistently applied book treatment for tax purposes with respect to a de minimis rule for capitalization thresholds. Many businesses deduct, for financial statement purposes, single expenditure amounts below some threshold—say $5,000—for the purchase of assets with useful lives greater than one year. Currently, there is no corresponding de minimis threshold for tax purposes, so taxpayers must aggregate and capitalize these amounts. Although recently proposed regulations advance a de minimis rule, these regulations also limit the aggregate deduction to an amount that does not "distort the taxpayer's income for the taxable year."[32]

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[30] See Prop. Treas. Reg. Sec. 1.162-4 (providing rules to be consistent with Prop. Treas. Reg. Sec. 1.263(a)-3, which attempts to distinguish repairs from capital improvements).

[31] See Prop. Treas. Reg. Sec. 1.263(a)-3 (included within the concept of "improvement" are "betterments", "restorations", and "adaptations" to property).

[32] See Prop. Treas. Reg. Sec. 1.263(a)-2T (setting aggregate limit at 0.1% of the taxpayer's gross receipts for the taxable year or 2% of the taxpayer's total financial statement depreciation and amortization for the taxable year).

This "no distortion" rule requires taxpayers to track their aggregate deductible expenses, which undermines the intended efficiency of a de minimis threshold rule. With only timing items at stake, this recommendation achieves greater conformity between taxable income and financial statement income, and for that reason alone is self-policing for purposes of the concerns described above.

4. There should be more consistency and reliability in the factually nuanced area of environmental clean up costs. Generally, taxpayers are granted a current deduction for qualified remediation expenditures on certain contaminated sites.[33] In contrast, the taxpayer must add to its basis in the property any clean up costs for a condition that existed prior to ownership of a site.[34] For manufacturing sites, there is yet a third category for expenditures, as otherwise deductible items are (in part) to be capitalized into the costs of inventory. Taxpayers and the IRS spend valuable time/resources allocating and apportioning cleanup costs incurred for a so called "mixed site" among the various possible categories. These inquiries involve highly subjective and factually intensive determinations that, to this point, have yielded confusing results. Rather than requiring from taxpayers complicated analyses of mixed sites' clean up costs, which it must then review, the IRS could instead establish bright line principles that allow deductions over a prescribed period of time or on a percentage-of-cost basis.
5. Through the application of statistically based risk tests, the IRS should limit Form 1042-S ("Foreign Person's US Source Income Subject to Withholding")

[33] See IRC Section 198(a).

[34] See IRC Section 198(b).

examination procedures to those taxpayers with high risk of noncompliance. All payments of United States source fixed, determinable, annual, or periodic income (FDAP) made to foreign persons are subject to reporting and withholding at source.[35] Typical examples of FDAP payments include interest, dividends, and royalties. Although payments to foreign persons for goods are not FDAP income, it is common IRS audit practice to make a blanket request for records of all payments made to foreign parties. When applied to manufacturing companies where a majority of payments to foreign parties are for goods, this audit practice is burdensome and inefficient, and likely to result in very little in the way of proposed tax assessments. We therefore recommend testing Form 1042-S compliance on a statistical basis. For example, ask for documentation on the ten largest payments and then see if further examination work is warranted based on those preliminary results. (In fact, this recommendation of sampling-testing-and-then-evaluating-risk is standard procedure in state sales and use tax audits.)

6. The IRS should streamline the audit of research and development (R&D) credits, and authorize safe harbors in this factually nuanced area. Taxpayers generally maintain their accounting records for R&D expenses on a "cost center" basis, where expenses are not tied to individual research projects but rather to divisions within the company. In the absence of a mandated project-based accounting system, IRS examiners must verify that costs collected in a taxpayer's "cost center" are creditable qualified research expenses. When challenged, taxpayers must expend valuable time and resources to gather information and connect

[35] IRC, ch. 3; Treas. Reg. Sec. 1.1441-1(b).

expenses to individual research projects. The IRS could remedy this impractical substantiation of nexus between expenses and R&D projects with bright lines to determine the qualifications for “creditable” research expenses. Specifically, LB&I might work with industry groups to develop required, stated taxpayer accounting governance policies, contemporaneous documentation for R&D projects, and some safe harbor for inevitable nonqualified or mixed or ambiguous expenses.

ISSUE THREE: MANAGING KNOWLEDGE IN THE ISSUE PRACTICE GROUPS AND INTERNATIONAL PRACTICE NETWORKS

Executive Summary

Effectively managed knowledge is a core asset of the IRS, and is extremely important in fulfilling the IRS mission. LB&I recently created websites that support several key functions for its Issue Practice Groups (IPGs) and its International Practice Networks (IPNs). Specifically, the websites capture, preserve, and provide access to institutional knowledge within all levels of the IRS, afford a central comprehensive database for remote employee access, and provide a tool for better achieving consistent approaches to issues. Additionally, the websites are a forum for discussing issues and collaborating with colleagues.

Background

LB&I asked the Subgroup to provide recommendations regarding knowledge management for the newly established LB&I IPGs and IPNs. During the past year, members of the Subgroup provided their input and comments on this matter to senior members of LB&I. LB&I provided a demonstration of the recently launched IPG website to the Subgroup to display how the site assists LB&I in managing the knowledge base of its business unit. Each IPG website provides a much needed resource for sharing knowledge and expertise on technical tax law issues within the IPG. The Subgroup reviewed various features of the site such as access to research, issue identification, and the provision of feedback through user surveys and forums.

The intended advantages and benefits of a remotely accessible central knowledge management database include: a comprehensive database for technical information, internal policies, and commercial background; a discussion forum for collaborating with colleagues; and a tool for better achieving consistent approaches to issues.

There are many advantages to consolidation of knowledge management and designated information channels. While some organizations have a primary employee on whom many rely for institutional knowledge, a primary employee one day retires and takes his knowledge and experience with him. Knowledge management has thus become critical in today's world of higher turnover, alternative workforces, and remote working. A formalized process of actively collecting, cataloguing, storing, and distributing knowledge within either issue groups or practice networks is a best practice for any large organization. Also, consolidating knowledge management promotes consistency on issues of privileged or attorney work product status, and helps determine available public information under the Freedom of Information Act.

Recommendations

The recommendations below have been communicated in real time throughout the past year, and many of these have already been accepted by LB&I and incorporated into the websites' design.

1. Each group or network should have a designated "knowledge manager" to oversee its specific website and to ensure that the content is updated and complete. This person should actively collect, catalogue, store, and distribute knowledge for the group.

2. The websites should capture and publish frequently asked questions (FAQs) that are searchable. These FAQs should be monitored frequently, to ensure continued accuracy and continued relevance.
3. The websites should be used as collaborative tools to provide defined processes to route technical and industry questions from the field to designated specialists. It is important that submitted questions are acknowledged quickly and answered within a defined time period. It should be easy for individuals to track the progress of submitted inquiries. The questions and responses should be captured and searchable for the future.
4. Each website should include a section on commercial awareness to provide a focal point and knowledge repository of marketplace information on the IPG's or IPN's area of interest. The websites should post industry events and trade publications, and maintain hyperlinks to materials of possible interest.
5. The websites should be user-friendly and intuitively accessible. There should be search engines capable of researching both the entire website and specific sections.
6. Members of the IPGs or IPNs, including management, should provide links to items posted on the website rather than attachments to emails. This will drive traffic to the websites and ensure that documents are posted to the site.
7. One of the keys to success will be the use of a uniform technology platform, which has a standard design and format for all of the IPGs and IPNs to utilize. This will both assist website users and increase efficiency in updating features across the different websites.

8. The data should be published on all the websites using a common taxonomy to facilitate cross referencing and searching across multiple websites.
9. The IPGs and IPNs should develop policies to encourage a "knowledge sharing culture" by measuring and rewarding such behavior by IRS professionals.
10. The websites should include a capacity to enable continuing education and other training. For example, websites could provide "just in time" training for special projects, technical developments, and commercial awareness. Webcasts and audio conferences with playback features should be accommodated on the websites, as well as hyperlinks to appropriate internal and external training.
11. Additional considerations in designing and deploying the websites include:
    - An electronic brochure of the IPG or IPN that includes a directory, an organization chart, contact points, policies and procedures, and other useful information.
    - A portal for downloadable instructions, guidance, or other materials
    - Electronic survey capability
    - A calendar for IPG/IPN events
    - Project management software or WIKI capability for projects
    - A discussion board or forum
    - A portal for document gathering

Internal Revenue Service Advisory Council

2012 Member Biographies

John G. Ams

Mr. Ams, J.D., is the Executive Vice President and Chief Operating Officer for the National Society of Accountants ("NSA") in Alexandria, VA. He has over 30 years in the federal tax arena with expertise providing legislative and regulatory representation in accounting and federal tax matters to a variety of constituencies including individuals, non-profit organizations, and corporations. At NSA, a professional society whose members are professionals in the areas of accounting and taxation, he is responsible for all operations and provides information, education and guidance to his membership regarding IRS regulations and administrative concerns including the new IRS tax return preparer requirements. He has presented testimony to IRS on numerous occasions and most recently testified in support of Circular 230 proposed regulations, where he raised a number of implementation concerns. Mr. Ams holds a J.D. from Georgetown University Law Center and a BA from Michigan State University, East Lansing, MI. **(OPR Subgroup)**

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Ms. Anthony is a Manager/Tax Practitioner with Popular Ventures, in Detroit, MI. Her responsibilities include working with audits, offers in-compromise, installment agreements and penalty abatements and payroll taxes. She is a chartered tax professional and has completed courses in individual and small business income tax preparation. She works with seniors and low income taxpayers in a large urban metropolitan area, and assist students with their tax filing requirements and tax counseling. Ms. Anthony holds a BA in Finance from Trinity College, Metatarie, Louisiana and a BA in Management Organizational Development from Spring Arbor University, Spring Arbor, MI. **(W&I Subgroup)**

Donna K. Baker

Ms. Baker, CPA, has worked in the accounting field for over 24 years and is the owner of Donna Baker & Associates, CPA and Tax Pro Filers, in Adrian, MI. In addition, she is an Associate Professor of Accounting and Chair of Accounting Department at Siena Heights University in Adrian, MI, where she teaches Intermediate Accounting, AIS, Forensic Accounting, Auditing, Taxation, etc. Her CPA firm currently prepares 650 tax returns per year focusing on C Corps, S Corps, partnerships, agricultural, non-profits and small to mid size business returns. Her firm also provides services in auditing, business consulting, strategic tax planning, forensic examination, financial statement preparation and payroll. Ms. Baker started Tax Pro Filers as a sabbatical project that was modeled after large tax preparation chains, such as H&R Block & Jackson Hewitt. She currently has three locations and prepares 4000 tax returns per year. She is a member of AICPA, NATP, and the Michigan Association of Certified Public Accountants and the Lenawee County VITA Coalition. Ms. Baker holds a MBA Professional Accounting/Information Systems from Michigan State University and a BA – Accounting from Siena Heights University. **(W&I Subgroup)**

Ann Esarco

Dr. Esarco, CPA, EA, is a Professor at McHenry County College (MCC) in Crystal Lake, Illinois. She owned and operated her own accounting and taxpayer representation firm, AJE Associates, PC, from 1982 until 2004. In 2004, her son took over the practice as she fully moved into academia. In 2007, she and MCC partnered with the Center for Economic Progress to form a VITA tax site on campus. MCC now independently funds the campus VITA program. In addition, Ann was awarded a grant from the Illinois Community College Board to design and implement a program that would award a Tax Practitioner Certificate to qualifying students. The VITA site and Tax Practitioner Certificate work together to train students for the Enrolled Agent's and Registered Tax Return Preparer's Examinations. Ann has written numerous articles and books such, as "IRS Now Considering Your Economic Reality," and "Taxpayer Advocate." She has been quoted in The Wall Street Journal and well as other business publications. Dr. Esarco holds a Ph.D. in Education from Capella University, Minneapolis, MN; a MS in Taxation from Northern Illinois University, DeKalb, IL; and a BS in Accounting/Management from St. Mary of the Woods College, Indiana. **(W&I Subgroup Chair)**

David F. Golden

Mr. Golden, LLM, JD, CPA, has worked in the tax field for over 26 years and is a partner with the law firm of Troutman Sanders LLP, in Atlanta, Georgia. His responsibilities includes, planning, compliance, transactions, and civil tax controversies. He is involved in a variety of matters relating to state and federal taxation of corporations, partnerships, individuals, tax exempt entities and industrial development bonds. He also provides a full range of trust and estate planning services. In addition, he prepared comments on behalf of the American Association of Attorney-Certified Public Accounts (AAA-CPA), on proposed regulations to the Section 6694 Tax Return Preparer Penalty Rules and have spoken extensively regarding Circular 230 and its impact on tax lawyers and certified public accountants. He is a member of the American Bar Association (ABA) and a member of AAA-CPA. Mr. Golden holds an LL.M from Emory University a JD from the University of Georgia and a BS from Ohio State University. **(OPR Subgroup)**

Linda S. Harding

Ms. Harding, CPA is the Director of Tax for CPAmerica International, a national association of independent CPA firms in Alachua, FL. She has almost 30 years in the field of taxation. Her responsibilities include overseeing the members' tax needs including technical resources, tax practice management, best practices, publications, continuing education and information disbursement. She has a strong technical background in federal and state taxation, including tax minimization strategies, tax compliance, FAS 109/FIN 48 requirements and disclosures and is proficient in tax issues regarding C Corporations, S Corporations, Partnerships, LLCs, individuals and estate and gift tax planning and GAAP. In addition, she is charged with keeping members informed of the requirements of Circular 230 standards as well as other practice issues (such as IRC Section 7216). In addition, she is a member of the American Institute of Certified Public Accountants (AICPA), a member of the AICPA Legislation and Policy Committee and the Florida Institute. **(OPR Subgroup)**

Ernest V. Hicks

Mr. Hicks, EA, CMA, is the President of Hicks and Hicks Enterprises in Anaheim, CA. His practice includes tax preparation and tax planning for individuals and small

businesses. Mr. Hicks also specializes in preparing returns for corporations, partnerships, LLC, and fiduciary returns. Mr. Hicks spent over 20 years in industry, where his responsibilities included cost and general accounting for small and midsize construction and manufacturing firms to Regional Controller for a division of Schlumberger. In addition, he is a member of the National Association of Enrolled Agents (NAEA), the California Society of Enrolled Agents and Institute of Management Accountants (IMA) and holds the certification, Certified Management Accountant (CMA). Mr. Hicks holds a Business Administration degree from Idaho State University, and an MBA from Pepperdine University. **(W&I Subgroup)**

Sanford D. Kelsey, III

Mr. Kelsey, JD, LLM, CPA, has worked in the tax field for over 18 years including in government, industry, and private practice and is currently a Senior Tax Attorney for FedEx Corporation, in Memphis, TN. His responsibilities include advising stakeholders of FedEx's various subsidiaries on federal, state and local, and international tax matters. He has also advised clients on administrative and legislative initiatives. In addition, his experience includes counseling clients on tax matters regarding structuring transactions and providing representation during tax contests. He has served as tax counsel on projects involving multi-discipline clients and has provided technical support for the clients' tax departments. Mr. Kelsey currently serves as an articles editor on the Editorial Board and Publication Committee of The Tax Lawyer – SALTE, an American Bar Association (ABA) Publication. He is also a member of the ABA, the Florida Bar Association and the Tennessee Society of Certified Public Accountants. Mr. Kelsey is a CPA (TN- inactive) and holds an LLM from Georgetown University Law Center, a J.D. from Indiana University School of Law and a BBA from Tennessee State University. **(SBSE Subgroup)**

Richard G. Larsen

Mr. Larsen, JD, CPA, is a Distinguished Professor of Accounting at George Mason University, School of Management in Fairfax, VA. He teaches courses on Taxation and Managerial Decision Making and on Taxes and Business Strategy. Prior to joining George Mason University he was a partner in the National Tax Department of Ernst & Young. At the time of retirement, he was a member of the Tax Accounting and Risk

Advisory Services group specializing in accounting for income taxes (including FIN 48 disclosures) and tax risk management (he was the global director of this area). He is a member of AICPA, ABA, National Association of Corporate Directors and the American Accounting Association and he is presently on the Board of Directors of Tax Analysts and the Bureau of National Affairs Accounting Advisory Board. Mr. Larsen holds a JD from George Washington University, National Law Center, Washington, D.C. and a BBA from George Washington University, Washington, DC. **(LB&I Subgroup)**

Janice Lucchesi

Ms. Lucchesi, CPA, currently serves as Vice President of Tax for Akzo Nobel Inc, in Chicago, IL. Ms. Lucchesi joined Akzo Nobel in 1993 and her responsibilities include directing the tax affairs of the companies in North America and coordinating transactions with international tax impact with the foreign parent. Prior to joining Akzo Nobel Inc., Ms. Lucchesi was a Senior Manager with Ernst and Young. Ms. Lucchesi has served as a member of the Executive Committee of the Organization for International Investment, the International Fiscal Association, and the Tax Executive Institute. She is member of the Advisory Board of the George Washington Law School/IRS Annual Institute on Current Issues in International Taxation and the University of Chicago Tax Conference Planning Committee. She is a CPA, and holds a BA degree in economics and sociology from Rice University and a Master of Management degree from Northwestern University. **(LB&I Subgroup)**

Charles J. Muller, III

Mr. Muller, LLM, JD, has worked in the tax field for over 30 years and is an Attorney/Shareholder with the law firm of Chamberlain Hrdlicka, in San Antonio, TX. His responsibilities include, civil, criminal, malpractice, tax, commercial and financial. He represents major health care providers in False Claims Act litigation. His tax controversy practice includes federal and state civil tax litigation; federal criminal tax litigation including related white collar crime representation; property tax disputes and litigation; representation of attorneys and accountants in malpractice cases and discipline proceedings; representation of taxpayers before the IRS appeals offices; and representation of taxpayers during civil and criminal IRS examinations. Mr. Muller has chaired the American Bar Association Committee on Civil and Criminal Penalties and the

Penalties Tax Force and he is a recipient of the Attorney General's Marshall Award for Outstanding Legal Achievement in the Trial of Complex Litigation. He is a member of both the American College of Tax Counsel and the American Bar Association (ABA), Tax Section, in addition to being listed in the Best Lawyers in America. He is a lecturer and presenter on various topics to professional organizations. Mr. Muller holds an LLM (Taxation) from Georgetown University School of Law and a JD and BA from St. Mary's University. **(OPR Subgroup Chair)**

Fred F. Murray

Mr. Murray, JD, CPA, is a Managing Director, Grant Thornton, LLP, U.S. member of Grant Thornton International, in Washington, DC. His responsibilities include managing policy, procedures, and risk in relation to United States Tax Services practice for a major international accounting firm with more than 500 offices in 113 countries – including evaluation of tax return positions and penalty concerns; risk analysis; reportable transactions and material advisor concerns; disputes and controversies with tax authorities, Sarbanes-Oxley, SEC, GAO and PCAOB matters; and SFAS 109/FIN 48 (ASC 740) financial accounting matters. He is a recipient of the 2010 Grant Thornton Tax Outstanding Performance Award. His experience includes 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 a member of the American Bar Association (ABA) Section of Taxation, (Council Director (2012-2015), and Chair (2009-2011), Committee on Administrative Practice). In addition, he is a Fellow of the American Law Institute, and a member of the American College of Tax Counsel, AICPA and the Federal Bar Association (Chair-Elect, Section of Taxation). Mr. Murray holds a J.D. from the University of Texas at Austin Law School and a B.A. from Rice University. **(SBSE Subgroup)**

Paul O'Connor

Mr. O'Connor, LLM, JD, CPA, is the Vice President, Head of U.S. Tax for EMD Millipore Corporation, in Billerica, MA. He has 32 years in taxation in the technology, software, and bioscience fields. For more than two decades, he has been chief

tax officer for Millipore Corporation (now EMD Millipore, a wholly-owned subsidiary of Merck KGaA, Darmstadt, Germany), a company engaged in bioscience research, chemical and pharmaceutical production. He manages a department of 11 members; overseeing all tax matters for Merck's North American subsidiaries, which include corporate tax, risk management, transfer pricing, and dispute resolution. He is a member of Tax Executive Institute (TEI) and served as the International President from 2010-2011. Mr. O'Connor holds a LL.M in Taxation from Boston University Law School, a J.D from Suffolk University Law School and a B.S from Boston College, School of Management. **(LB&I Subgroup)**

William E. Philbrick

Mr. Philbrick, CPA/ABV, CVA, CFF, CGMA is a Senior Vice President with Greenberg, Rosenblatt, Kull, & Bitsoli, P.C., in Worcester, MA. He has over 30 years experience in taxation and his responsibilities include individual and corporate taxation and tax planning at both the Federal and state levels including international taxation. He also has extensive experience in mergers and acquisitions, and has represented clients as an expert witness for valuations in dispute litigation proceedings. He has represented clients in estate and valuation matters before the IRS and the Commonwealth of Massachusetts. In addition, he prepares valuations for closely held businesses, publicly traded companies, personal holding companies and LLCs. These entities operations include personal service providers such as insurance agencies and investment holdings, real estate management, manufacturers, construction and technology services. He has also represented clients before the IRS and various states with respect to insolvency matters concerning cancellation of debt income, collection matters and divisive reorganizations. Mr. Philbrick is a frequent lecturer and speaker before professional organizations on several tax areas. Mr. Philbrick is a member of the AICPA, the Massachusetts Society of Certified Public Accountants, the Massachusetts Association of Accountants, the National Association of Certified Valuators and Analysts, and the National Society of Accountants. Mr. Philbrick holds a BS in BA degree from Salem State University, Salem, MA, and a MST from Bentley University, Waltham, MA. **(W&I Subgroup)**

Ameek Ponda

Mr. Ponda, JD, LLM, is a partner with Sullivan & Worcester LLP, in Boston, Massachusetts, and also a member of the firm's management committee. Mr. Ponda joined Sullivan & Worcester in 1992 and his responsibilities include domestic and international taxation, with an emphasis on mergers & acquisitions and REIT transactions. In addition, Mr. Ponda is an adjunct professor with the Boston University School of Law Graduate Tax Program, where he has taught courses in Business Tax Planning, Corporate Reorganizations, International Taxation, RICs & REITs, and Financial Products. He is also a Lecturer on Law with Harvard Law School, where he teaches Partnership Taxation. A frequent speaker on taxation topics, he is the author of numerous articles, including "REITs Abroad" and "Economic Inconsistencies in the Taxation of Currency Swaps." Born in Bombay and fluent in Hindi and Urdu, Mr. Ponda is a charter member and former secretary of The Indus Entrepreneurs - Boston, and on the Advisory Board to the South Asian Bar Association of Greater Boston. He is also a member of the American Law Institute and the International Fiscal Association. Mr. Ponda holds a BA from Harvard College, a JD from Harvard Law School, and an LLM in Taxation from Boston University School of Law. **(LB&I Subgroup Chair)**

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. 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. **(W&I Subgroup)**

Christopher Riley

Mr. Riley, CPA, is the Director, State Government Relations for Archer Daniels Midland Co., in Decatur, Illinois. Mr. Riley joined Archer Daniels Midland Co., in 1995 and served as Director of Tax Audits from 2006 to 2009. He was previously employed as a Senior Tax Associate with Deloitte & Touche in New York City. As Director of Tax Audits, his responsibilities included managing Federal Audits of Consolidated, Excise Tax, Employment Tax, Foundation and Partnership Returns, including its participation in the IRS's Compliance Assurance Process (CAP) program. In addition, he previously served as Chair of Tax Executive Institute's IRS Administrative Affairs Committee. He is a CPA, and holds a BA degree in Mathematics Education from Eastern Illinois University, Charleston, IL and an MBA with an emphasis in accounting, and an MST in Taxation from the University of Illinois, Champaign, IL. **(Chairman IRSAC)**

Janeen Ryan

Ms. Ryan, EA has 27 years experience in the field of taxation and is the owner of Janeen Ryan, EA, in Aurora, CO. As a self-employed tax accountant she does tax preparation and tax planning for individuals and small businesses. Her expertise is predominantly small businesses and residential rental properties. She is the Past President of the Colorado Society of Enrolled Agents (COSEA) 2009 and 2010 and is a current member of the board. In addition, she is a member of the National Association of Enrolled Agents(NAEA) and Public Accountant's Society of Colorado(PASC). Ms. Ryan holds a BS in Accounting from the University of Illinois, Champaign, IL. **(OPR Subgroup)**

Madeleine Townes

Ms. Townes, JD, is a licensed attorney specializing in corporate and individual tax. Ms. Townes worked as a Tax Manager with NYK Logistics (Americas) Inc., in Memphis, TN. Her responsibilities there included filing Canadian income taxes, filing property, income, and miscellaneous taxes for the Corporation. She was also responsible for obtaining Business Licenses for local offices in 26 states. She is experienced in the design and delivery on innovative, bottom-line change management programs through account reconciliations that

generate over $80 million annually through the restructuring of internal operations business processes consistent with short/long term organizational objectives. In addition, she provides visionary leadership in turning under-performing operations and start-up opportunities through team leadership, building key alliances, and implementing quality control management systems. Ms. Townes holds a JD from The University of Memphis, Cecil C. Humphreys School of Law and a Bachelor of Science Degree in Business Administration (Emphasis-Accounting) from Fisk University in Nashville, TN. **(SBSE Subgroup Chair)**

Neil D. Traubenberg

Mr. Traubenberg, JD, recently worked as Vice President-Corporate Tax for Sun Microsystems, in Broomfield, Colorado. He has over 35 years experience in taxation that included an international restructuring strategy that integrates subsidiaries attained through acquisition with existing Sun subsidiaries. In addition, he managed a valuation allowance in excess of $1.8 billion and was responsible for all federal, state and foreign tax matters of corporation and multiple subsidiaries located in the United States, Europe, and Asia. He regularly attended audit committee meetings to advise on tax matters of the company and oversaw the implementation of the Sarbanes-Oxley tax process review that resulted in no material weaknesses or significant deficiencies. Mr. Traubenberg is a lecturer on various topics to professional organizations, most recently focusing on matters related to FIN 48, International Financial Reporting Standards (IFRS), and new IRS Schedule UTP. He is a member of the ABA-Tax Section, MAPI and was Tax Executive Institute (TEI), International President from 2009-2010. Mr. Traubenberg holds a JD and a BS from Case Western Reserve University. **(LB&I Subgroup)**

Cyndi Trostin

Ms. Trostin, J.D., LL.M., is a partner with law firm of Glick & Trostin, LLC in Chicago, Illinois. Having more than 25 years of experience in federal taxation, Ms. Trostin combines private practice with teaching, research and consulting. Her fields of expertise include IRS Tax controversy (audits, appeals, offers-in-compromise), advocacy, tax preparation (individuals, trusts, estates, gifts, private foundations), forensic accounting, estate planning, business planning, and trust/probate administration and

litigation. She is a member of the American Bar Association, Tax Section, and the Chicago Bar Association. Ms. Trostin holds a B.S.B.A. degree in business management from Roosevelt University, and a J.D. and an LL.M. in taxation (with honors) from the John Marshall Law School in Chicago, IL. She is an adjunct professor teaching Tax Accounting in the LL.M. and MST programs, serves on the Tax Advisory Board and is a faculty advisor for independent tax studies at the John Marshall Law School. **(SBSE Subgroup)**

Deborah Walker

Ms. Walker, CPA, is a partner with Deloitte Tax LLP, in Washington, DC. She is a leader of the Washington National Tax Global Employer Services practice. She specializes in numerous employee benefit and executive compensation issues, including qualified and nonqualified deferred compensation arrangements, employment taxes, and health and other welfare benefits plans. She also assists clients in resolving liabilities for unpaid taxes. Prior to joining Deloitte Tax LLP, Ms. Walker was Deputy to the Benefits Tax Counsel at the Office of Tax Policy at the United States Treasury Department and was formerly a partner-in-charge of the KPMG MidAtlantic Compensation and Benefits Practice, providing consulting services to individuals and corporate clients, and partner in the KPMG Washington National Tax Practice. In addition, she is an active member of the American Institute of Certified Public Accounts and has authored and co-authored numerous articles on compensation and employee benefits issues. Ms. Walker holds a Masters of Business Administration, University of North Carolina, Chapel Hill, North Carolina and a BA in Economics from Alfred University, Alfred NY. **(Vice Chair & SBSE Subgroup)**

Cecily V. M. Welch

Ms. Welch, CPA, PFS, CFP®, is a Senior Tax Manager with S.J. Gorowitz Accounting and Tax Services, Inc., in Alpharetta, GA. She has over 18 years experience performing analysis of financial information to identify weaknesses, form recommendations, and implement solutions. She has a wide range of knowledge regarding tax compliance and planning for partnerships, corporations, individuals, trusts, estates, and gifting. In addition, she is the tax subject matter expert for multiple financial professionals including bankers, attorneys and investment brokers. She developed action steps and

measurement tools for implementing the strategic plan of the firm. Ms. Welch has lectured frequently to professional organizations and has experience in domestic and international financial audits. Ms. Welch is a member of AICPA and is active in the Georgia Society of CPA's – Tax Section and Estate Planning Section. She is currently treasurer on the board of VOX Teen Communications, Inc. and formally served on the CityDance Ensemble, Inc. and Choices Matter Development Foundation, Inc. boards. Ms. Welch holds a MBA from the University of Wisconsin and a BS in Accounting from North Carolina A&T State University. **(SBSE Subgroup)**

Peter S. Wilson

Mr. Wilson, JD, CPA, is McGladrey, LLP's National Partner for Tax Quality and Risk Management in Washington, DC. He is responsible for quality assurance, risk management, and professional standards for the firm's $450+ million tax practice. He has over 25 years experience as a practicing attorney and CPA. He chaired the task force that developed the ABA Tax Section comments on Circular 230 §10.34(a) (2009). He served as a member of the AICPA's §6694 Task Force (2008) and its Task Force on Tax Penalty Reform (2009 and 2010), as well as the ABA Tax Section working groups that developed comments on non-shelter amendments to Circular 230 (2006), and on monetary penalties for Circular 230 violations (2007). In addition, he authored McGladrey's comments on the tax return preparer registration regulations under §6109 and the related amendments to Circular 230 (2010). He is a member of the ABA, Tax Section, Standards of Tax Practice Committee, and Civil and Criminal Penalties Committee, and the AICPA, Tax Division. Mr. Wilson holds a JD from Albany Law School, Albany, NY, a B.S. from the LeMoyne College, Syracuse, NY, and an M.B.A. from Rensselaer Polytechnic Institute, Troy, NY. **(OPR Subgroup)**