

**Internal Revenue Service Advisory Council 2010 Public Report  
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**GENERAL REPORT**

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**NOVEMBER 17, 2010**



**GENERAL REPORT**  
**OF THE**  
**INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

The Internal Revenue Service Advisory Council (the “IRSAC”) 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 32 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, the tax professional community and 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 Subgroup, the Small Business/Self-Employed Subgroup, and the Large Business and International Subgroup correspond to three of the IRS's operating divisions. The fourth subgroup is the Office of Professional Responsibility Subgroup.

The issues included in the annual report are issues that IRSAC members consider especially important. IRSAC members discussed these issues over the past year during working sessions and on conference calls. IRS personnel brought several of these issues to the members' attention. IRSAC members raised other included issues.

The 2010 Wage and Investment subgroup report explores several pertinent issues. First, the report reviews and makes recommendations on electronic returns that contained employer identification numbers that did not match the name controls used by the IRS in processing business and fiduciary income tax returns. Next, the report examines the 2010 filing season's savings bond initiative. The report also reviews automated underreporter notices and soft notices and issues surrounding the first-time homebuyer's credit during the 2008 and 2009 filing seasons.

The Large Business and International (LB&I) subgroup report contains discussions regarding the Industry Issue Focus (or "tiered" issue strategy); the newly released Schedule UTP (Uncertain Tax Position Statement); the Quality Examination Process; workforce integration; centralized responsibility for valuation to provide consistent policies and application; and, the development of guidance addressing standards of care for valuation. The report recommends certain modifications to the Industry Issue Focus, highlights where specific clarification is needed with regard to Schedule UTP, and discusses the roll-out of the new Quality Examination Process for

audits. In addition, the subgroup's report examines workforce integration with respect to newly hired agents in LB&I, as well as two matters applicable to appraisers and their valuations.

The Small Business/Self-Employed subgroup reviewed several difficult issues. The most significant issue that they addressed is the Report of Foreign Bank and Financial Accounts. Their report proposes simplifying voluntary compliance and addresses the challenges of international tax administration with respect to the Report of Foreign Bank and Financial Accounts. In addition, the Small Business/Self-Employed subgroup report contains recommendations regarding enhancing the effectiveness of collection efforts and cooperative resolution of worker classification uncertainty. In the collection area, suggestions are provided with respect to improving collection standards to reduce installment payment defaults, developing more effective tools for ACS, improving service to taxpayers requesting Lien Certificates, and the application of the Partial Payment Installment Agreement program. In the worker classification area, two proposals are offered: one designed to incentivize businesses to request worker classification status and the other to reduce cooperatively the universe of unresolved worker classification cases.

Finally, the Office of Professionally Responsibility subgroup's report examines the new tax return preparer registration requirements, specifically focusing upon the definition of a "return preparer." The subgroup also reviews the proposed provisions of the revised Circular 230, particularly focusing upon the proposed provisions affecting continuing education providers. Additionally, the subgroup proffers their recommended definition of "willful" within Circular 230 and investigates the idea of allowing the

Office of Professional Responsibility to issue Private Letter Rulings or some similar other form of precedential guidance. Also, the report comments upon the distinction between Title 26 and Title 31 of the United States Code. Finally, the report proposes revisions to the provision of Circular 230 addressing former Internal Revenue Service employees who wish to automatically be recognized as enrolled agents.

The following issue related to the Work Opportunity Tax Credit (WOTC) was not assigned to a specific IRSAC subgroup. This issue is being presented as a full IRSAC issue due to its broad application and Commissioner Shulman's agreement to address the issue.

**ISSUE: INEFFICIENCIES THAT ERODE A PORTION OF THE INCENTIVE EMPLOYERS REALIZE FROM THE WORK OPPORTUNITY TAX CREDIT**

**Executive Summary**

After the release of IRS Announcement 2002-44, many employers automated their job application process in anticipation that state workforce agencies would allow electronic submission of Form 8850. Unfortunately, most state workforce agencies do not accept electronically-submitted Form 8850s and those that do expect employers to retain originally-signed forms. Obtaining originally-signed Form 8850s imposes a significant administrative burden on employers and prevents employers from taking full advantage of the Work Opportunity Tax Credit. To alleviate this administrative burden, IRSAC recommends that the Commissioner of the IRS take prompt action to ensure that the Secretary of Labor, or the Secretary's appropriate designee, issue guidance mandating that state workforce agencies treat hard copies of electronically-signed Form 8850s as if they were originally-signed Form 8850s.

## **Background**

The Work Opportunity Tax Credit (the “WOTC”), enacted in 1996, provides employers an incentive to hire disadvantaged individuals. Procedurally, employers claim the tax credit by requiring job applicants to complete IRS Form 8850 (*Pre-screening Notice and Certification Request for the Work Opportunity Credit*). The employer has 28 days from the date the employee begins work to submit Form 8850 to the Department of Labor State Workforce Agency (the “SWA”) in their state for review. The SWA verifies the accuracy of information reported on Form 8850 by crosschecking it with federal and state databases and reviewing accompanying documentation. If the information on Form 8850 is accurate, the SWA issues a certification of WOTC eligibility to the employer. Once the employer receives the WOTC certification from the SWA, the employer may claim the tax credit on their federal income tax return.

In 2002, IRS Announcement 2002-44 (Internal Revenue Bulletin 2002-17) states that the IRS will allow SWA’s to accept Form 8850 electronically if the SWA’s electronic system meets certain requirements. In the eight years since the announcement’s release, a significant number of employers migrated to automated job application processes. Typically, these processes require the job applicant to fill out the job application and related materials on a computer and transfer these materials to the employer electronically. Many employers participating in the WOTC program automated their job application process with the expectation that eventually SWAs would eventually allow electronic submission of Form 8850.

To date, only a few SWAs allow employers to submit Form 8850 electronically; and, where accepted, the SWAs in those states still expect the employer to retain

originally-signed paper copies of Form 8850 for audit purposes. Thus, employers participating in the WOTC must obtain an originally-signed Form 8850 even if they use an automated job application process.

For many employers, Form 8850 is the only required hardcopy form in an otherwise paperless job application process. Obtaining an originally-signed Form 8850 creates a significant administrative burden for employers and causes some employers to opt out of participating in the WOTC program. In addition, delays in receiving and manually processing the signed Form 8850 occasionally causes employers participating in the WOTC program to miss the 28-day deadline for submitting Form 8850 to the SWA, thereby preventing the employer from taking advantage of the tax credit.

Potential problems with the existing process include:

1. The job applicant must print a hard copy of Form 8850 during the application process. If the applicant cannot locate a printer or experiences problems printing Form 8850 then the WOTC process is delayed. In the alternative, the applicant may forego completing Form 8850 altogether. In that case, the WOTC is no longer available to the employer.
2. The employer has 28 days from the date the applicant begins work to submit Form 8850 to the SWA. If the job applicant does not mail the signed Form 8850 to the employer in a timely fashion or if the form is lost in the mail, then the employer cannot submit the form to the SWA in time.
3. The employer must manually process Form 8850 before submitting to the SWA. During this process, the form may be inadvertently placed in a personnel file,

mailed late, or not mailed at all. If the employer misses the 28-day deadline, the employer is ineligible to claim the WOTC.

### **Proposed Solution**

Since the IRS issued Announcement 2002-44, most SWAs have not implemented processes to receive Form 8850 electronically. The SWAs that accept electronically-submitted Form 8850s still expect employers to retain originally signed Form 8850s. The required filing of an originally-signed paper copy of Form 8850 places a significant administrative burden on employers and acts as a barrier to the WOTC filing process.

The IRS may provide guidance for the Department of Labor (DOL) that will allow DOL to issue guidance to the SWAs on this matter. The members of IRSAC believe a solution exists that alleviates the administrative burden of obtaining an originally-signed Form 8850.

The IRSAC proposes that the IRS take whatever steps necessary to promptly ensure that the Department of Labor issue a Training and Employment Guidance Letter (a “TEGL”) mandating that all SWAs treat hard copies of electronically-signed Form 8850s as if they are originally signed Form 8850s. This solution allows employers to completely automate their job application process. In addition, this solution does not change how SWAs perform their duties or impose additional burdens on SWAs.

The proposed solution allows job applicants to complete and sign Form 8850 electronically. After the job applicant electronically submits the completed Form 8850 to the employer, the employer prints a hard copy of the electronically-signed form and mails the form to the SWA. The SWA processes the form and issues a certification or denial to

the employer. The employer retains the electronically-signed form under their established record-keeping system.

### **Recommendation**

To facilitate swift action by the Department of Labor, the IRSAC recommends that the IRS take whatever steps necessary to promptly ensure that the Secretary of Labor issue a Training and Employment Letter mandating that all SWAs treat hard copies of electronically-signed Form 8850s as if they are originally-signed Form 8850s.

### **CONCLUSION**

The IRSAC members are grateful for the opportunity to serve the Internal Revenue Service and taxpayers. Additionally, the IRSAC appreciates the IRS personnel they interacted with during the past year. We enjoyed our discussions on current and emerging tax policy and procedural issues; we hope our comments contribute to solving these complex and engaging problems.

**INTERNAL REVENUE SERVICE  
ADVISORY COUNCIL**

**WAGE AND INVESTMENT  
SUBGROUP REPORT**

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**NOVEMBER 17, 2010**



## **INTRODUCTION/EXECUTIVE SUMMARY**

The IRSAC Wage & Investment Subgroup (hereafter “Subgroup”) is comprised of a diverse group of tax professionals including certified public accountants, educators, enrolled agents, and a national tax director of a large retired person organization. This group brings a broad range of experience and perspective from both tax preparers’ and taxpayers’ views, and includes unique experience in the issues faced by many W&I taxpayers. We have been 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 Richard Byrd for his recognition of the value of the Subgroup as an integral part of his leadership team. The Subgroup has had the privilege of working with the professionals within the W&I Division of the IRS and found them to be extremely helpful in providing the information, resources, and IRS personnel necessary to develop our report.

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

1. **Electronic Business Returns EIN/Name Control Mismatches**

The IRS, tax professionals, and taxpayers have been experiencing unnecessary delays and time spent electronically filing of business and fiduciary returns. Name control (NC) mismatches are increasing because of multiple ways of developing the NC, including differences in the four letters chosen depending on how the Employer Identification Number (EIN) was initially requested, online or by paper. Our recommendations are intended to save time and frustration for tax professionals when filing electronic returns as they are now mandated beginning in 2011.

## **2. Savings Bonds**

On September 5, 2009, the IRS announced the savings bond initiative that allows purchase of savings bonds with income tax refunds. W&I is currently reaching some of the low-income and elderly populations, but would like to promote the initiative more broadly to other W&I populations, directly and through intermediaries. Most of the current marketing is geared toward taxpayers, but the Subgroup feels the marketing effort should go beyond the effort directed at taxpayers and directly target the intermediaries.

## **3. Automated Underreporting Soft Notices (CP 2057)**

The primary goal of the Automated Underreporting (AUR) Soft Notice program is to correct taxpayer behavior on future tax returns. The secondary goal is the collection of any additional tax due on the current tax return. Our recommendations provide suggestions for redesigning the soft notice by improving its readability and usefulness to both the taxpayer and tax practitioner. The Subgroup also suggests that the notice include an educational component for the taxpayer, and that the IRS develops a procedure to inform the tax practitioner community of the soft notice program.

## **4. First-Time Homebuyer Credit**

The Subgroup was asked to assist the IRS in reviewing the three Computer Paragraph (CP) 03 notices that will be mailed to taxpayers who claimed the First-Time Homebuyer Credit (FTHBC) beginning in late 2010. Additionally, the Subgroup worked with the IRS by reviewing Form 5405 as well as addressing the various repayment requirements of the credit.

## **ISSUE ONE: ELECTRONIC BUSINESS RETURNS EIN/NAME CONTROL**

### **MISMATCHES**

#### **Executive Summary**

The IRS requested that the Subgroup review the current Business Master File (BMF) customer needs regarding the Employer Identification Number (EIN) and Name control mismatches that occur when filing returns electronically. The IRS, tax professionals, and taxpayers have been experiencing unnecessary delays and time spent electronically filing business and fiduciary returns. Name control (NC) mismatches are increasing because of multiple ways of developing the NC, including differences in the four letters chosen depending on how the EIN was initially requested, online or on a paper application. Our recommendations are intended to save time and frustration for tax professionals when filing electronic returns as they are now mandated beginning in 2011.

#### **Background**

The IRS frequently rejects electronically filed (e-file) business and fiduciary tax returns when the business' or fiduciary's NC fails to match the associated EIN. During the 2010 filing season, IRS turned off this matching process and perfected the tax returns manually because of the volume of mismatches.

When a tax professional contacts the *e*-Help Desk for assistance in resolving NC/EIN mismatches, they are advised to have the taxpayer contact the Business and Specialty Tax Line in Accounts Management to obtain the NC. The *e*-Help Desk is only able to assist with non-account related issues. This creates a second telephone call and increases IRS resources needed to resolve the taxpayer's issue.

The *e*-Help Desk, following Internal Revenue Manual (IRM) 3.42.4 and IRM 3.42.7, provides the tax professional with guidance on how a NC is created and refers them to the Business and Specialty Tax Line if additional assistance is needed. This leaves the tax professional with three options:

1. Guess the NC and file the return again electronically (if they guess wrong the return rejects again),
2. Make a second contact to IRS by calling the Business and Specialty Tax Line to obtain the correct NC, or
3. Mail the return to the IRS (if they are required to file electronically, then they must choose option 1 or 2).

Feedback from the IRS, Office of the Chief Counsel (Procedure & Administration) indicated the four-letter NC is taxpayer return information, which is protected from disclosure under IRC Section 6103. The NC information is return information because it is a piece of information identifying a taxpayer. Consequently, appropriate consent, such as a power of attorney or authorization to disclose return information, is needed to support proof that the return preparer has authority to access that information. Given the statutory restrictions on disclosure of return information under IRC Section 6103, Counsel indicated that the IRS could not change this position.

IRS representatives discussed the background and history of the NC and the different (manual and online) naming conventions with the Subgroup. The Subgroup emphasized the need for a single naming structure. Since the online naming convention is not flexible, the option of modifying the manual naming rules to be the same as the online rules were discussed. There are also challenges with determining the number of unique

EIN/NC rejects. The system currently tracks the number of EIN/NC rejects and acceptances without regard to the number of times the return was submitted. The IRS will continue to gather data on the number of rejects by return type and provide that information to the IRSAC Subgroup.

### **Recommendations**

1. De-classify the four-letter NC as protected information.
2. Expand the e-Help Desk authority to include resolving EIN and NC mismatch issues.
3. Modify the language on all Forms 8879 (e-file Signature Authorization forms) and possibly other tax authorization forms to specifically include language indicating that the taxpayer is specifically authorizing the tax return preparer to have access to the NC assigned to the taxpayer.
4. Change the rules for assigning a NC so they are the same regardless of the application process for the EIN.
5. Send a letter to all Form 1041 and 1065 filers who do not currently e-file or for whom the IRS manually perfected the prior year tax return informing them of the NC that was assigned to the entity. The letter should indicate that the NC should be shared with their tax professional.
6. Provide the assigned NC on the IRS information letter prominently with an explanation of the need for the NC and its uses. Do not hide the NC on page two of the letter.
7. Allow the check box on a paper tax return to be sufficient authority for the third-party designee to obtain the NC directly from an IRS e-Help Desk assister.

8. Examine the need for the NC and the NC assignment rules for all taxpayers to determine if their use continues to make sense.
9. Develop a web-based application or telephone application with a direct telephone number that provides the NC for the entity if the taxpayer enters the EIN and a shared secret.
10. Eliminate the words “A”, “An”, “The”, “Estate”, “Trust” and other “noise phrases” as part of the NC and make certain that all NCs be exactly **four** characters.
11. Revise the NC assignment rules so that a name is never truncated from the name of the entity, such as PTA for Parent Teachers Association, as indicated in the current rules.
12. Publish the streamlined NC rules on IRS.gov and provide to software developers to be included in their software instructions and design.
13. Recommend that software preparation companies modify the reject message on NC mismatches to include an instruction to the preparer to have the third-party designee contact the IRS during the authority period to obtain the NC.

## **ISSUE TWO: SAVINGS BONDS**

### **Executive Summary**

The IRSAC was asked to provide input and feedback to assist the IRS in advertising the Savings Bond initiative that was announced September 5, 2009. W&I is currently reaching some of the low-income and elderly populations, but would like to promote the initiative more broadly to other W&I populations, directly and through intermediaries. Most of the current marketing is geared towards taxpayers, but W&I feels the marketing effort will have to go beyond the effort directed at taxpayers and directly target the intermediaries.

### **Background**

While the idea of using a portion of a tax refund to purchase savings bonds is new to many, it was tried previously. Between 1962 and 1968 the IRS allowed refund recipients to purchase savings bonds with their refunds. This program required the entire amount of a tax refund to go into savings bonds. As a result, less than one percent of refund dollars were used to purchase savings bonds.

The introduction of Form 8888 for the 2006 tax year allowed taxpayers to conveniently designate their refunds be deposited into up to three accounts with any U.S. financial institution. With the ability to split refunds came the opportunity to allocate a portion of a refund into savings bonds. Beginning with a pilot program during the 2007 tax season, the Doorways 2 Dream (D2D) worked with a large national tax preparation firm and Volunteer Income Tax Assistance (VITA) programs to offer savings bonds as an option.

For 2009 tax returns, the option to have a portion of a tax refund used for Savings Bond purchases was reintroduced to the tax return. Taxpayers could use Form 8888 to purchase savings bonds in increments of \$50 to a maximum of \$5,000. Direct deposit of any remaining refund to a U.S. financial institution account was required. Savings bonds could only be purchased in the name of the taxpayer and certificates were mailed to them within three weeks. Over 22,000 taxpayers requested savings bonds with purchases totaling nearly \$11 million.

For 2010 tax returns, the program will be greatly enhanced. Savings bonds will be able to be purchased in co-ownership and with beneficiaries; for example, children and grandchildren. Direct deposit of any remaining refund will not be required. Paper checks can be requested for the balance. Many of the technical issues which caused a slow down in processing a refund payment and a default to a paper check for 2009 tax returns, such as a savings bond request not being in a multiple of \$50, have also been resolved.

The savings bonds chosen for the refund program are U.S. Series I Savings Bonds. Their composite interest rate consists of a fixed rate and an inflation based rate, adjusted every six months, May 1 and November 1.

The Bureau of the Public Debt has a strategic initiative to eliminate issuing paper savings bonds. Therefore, coordination with the Bureau of the Public Debt to take advantage of electronic issuance might be needed in the future for the continuation of this program.

Another issue is getting an undefined but potentially large group of tax return preparers to consider recommending the purchase of savings bonds by taxpayers with expected refunds. The value proposition to engage tax return preparers is harder to make

and market than the value for consumers. For example, tax return preparers cannot earn commissions from the sale of savings bonds and might be unwilling to spend any time or effort addressing savings bonds with taxpayers. Some preparers believe there may be an Internal Revenue Code (IRC) 7216 issue with encouraging the purchase of savings bonds, and there are other preparers who have agreements with financial institutions restricting their promotion of any financial products to those of the financial institution only. Self-prepared tax returns generated the highest portion of Savings Bond purchases in 2010 and demonstrate that consumers will buy savings bonds without a direct request from a preparer.

### **Recommendations**

1. Promote, to both taxpayers and preparers, the ability to purchase savings bonds in the names of the taxpayer and another person including children and grandchildren, and utilize promotional materials featuring families such as those available for the Earned Income Tax Credit.
2. Emphasize in IRS promotions the positive components of the interest rate including the inflation protection built into the savings bonds. The promotion should compare the savings bond rate to that of Treasury Bills and/or average saving accounts rates at banks to highlight the relatively high interest rate.
3. Rotate information about savings bonds for all parties, individuals and preparers, on the home page of IRS.gov and include information on savings bonds as a topic on the home page of the Tax Professionals page of IRS.gov to reach this key target audience with more detail.

4. Request that the Ad Council work on promoting savings bonds throughout tax season.
5. For the taxpayers:
  - a. Market to low- and moderate-income taxpayers without bank accounts (the unbanked) as well as the agencies serving them with tax preparation and other services. Highlight that direct deposit is no longer required, allowing this to be a unique saving opportunity for the unbanked. IRS Stakeholder Partnerships, Education and Communications had already initiated some of these contacts.
  - b. Send a post card to those who already purchased a Savings Bond with tax refunds and encourage them to buy Savings Bond when filing their 2010 tax return and ask them to tell a family member or friend to buy one too.
  - c. Evaluate messaging to taxpayers to determine motivation to purchase savings bonds. Incorporate the most effective messaging in future promotions.
  - d. Keep a strong focus on marketing savings bonds directly to taxpayers. The taxpayer is the ultimate decision maker determining whether he or she will benefit from savings bonds. Preparer concerns and conflicts of interest, real and perceived, may make their willingness to engage in savings bond promotion difficult to attain. Regardless, few, if any preparers, would actually tell a taxpayer they won't process the taxpayer's request for a savings bond.
  - e. Create a bookmark or tri-fold about the savings bond initiative that can be provided to taxpayers.
6. For the Bureau of the Public Debt:

- a. Develop joint publicity with the Bureau of the Public Debt in promoting savings bonds, and do so in January so taxpayers have already received information about savings bonds at the time their taxes are prepared and know what funds are available for purchasing savings bonds.
  - b. Work with the Bureau of the Public Debt on electronic options for issuing savings bonds in future filing seasons to reduce costs to the government and help ensure long-term viability of the opportunity.
7. For tax preparers and payroll companies:
- a. Educate tax preparers. Prepare Frequently Asked Questions (FAQs) about U.S. Series I Savings Bonds. General questions include: how to purchase savings bonds through the tax filing process and, specifically, address any applicability of IRC 7216. Reference FAQs in the *e-News for Tax Professionals* and post them on the Tax Professionals page of IRS.gov.
  - b. Utilize the new PTIN database of preparers to promote the opportunity and key points that might be helpful in encouraging preparers to build awareness/promote savings bonds.
  - c. Encourage tax preparers to include a question asking the taxpayer if they are interested in purchasing a savings bond in any preparer version of a taxpayer questionnaire as well as directly when they tell the taxpayer he or she has a refund and how much it is.
  - d. Research other promotional materials such as AICPA's "Feed the Pig" program in terms of risk/burden to the tax preparer.
8. For volunteers:

- a. Continue the campaign with VITA and Tax Counseling for the Elderly volunteer preparers to boost purchase rates with the low- and moderate-income taxpayers by focusing on the benefits to taxpayers and the ease of purchasing savings bonds through the tax filing process. Add a section to volunteer training materials including instructions on the savings bond purchasing process. Also advise volunteers that the IRS supports and encourages volunteers to build savings bond awareness by asking taxpayers if they want a savings bond. Add a question, “Are you interested in learning more about buying a savings bond with any refund?” in the section related to direct deposit in the Interview and Intake Form and savings bond information, including term, penalties, safety, ease in cashing, rate as of November 2010, etc., on the mostly-blank page four of the Intake and Interview Form 13614.
- b. Ask the software vendor for the product used by volunteers to include a one-page information sheet with “Bond Basics” (type of savings bond, rate, term, how to cash, replace, etc.) in the software system for volunteers to print for taxpayers as a take-away. This ensures that needed and accurate information is available for taxpayers and reduces volunteer effort by not requiring them to memorize savings bond basics or order and carry collateral materials to and from tax sites. Ask this software vendor to consider a pop-up or imbedded question in the software asking preparers if the taxpayer wants to purchase a savings bond.

## **ISSUE THREE: AUTOMATED UNDERREPORTING SOFT NOTICE (CP 2057)**

### **Executive Summary**

The IRSAC was asked to provide input and feedback to assist the IRS with the Automated Underreporting (AUR) Soft Notice program. The primary goal of the program is to correct taxpayer behavior on future tax returns. The secondary goal is the collection of any additional tax due on the current tax return. Our recommendations provide suggestions for redesigning the soft notice by improving its readability and usefulness to both the taxpayer and tax practitioner. The Subgroup also suggests that the notice include an educational component for the taxpayer, and that the IRS develop a procedure to inform the tax practitioner community of the soft notice program.

### **Background**

The IRS computer systems have the ability to match individual taxpayer data reported on the taxpayer's tax return to data reported to the IRS by third-party payers. This matching process can inform the IRS about possible reporting errors. Correction of underreported income or over-reported deductions should result in the collection of additional taxes.

The AUR program identifies discrepancies between the information provided by the taxpayer on an individual income tax return and information provided by employers, financial institutions, and others through third-party reporting systems. Once tax returns with discrepancies are identified, the IRS decides how many cases, out of the total number identified, can be investigated with available resources. Tax examiners then analyze the selected cases and are sometimes able to resolve the discrepancies without contacting the taxpayer. In other situations, tax examiners may request additional information from taxpayers by sending a Computer Paragraph (CP) 2000 notice. The CP

2000 notice requires a response from the taxpayer. If the taxpayer does not respond, or if the response is inadequate to resolve the discrepancy, the IRS will issue a Statutory Notice of Deficiency.

Due to limited resources the IRS cannot investigate all areas of potential noncompliance, including AUR discrepancies. The IRS is increasingly using alternative approaches to resolve compliance issues outside of its traditional processes. The IRS launched its AUR Soft Notice program initiative to encourage taxpayers to voluntarily correct discrepancies on their tax returns. Information provided by the IRS stated that in the AUR Program, where millions of discrepancy cases were not investigated for Tax Year (TY) 2007, officials selected approximately 31,000 cases to test the soft notice program (CP 2057). The test was developed with six distinct objectives. These six objectives were to: (1) change taxpayer behavior on future tax filings, (2) correct current year taxpayer behavior, (3) limit the impact on IRS revenue, (4) limit the impact on IRS resources, (5) increase coverage to include more taxpayers with mismatches, and (6) minimize the burden on taxpayers.

Measures were then developed and used in TY 2009 to assess the success of CP 2057 case inventory against each of these six objectives.

1. The objective to change taxpayer behavior on future returns was measured by reviewing the taxpayer's subsequent year's tax return to determine if the taxpayer corrected the behavior.
2. The objective to correct the current year behavior of the taxpayer was measured by surveying the filing of amended tax returns (Form 1040X) by

those taxpayers, and determining how fully they agreed to or addressed the issues on the CP 2057.

3. The measurement used to determine the impact on IRS revenue was to assess case revenue generated, comparing yield versus calculated tax change, and cost incurred per dollar of revenue.
4. The measurement used to establish the impact on IRS resources was to determine increased IRS activity that directly resulted from the mailing of the CP 2057 to the taxpayers. The activities measured included responding to taxpayer telephone calls and written correspondence, including processing 1040X returns and handling of undeliverable mail.
5. The measure developed to determine if there should be an increase in taxpayer coverage was to calculate the overall cost of generating and mailing the CP 2057.
6. The impact on taxpayer burden was measured by the number of CP 2057 that resulted in no change in tax to the taxpayer or that resulted in the taxpayer seeking a tax practitioner for assistance with responding to the notice.

Information provided by the IRS indicates that soft notice treatment generates substantially lower revenue per case than AUR historically achieves. The CP 2057 effectively collects only 13 percent of revenue as compared to the CP 2000 Notice. According to a TIGTA report, *Plans for Evaluating the Use of Soft Notices in Addressing Underreporting Can Be Enhanced*, dated August 27, 2010, the CP 2057 has negligible impact on changing repeat behavior overall, though some categories are more effective

than others. Two categories that appear to be more effective are the earned income tax credit and dependency exemptions. The TIGTA report also states that researchers estimated approximately \$218 million in tax revenue might have been saved from changed taxpayer behavior in these two categories for TY 2003.

The CP 2057 provides information for the taxpayer to verify against the tax return submitted to determine if the return was correctly prepared. Although the notice tells the taxpayer what they should do if they find a problem, the taxpayer is not required to take any corrective action by paying additional tax due, providing additional documentation, or filing an amended tax return. Currently the CP 2057 contains a table that suggests response options for the taxpayer. If the taxpayer believes the filed return is correct, and the third-party payer data submitted to the IRS is incorrect, the taxpayer is instructed to contact the third-party payer that is referenced in the notice and request a corrected statement. The taxpayer is specifically told not to call or send correspondence to the IRS. If the taxpayer agrees with the notice, they are instructed to prepare Form 1040X and mail it to the IRS with a copy of the CP 2057 attached.

Currently the CP 2057 is as follows:

If the amount of your return is . . .	Then . . .
Correct	<ul style="list-style-type: none"> <li>• Do not call or respond to the IRS in reference to this letter.</li> <li>• Contact the payer if you believe the amount was incorrectly reported to the IRS and request that the payer verify and correct his records if necessary.</li> </ul> <p>If the amount is not corrected before filing future returns, you may continue to have</p>

	similar reporting problems.
Not Correct	<ul style="list-style-type: none"> <li>• Correct your return by completing the enclosed Form 1040X, Amended U.S. Individual Income Tax Return.</li> <li>• Securely attach the completed Form 1040X to a copy of this notice and send to IRS, PO Box XXXX, City, ST, XXXXX-XXXX. An envelope is enclosed for your convenience.</li> </ul> <p>Failure to file an amended return may result in further action by the IRS to verify the correct amount is reported on your return.</p>

**Recommendations**

1. Redesign the CP 2057 by expanding response options to direct the taxpayer towards corrective actions. Corrective actions may include contacting the third-party payer for a corrected document, changing the reporting line of an income or deduction item, amending the tax return, or agreeing to the CP 2057 changes as received from the IRS. The taxpayer should have the opportunity to agree with the changes to the tax return by submitting a signed statement agreeing to the adjustments on the CP 2057, and requesting that the IRS calculate the balance due along with penalties and interest. The calculation by the IRS of additional taxes due from an agreed to CP 2057 may not result in any additional processing cost to the IRS as the IRS currently manually reviews 1040X submissions. Allowing the

taxpayer to agree with the CP 2057 reduces taxpayer burden as a tax practitioner may not have to be engaged to resolve the discrepancy.

a. A suggestion for the redesigned table follows:

If the item(s) you reported on Your Tax Return Are	Except That	Then
Correct	. . . the third-party entity data is incorrect	. . . contact the third party and request that they correct their records, and issue corrected copies to both you and the IRS.
Correct	. . . you reported on a different line than the IRS expected (see page 4 for expected reporting line),	. . . for this year, no action is required. However, please use the expected line in future reporting to avoid additional correspondence from the IRS.
Partially Correct		Correct your return by completing the enclosed 1040X, Amended U.S. Individual Income Tax Return. Securely attach the completed Form 1040X to the voucher on page X of this notice and send to IRS, PO Box XXXX, City, ST. XXXXX-XXXX. An envelope is enclosed for your convenience.
Incorrect		Sign on page X, the IRS will calculate the balance due and send a letter requesting payment.

- b. Expand the “What To Do If You Need Assistance” section of the letter informing the taxpayer of the procedure for obtaining a copy of their tax return. The taxpayer should also be reminded of the resources on IRS.gov and at Taxpayer Assistance Centers.
  - c. Include a voucher for the taxpayer to attach to their completed 1040X, instead of attaching the CP 2057 notice.
  - d. Include a voucher for the taxpayer to sign attesting to all the proposed changes and requesting that the IRS calculate the balance due, including penalty and interest.
2. Inform the taxpayer of educational resources that are available by directing the taxpayer to the IRS website and publications that may be specific to items on the CP 2057.
3. Expand the use of E-alerts and the Tax Professionals page on IRS.gov to notify practitioners at least one week prior to a bulk mailing of the CP 2057. This alert should remind tax practitioners about their obligation to inform taxpayers that an amended tax return should be filed if the original tax return was prepared incorrectly. The IRS should also inform tax practitioners of other options available in response to the CP 2057 notice.

## **ISSUE FOUR: FIRST-TIME HOMEBUYER CREDIT**

### **Executive Summary**

The Subgroup was asked to assist the IRS in reviewing the three Computer Paragraph (CP) 03 notices that will be mailed to taxpayers who claimed the First-Time Homebuyer Credit (FTHBC) beginning in late 2010. Additionally, the Subgroup worked with IRS by reviewing Form 5405 as well as addressing the various repayment requirements of the credit.

Refundable tax credits administered through the tax code are increasingly being used to deliver social and economic benefits to the American public. The Congressional Budget Office estimated that refundable credits would increase \$500 billion over the next 10 years. FTHBC is currently among the largest refundable tax credits for individuals. Over 3.3 million taxpayers have claimed more than \$23 billion in FTHBC.

### **Background**

There are different strategies for the repayment of the three FTHBCs, therefore IRS will mail notices to all taxpayers who received the credit. The estimated total number of purchases is 3.3 million consisting of 1 million under the Housing and Economic Recovery Act (HERA); 1.7 million from the American Recovery and Reinvestment Act (ARRA) and 600,000 from the Worker, Homeownership, and Business Assistance Act (WHBAA). Everyone who took the FTHBC in one of the 2008, 2009 or 2010 years will receive a notice.

Taxpayers who purchased their homes in 2008 under HERA and claimed and received the FTHBC are required to repay the credit over 15 years. The CP03a notice will be sent October through December, to remind those taxpayers who will have to

repay. This notice will reflect the amount of credit received; the amount of credit to be repaid as additional tax in 2011; and the balance on the account.

Taxpayers who purchased their homes in 2009 and 2010 under ARRA or WHBAA are not required to repay the credit as long as the home remains their primary residence for at least three years after purchase. If within those three years their situation changes and the home is no longer their primary residence, they will have to repay the entire credit. The CP03b notice will be sent October through December to those taxpayers who will probably **not** have to repay. The IRSAC fully supports the mailing of these notices.

The 2009 credit under ARRA or WHBAA must be repaid if the owner moves out of the home within the three years of purchase and if the owner sells the home at a gain.

In the event of the death of one of the taxpayers who claimed the credit, the repayment is forgiven in the year of death for the portion of the deceased taxpayer.

Notice CP03c will be mailed to taxpayers for whom third-party data indicates a potential disposition that requires their attention and reporting.

### **Recommendations**

1. Ask the software companies to include an inquiry in the questionnaire or tax organizer used by tax preparers asking the taxpayer if they sold or moved out of the home that they purchased during one of the FTHBC years.
2. Include a statement in the CP03a and CP03b notices that would provide information to the taxpayer regarding the recapture of the credit if they were to sell the home in which they received the FTHBC.

3. Include a statement in the CP03a and CP03b notices that would inform the taxpayer that they would need to keep adequate documentation on improvements to the home if they sell.
4. Send a notice to each spouse if the credit was claimed on a joint return.
5. Include a “special events” paragraph in the balance due section of the CP03a notice to reflect change in the amount due, for example, if the home was jointly owned and the spouse died. The notice would explain that only one half the balance of the credit remaining will have to be repaid.
6. Update Publication 523 to include more specific information on the following:
  - a. Define “how to calculate a gain” and provide examples of what can be included;
  - b. Inform the taxpayer that repayment of the credit would not be required if they sell the home at a loss to an unrelated party;
  - c. Remind the taxpayer to reduce their basis in the home by the amount of any un-repaid credit if they sell;
  - d. Include a recapture worksheet for un-repaid credit in the instructions for Form 5405.
7. Develop a web-based application to calculate the recapture of the credit.
8. Introduce a separate special section on the website entitled “Repayment and Recapture of First-Time Homebuyer Credit.” This section should consolidate all the various aspects of the topic on IRS.gov
9. Ensure that reference is made for FTHBC in Publication 523 for the military exception and related documentation.

**INTERNAL REVENUE SERVICE  
ADVISORY COUNCIL**

**LARGE BUSINESS AND INTERNATIONAL  
SUBGROUP REPORT**

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**NOVEMBER 17, 2010**



## **INTRODUCTION/EXECUTIVE SUMMARY**

The IRSAC LB&I Subgroup (hereafter “Subgroup”) is comprised of a diverse group of seven tax professionals. The members of the Subgroup include attorneys and certified public accountants from prominent law and accounting firms, as well as the corporate tax departments of major companies. The Subgroup brings a broad range of experience and knowledge to the IRSAC, and is uniquely qualified to provide a perspective on behalf of LB&I taxpayers. The members of the Subgroup have been honored to serve on the IRSAC, and appreciate both the opportunity to submit this report and to assist LB&I in the accomplishment of its important work.

The Subgroup enjoys a close working relationship with LB&I leadership. This relationship has given the Subgroup the opportunity to consult with LB&I on a variety of matters. LB&I has been extremely helpful in providing the information and resources necessary to develop our report.

LB&I asked the Subgroup to focus its efforts this year on (1) the issue management process, (2) the new proposed form regarding uncertain tax positions, (3) the roll-out of the new Quality Examination Process, and (4) workforce integration. The Subgroup had the benefit of providing its comments on many of these topics in a “real-time” setting this year. We believe that this resulted in our comments being more timely and relevant and, thus, more useful to LB&I. The Subgroup appreciated the opportunity to provide comments in this format. In addition to the issues identified above, the Subgroup’s written report contains analysis with respect to two valuation issues that were prepared by the Small Business/Self-Employed Subgroup.

With respect to the issue management process, LB&I asked the Subgroup to

comment on how the Industry Issue Focus, or “tiered” issue strategy, could be modified. The main stated goal of the “tiered” issue strategy was to gain consistency among taxpayers in resolving audits of significant issues for the IRS. Rather than consistent resolution, LB&I has recognized that the “tiered” issue strategy, in practice, has resulted in many issues remaining unresolved.

Regarding uncertain tax positions, LB&I asked the Subgroup to comment regarding the new schedule on which those positions would be reported. This schedule is a “game changer” in terms of what information taxpayers are expected to report to the IRS, and the Subgroup does not agree with its implementation. Nevertheless, the Subgroup appreciated the opportunity to comment on the contents of the proposed form.

With respect to the Quality Examination Process, LB&I asked for the Subgroup’s suggestions as to how to best inform taxpayers of the new process. The Subgroup offered thoughts as to how to successfully roll-out the process to taxpayers, as well as ideas for LB&I to consider in terms of monitoring that the process is being implemented in practice.

As for workforce integration, within the last several years LB&I has added hundreds of new employees. Many of these employees are very seasoned individuals with many years of experience in the private sector. LB&I asked the Subgroup for thoughts as to how to best integrate these individuals into the IRS workforce and to leverage their substantial knowledge and experience.

## **ISSUE ONE: ISSUE MANAGEMENT**

### **Executive Summary**

The IRS established its Industry Issue Focus, or “tiered” issue program, in 2007 to identify and prioritize issues of high strategic importance and compliance risk. The goal was to improve consistency in the resolution of issues, reduce audit time, and better utilize IRS resources.

In establishing the tiered issue program, the IRS attempted to leverage off its very successful programs used in prior years to challenge abusive tax shelter transactions. Many of these transactions were packaged and promoted as “uniform” transactions, with very little variance in facts. In turn, the centralized response utilized by the IRS to challenge these transactions was very successful.

Many of the issues facing the tiered issue program are not similar in nature. Rather, there are significant factual differences among transactions and taxpayers. These nuances are not conducive to a uniform resolution approach and, therefore, the industry issue focus approach has faced significant challenges.

The Subgroup believes that, although some issues identified in the industry issue focus strategy may continue to warrant a coordinated approach, LB&I already has an arsenal of tools that may be used to address the audit and resolution of these issues, without the added burden of a tiered issue designation.

### **Background**

The “tiered” issue management procedure (referred to herein as the tiered issue strategy) was created by LB&I in response to taxpayers’ concerns about the lack of consistency across LB&I in handling similar issues for different taxpayers across the

country. The intent was to have a centralized review by an Issue Management Team ("IMT") of those issues that LB&I viewed as major compliance challenges. The IMTs are led by Executive Issue Owners ("EIOs") and are comprised of IRS personnel with mixed talents and backgrounds.

LB&I is revisiting the tiering strategy to identify how the strategy can be improved. Field examination teams ("the Field") have not consistently understood the strategy or applied it as envisioned. While the Field is responsible to work an issue, there is a perception that they do not have authority relative to tiered issues, especially Tier I issues (i.e., issues that pose the highest compliance risk across multiple LB&I industries and generally include large numbers of taxpayers, significant dollar risk, substantial compliance risk, or are high visibility). Because of this confusion, delays have occurred in resolving some of the issues.

The current tiering strategy also is not well understood by some LB&I taxpayers. Some believe that the policy is one of "automatic adjustment" in the case of Tier I issues. In that vein, some taxpayers have received penalty Information Document Requests (IDR's) with respect to Tier I issues while still under active examination and more than a year before even receiving a proposed adjustment. There also is a belief among some LB&I taxpayers that the Field (including the case manager) has no authority to resolve tiered issues. Rather, there is widespread belief that control is centralized with the "man behind the curtain." This leads taxpayers to fail to follow the rules of engagement and to seek discussions directly with the EIOs. Such case-by-case discussions are impractical due to the number of taxpayers with tiered issues and, in fact, are rarely granted.

In addition, the tiered issue strategy has been faulted with extending the time of audits. There is a belief among many LB&I taxpayers that this is a result of greater and more frequent involvement of IRS Counsel in the audits of tiered issues. There is a belief that Counsel does not share the field's timeframe in terms of closing an audit and frequently raises new issues late in the audit process.

### **Analysis**

The LB&I Subgroup shares the concerns of both the IRS and taxpayers relative to the tiered issue strategy. While the goal of consistent treatment is critical, the process as it has been developed has overemphasized the control focus. Too many field personnel and taxpayers view tiered issues in a negative light, with the issues tainted before the first IDR is served. As a result, there is a lack of ownership by the Field and transparent dialogue between the Field and the taxpayer necessary to fully develop the facts and potentially resolve the issue.

Several questions arise. The first is: why haven't the Field and taxpayers consistently understood the process and worked the issues constructively? The second is: what changes can be made within the existing process to improve it? The third is: should the entire strategy be abandoned?

Relative to the first and second questions, the Subgroup believes that part of the problem is related to words used to describe the issues. For example, the Issue Tiering-LB&I link on the IRS.gov website describes the two broad categories of Tier I issues as "Recognized Abusive and Listed Transactions" and "High Risk Transactions." Under the latter category, the first item listed is "§118 Abuse." The use of such pejorative language immediately creates presumptions regarding the legitimacy of a taxpayer's treatment of

any Tier I issue (even those as innocuous as §199 and §965 deductions). In some cases, this has led to taxpayers adopting a defensive posture and the goal of two-way transparency is defeated. Once an issue is designated as Tier I, resolution in some cases has become more difficult. The Subgroup believes that the process could be improved and better received if the language used to describe the issue categories and individual issues was “toned down.”

The Subgroup believes another problem is that the current list of "High Risk Transactions" is an unusual combination of temporary and permanent differences, statutory incentives, perceived abuses, and potentially aggressive tax plans. For example, perceived abuses such as the use of §118 by partnerships and structured foreign tax credit generators are on the same list as statutory incentives like §199 (which is now in Tier I “monitoring” status) and §965. The latter two issues require audit guidelines and guidance, but that could be done through pre-existing processes and tools. Listing such issues as "High Risk" has the ability to change the approach of the Field when performing the examination, the reaction of taxpayers to IDRs, and the openness of related discussions.

If the tiered issue strategy is continued, the Subgroup believes that the list of "High Risk Transactions" should be revised to separate "audit challenges" from potential abuses. LB&I has issued excellent materials highlighting the potential issues in post-filing research credit claims and non-compliance with §1441 withholding requirements, and has issued audit guidelines for §199 and §965 deductions. These areas may represent audit challenges, but the Subgroup believes that such challenges can be managed through

memoranda to the Field, audit guidelines in the Internal Revenue Manual and guidance on technical matters.

Similarly, the materials issued by LB&I on the §118 "abuses," mixed service costs, and repairs versus capitalization change in accounting method highlight areas that the Field needs to be aware of and provided with technical advisor contact information. The Subgroup believes these issues can also be successfully managed outside of the tiered issue strategy process.

The other Tier I issues are foreign tax credit (FTC) generators, total return swaps (listed as part of §1441), and cost sharing. Cost sharing is very different in nature than FTC generators and total return swaps. While it represents an area of potentially aggressive taxpayer planning, it is ultimately a transfer pricing issue, and if executed on an "arm's-length" basis, is completely appropriate. The Subgroup believes that the Field should be able to work these factual and valuation-based issues given the guidance available to them in the recent comprehensive regulations, the Coordinated Issue Paper, the Audit Checklist and through various internal and external expert advisors.

It appears that LB&I views FTC generator transactions and total return swaps as abusive. While taxpayers believe both types of transactions can be executed for valid business purposes and be completely appropriate, the IRS has clearly concluded that both types of transactions produce results that are unintended.

For example, generally once a transaction is labeled as an "FTC generator," factual differences between taxpayers or transactions appear to be irrelevant. This is so, even though the IRS and the IMT recognize that certain transactions include features that more strongly support the argument that the transactions were tax motivated, including

circular flows of funds and nontraditional business and investment practices.

Furthermore, the rules applied by the IRS regarding what defines a transaction as an FTC generator can be viewed as subjective. A transaction that has all of the same economic and tax effects can avoid the “FTC generator” label, and the entire Tier I bureaucracy, on the basis of a simple technical point (i.e., the transaction does not utilize a special purpose vehicle in its execution). Consistency can actually be defeated in this context. Finally, although the goal of the issue management strategy is consistent treatment among taxpayers, the Subgroup believes that there have been inconsistent settlements in this area that undercut the stated goal of consistency. The Subgroup believes that more dialogue is required between LB&I and the taxpayer community in order to correctly identify transactions that have been labeled as "FTC generators."

In addition to FTC generators, the IRS has deemed several total return swap scenarios as abusive based on methods of execution that indicate pre-arrangement, agency, and lack of economic substance. Recent published guidance clarified the IRS position, but resulted in a change in audit tactics that was not helpful to taxpayers. With respect to total return swaps, recent legislative changes have addressed this issue going forward.

The Subgroup believes that if LB&I continues the current Tier I issue management strategy, it would require additional analysis and dialogue. Examination teams generally find methods to resolve issues in a reasonable manner. However, as stated above, the real world result of an issue being designated as Tier I is that the case manager and examination team may not exercise their authority. Therefore, if

coordination of an issue is still deemed to be necessary, alternative methods outside the Tier I process may be preferred.

### **Recommendation**

The Subgroup does not believe that the current tiered issue strategy should be continued. The manner in which the process to manage the strategy has developed has led to less transparency in the development of issues, which is in direct contrast to the direction LB&I is pursuing through the new Quality Examination Process (formerly known as Joint Audit Planning) and the Compliance Assurance Program. We believe that the current process can result in taxpayers being on the defensive at the very beginning of an examination and can result in inadequate factual development and more unagreed issues.

Certain issues require more dialogue at the industry level and may require continued management on a coordinated basis. The Subgroup could see a need for a continuation of the current issue management strategy for these types of issues until a new coordination process can be put in place.

As a final note, the Subgroup reiterates that it supports consistency. However, consistency must be accomplished through methods that provide some flexibility on the basis of differing facts and circumstances. The issue management strategy as currently applied does not afford enough flexibility and, therefore, should be discontinued.

## **ISSUE TWO: UNCERTAIN TAX POSITIONS**

### **Executive Summary**

Earlier this year, the IRS announced that it would require certain taxpayers to report their uncertain tax positions (UTP) with their tax return. To that end, the IRS released a draft Schedule UTP and accompanying instructions, followed by a final Schedule UTP (the Form) issued on September 24, 2010. This schedule represents a significant change in terms of the type of information that taxpayers are expected to provide to the IRS.

The Subgroup does not agree with this change in IRS position or the issuance of this schedule. In addition, the Subgroup believes that there are significant challenges to overcome to make sure that examination teams utilize the information contained on this new schedule in a reasonable manner.

Nevertheless, the Subgroup welcomed the opportunity to provide technical comments on the schedule itself, as set forth below.

### **Background**

The Subgroup reviewed the draft and the final form and instructions for Schedule UTP. Our comments will be limited to the content of the Form itself; however, it should be noted that the Subgroup does not concur with the decision to issue the Form. We question how this form can help the IRS in overall administration, since it applies to only a minority of LB&I taxpayers. In addition, the Subgroup believes that the Form is unnecessary for taxpayers that are participating in the Compliance Assurance Process (CAP), since those taxpayers have already pledged a substantial amount of transparency with respect to their tax positions. We encourage the expansion of the CAP program;

however, it is difficult to see how the Form could be constructive with respect to CAP taxpayers. We are encouraged that Announcement 2010-75 provides that the IRS will address Schedule UTP compliance in upcoming CAP guidance expected to be released shortly.

Furthermore, the Subgroup does not believe that the new disclosure will provide the results desired by the IRS. We believe that it will only lead to less transparency and communication between taxpayers and IRS examination teams, more controversies and longer cycle times. In addition, we believe the IRS should be mindful of the increased number of controversies that will arise once state and foreign tax authorities adopt a similar disclosure requirement, since it could lead to more mutual agreement procedure cases and foreign tax credit claims.

Moreover, it is imperative that the IRS use the information collected on Schedule UTP in a thoughtful and judicious manner. The Subgroup is concerned that examination teams may use the information reported on Schedule UTP as a checklist to facilitate determining deficiencies as a matter of course. To avoid such a result, examining agents must be thoroughly trained regarding the information reported on the schedule, and a division within the National Office should be given the task of monitoring the use of such information. Announcement 2010-75 describes that the IRS issued contemporaneously with the announcement a directive concerning the use of the Schedule UTP by the IRS and its examinations and research personnel. We believe that the directive is a useful first step in providing direction to the agents and encourage the IRS to seek input from taxpayer groups once tax audits begin on returns that contain the Schedule UTP.

Finally, the IRS should remain cognizant that this form represents a significant change in the type of information that taxpayers are expected to provide. As such, this increased mandatory transparency that is being forced upon taxpayers should be matched by increased transparency on behalf of the IRS. For example, the IRS could engage in more open and informal dialogue with taxpayers, provide more guidance in a timely manner, or advise taxpayers as to when IRS counsel or technical advisors are involved with an issue.

### **Analysis**

#### **Disclosure with intent to litigate**

The requirement to disclose items that are not reserved because of intent to litigate is meant to cover positions where the reserve is zero because the taxpayer is willing to litigate. The premise is that if the position were instead settled with the IRS, then there would presumably be a need to reserve. We recommend that disclosures of such positions be eliminated. First, the underlying documentation may not exist for many taxpayers because the application of the rules governing accounting for uncertain tax positions varies among those taxpayers reporting under U.S. Generally Accepted Accounting Principles (GAAP) and those reporting under International Financial Reporting Standards (IFRS) or other standards, and, in fact, even varies among taxpayers using U.S. GAAP. Simply stated, many taxpayers will not have as part of their accounting workpapers a table that indicates the chances of sustaining a position in court, versus in Appeals or in the Field, and such documentation would need to be created in order to comply with the Form. The final Schedule UTP instructions do not address our objection relating to documentation but merely states: “The Service expects that a

corporation would continue to document its decision in the same way as it substantiates any decision not to record a reserve in its financial statements.” To reiterate, there is no required documentation under U.S. GAAP or IFRS which calls for such an analysis. Disclosure of expectation to litigate positions would require taxpayers to take steps in preparing their tax provisions that are not being done today.

Second, if the taxpayer and its independent audit firm have concluded that there is no need to set up a reserve for a matter, we question if the cost of providing this information outweighs the benefit.

### **Maximum tax adjustment (MTA)**

Some highly certain positions, those with 80-90 percent certainty, may still be reserved in situations where a taxpayer is willing to accept a nuisance settlement at Appeals to avoid litigation. The Subgroup was concerned that the maximum tax adjustment required in the draft of the Form would overstate the importance of these issues. We commend the IRS for eliminating the MTA in the final version of the Schedule UTP.

### **Administrative practice**

The draft form required disclosure of items with no reserve due to the expectation that, under administrative practice, these items will not be adjusted by the IRS. Although there may be significant items that fall into this category such as status classification questions for Registered Investment Companies and Real Estate Investment Trusts, there are also many such items that would not concern the IRS, such as capitalization of repairs or fixed assets below a set dollar amount. We commend the IRS for removing the requirement to disclose these items in the final version of the Form.

### **Unable to obtain information**

The Form provides a box to check in Part I and Part II if the taxpayer was unable to obtain information from related parties sufficient to determine if a tax position is an uncertain tax position. We recommend that the instructions provide further explanation of when this box should be checked. The instructions could state: “For example, it is intended to be used when a taxpayer’s controlling shareholder prepares the income tax reserves but does not inform the taxpayer.”

### **Unit of account**

Page one of the general instructions of the draft Form stated: “A tax position is based on the unit of account in the audited financial statements in which the reserve is recorded. A tax position taken in a tax return means a tax position that would result in an adjustment to a line item on that tax return if the position were not sustained. A line item on a tax return may be affected by multiple units of account, in which case each unit of account must be reported separately on Schedule UTP.” The final sentence was changed in the final instructions to read: “If multiple tax positions affect a single line item on a tax return, report each tax position separately on Schedule UTP.” We recommend that “item” be replaced by “item(s)” each place it appears so that it is clear that a unit of account may impact more than one line item on a return.

### **Temporary items**

The Form includes codes so that tax positions are marked as either temporary or permanent. The final instructions provide that: “A corporation or a related party records a reserve for a U.S. federal tax position when a reserve for income tax, interest or penalties with respect to that position is recorded . . .” We understand the intention is to

require the disclosure of reserves for interest on temporary differences. In Example 6 of the instructions, which illustrates a reserve recorded for a temporary difference, an expenditure was made in 2010 and a reserve was recorded in 2010 due to uncertainty of whether it should be deducted in 2010 or amortized over five years. If the reserve was recorded due to potential interest only, however, the most likely scenario would be that the reserve would not be recorded until 2011, since the due date of a calendar 2010 tax return is in March 2011 and interest would not accrue until that date. Accordingly, we recommend that Example 6 be deleted from the instructions.

### **Use of Part I versus Part II**

The draft general instructions on page one stated that a tax position is required to be reported on a Schedule UTP for a year if, at least 60 days before filing the tax return, a reserve has been recorded with respect to that position. Page two of the draft instructions further stated that if the decision to set up the reserve was made within 60 days of filing a tax return, then the position must be reported on Part I of the Schedule UTP for the current year or on Part II of the Schedule UTP for the next tax year. We initially recommended that the option to disclose a tax position on Part I of the current tax return, where determination was made within 60 days of filing the return, be referenced on page one of the general instructions. However, Announcement 2010-75 provides that the instructions clarify that a tax position is reported on Schedule UTP once (1) a reserve for a tax position is recorded and (2) a tax position is taken on a return regardless of the order in which those two events occur. On page one of the instructions, under reporting current year and prior year tax positions, the instructions provide: “Do not report a tax position

on Schedule UTP before the tax year in which the tax position is taken on a tax return by the corporation.”

The examples in the instructions appear to confuse the reporting issue. In Example 6, regarding a temporary item, a taxpayer establishes a reserve in 2010 due to uncertainty as to whether an expenditure should be deducted in 2010 or amortized over five years. The taxpayer did not provide reserves in any of the years 2011 to 2014 with respect to the issue. The instructions conclude that the taxpayer has taken a position in its tax return in each of the years 2010 through 2014, but should disclose the position on Schedule UTP for 2010 only, since it did not record a reserve for this position in 2011 to 2014.

In Example 7, regarding a permanent item, a taxpayer establishes a reserve in 2010 for an amortized deduction to be claimed over five years due to uncertainty of whether any deduction or amortization may be allowable. The instructions conclude that the corporation has taken a position in its return in each of the years 2010 through 2014 and that the tax position must be disclosed on a Schedule UTP for each of the years 2010 through 2014. It further notes that the result would be the same if, instead of recording the reserve in 2010 for all of the tax positions taken in each of the five years, the corporation records a reserve in each year that specifically relates to the tax position taken on the return for that year.

The only distinction between Examples 6 and 7 is that Example 6 deals with a temporary item, whereas Example 7 deals with a permanent item. If the intention is that the timing of taking the tax position on the return triggers the disclosure, not the timing of the reserve that should be specifically stated.

## **Transition rule**

Page one of the instructions, under the heading “Transition Rule,” provides that a corporation is not required to report on Schedule UTP a tax position taken in a tax year beginning before January 1, 2010, even if a reserve is recorded with respect to that position in audited financial statements issued in 2010 or later. The transition rule on page one does not address the case when a reserve is recorded in a year beginning before January 1, 2010, but the tax position is taken in a tax year beginning in 2010 or later. It merely references Example 8, which does illustrate this case. Example 8 uses the facts in Example 7 mentioned above except that the corporation recorded the reserve and made the expenditure in 2009 and concludes that the tax position must be reported on Part I of Schedule UTP for each of the years 2010 to 2013.

Furthermore, in Example 9, there appears to be an inconsistency between the general transition relief rule (i.e., no requirement to disclose positions taken in a tax year before 2010) and a situation involving the utilization of carryforwards (i.e., a position that becomes embedded in a Net Operating Loss (NOL) [or credit] carryforward should be considered a "position taken" in both the year the position arises and again in the year that the carryforward is utilized). This point is especially important for clarification, since many taxpayers have such carryforwards from recent years.

The Subgroup believes that having part of the transition rule embedded in an example could lead to misinterpretation. We hereby request that the instruction on page one set forth the transition rule for both the case when the reserve is recorded pre-2010 and a tax return position is taken in post-2010 as well as the case when the tax return position is taken pre-2010, and no tax reserve was recorded pre-2010. In addition, we

recommend that the general transition relief rule be clarified with respect to Example 9 in the instructions, so that it is clear that a pre-2010 position is not reportable on Schedule UTP merely due to the fact that it is embedded in an NOL or credit carryforward for 2010 or a later tax year.

**Recommendation**

As stated above, the Subgroup does not agree with the decision to issue the Schedule UTP; however, it appreciates the opportunity to provide technical comments regarding the form as set forth above. More importantly, the Subgroup stresses that the information provided on the Form must be used in a reasonable manner and encourages that this increased transparency on behalf of taxpayers be reciprocated by the IRS.

## **ISSUE THREE: QUALITY EXAMINATION PROCESS**

### **Executive Summary**

With respect to the Quality Examination Process (“QEP”), LB&I asked for the Subgroup’s assistance in determining the best methods to communicate the QEP to taxpayers. The Subgroup suggested various techniques and methods to help with a successful roll-out of the QEP.

### **Background**

In June of this year, LB&I introduced a new examination process known as the QEP. The QEP is the result of a joint effort between the IRS and taxpayers that is intended to improve communication, coordination, and resolution of audits.

The predecessor of the QEP, the Joint Audit Planning Process, had similar laudable goals in terms of providing a framework for audits to run smoothly and efficiently. The Joint Audit Planning Process, however, faced significant hurdles in its actual implementation. In light of those challenges and in order to improve the process, LB&I decided to review the Joint Audit Planning Process internally, as well as partner with taxpayers and various professional organizations externally.

### **Analysis**

In terms of delivering communications to taxpayers about the implementation of the QEP, the Subgroup suggested that the QEP should be highlighted at the general meetings of various groups and professional organizations, such as the Tax Executives Institute, the American Institute of Certified Public Accountants, and the American Bar Association. The Subgroup also recommended pursuing articles in the professional tax publications to supplement the IRS news releases. The Subgroup believes that LB&I has

been successful in publicizing the roll-out of the QEP. The LB&I Commissioner even released a six-minute video introducing the QEP (as recommended by the Subgroup and others).

Although the external roll-out has been a success, the IRS should be mindful that, arguably, an even more important facet to a successful QEP is its roll-out internally within the IRS. One of the problems with the prior Joint Audit Planning Process was that it was not implemented in practice. Rather, it was oftentimes viewed as a discretionary guide of some good ideas and suggestions regarding how to conduct an audit.

Accordingly, examination teams and taxpayers should attend QEP training together, which would allow both sides to hold each other accountable under its standards. Prior to each audit beginning and any IDRs being issued, the examination team and taxpayer should be able to go through the training together, and execute a form acknowledging that this occurred. Furthermore, the training should include the specifics of what the QEP entails. Instead of simply mandating that the audit plan should be developed and that the taxpayer should be involved, the training should specify how and when the audit plan should be developed.

Finally, to ensure that QEP standards are being implemented, a senior IRS employee (for example, Territory Manager, Director of Field Operations, or Industry Director) should solicit taxpayers' opinions at the close of an audit. This can be, perhaps, in the form of a letter sent to the taxpayer at the close of an audit to inquire as to whether, in the taxpayer's opinion, the QEP standards were followed.

## **Recommendation**

LB&I should continue to highlight the benefits that the QEP will deliver to both taxpayers and the IRS. The Subgroup believes that the implementation of the standards expressed in the QEP will improve the efficiency and resolution of audits. To that end, LB&I should continue to monitor whether the QEP standards are being implemented by examination teams through the method identified above by the Subgroup.

## **ISSUE FOUR: WORKFORCE INTEGRATION**

### **Executive Summary**

A sound enterprise is premised on deploying the right people to the right tasks, now and in the future. Tax administration is no different. This general principle forms the basis for our assessment and six recommendations below.

### **Background**

We understand from our conversations with IRS personnel that the current economic climate translates into an unprecedented pool of job applicants, in terms of both quantity and quality. We also understand from these conversations that the IRS has been successful in hiring, and so far retaining, many highly qualified candidates – e.g., some eight hundred (800) experienced tax professionals have joined LB&I in the past year or so. We applaud this development and recommend that the IRS continue to actively recruit experienced applicants, especially candidates who have received quality training in the private sector.

Our feeling is that applicants with experience in the private sector bring to the IRS not only their acquired knowledge of substantive tax rules and industry practices, but also a very "real world" perspective on how taxpayers behave and operate; this additional perspective can only help communication between the IRS and taxpayers. Compare this to the reverse scenario, where an experienced IRS person leaves a government position for a position in private practice or in industry. That person's employer will generally utilize the person in a role that capitalizes on his or her acquired knowledge of substantive rules, as well as his or her knowledge and experience with IRS rules and

procedures for working with taxpayers. A private-sector employer who fails to capitalize on the experiences and knowledge of a former IRS employee is simply wasting potential.

In connection with our assessment and recommendations, we reviewed the following materials: (1) IRS Highlights Job Opportunities for New Grads on YouTube, IR-2010-81, July 6, 2010, and the videos referenced therein (which we viewed on YouTube); and (2) the 2009 National Agreement II between the Internal Revenue Service and the National Treasury Employees Union. In addition, we interviewed a number of IRS personnel.

### **Analysis**

We identified the following challenges the IRS faces in integrating experienced practitioners into the IRS and, more generally, maintaining and improving the quality of the IRS workforce. We also learned that the IRS has already addressed these matters to a great extent.

First, many of the experienced hires possess highly specialized, technical tax and business knowledge. Most of them are not trained as auditors, however, and do not possess knowledge of IRS procedures. We asked ourselves: “What procedures should the IRS use to train experienced practitioners in their missing skill sets?” In particular, we were concerned that practitioners who have many years of experience may have little patience with lower-level tasks and training. In response to our inquiries, we learned that the IRS individualizes its training regimen to round out a new hire’s skill set, as opposed to using a one-size-fits-all approach that all new hires must endure. In particular, the IRS uses online training modules (e.g., Centra and MicroMash) to custom tailor a training plan between a new hire and his/her training instructor, which can then be implemented

on an individualized basis. Thus, in the case of experienced hires, the IRS does not utilize the same training that it uses for new agents it hires right out of school, but instead makes available expedited training courses to quickly get experienced practitioners up to speed on the skills they need to complete audits.

Second, agents who have many years of private-sector experience will likely want to progress more quickly in their IRS career than perhaps their counterparts fresh out of school. We recommended that the IRS identify impediments within its system, such as seniority rules for promotion, which may inhibit experienced hires from advancing as quickly as they would like. In response, we learned that experienced hires can enter the IRS at a more senior “grade”, rather than at entry level, and they can also advance more quickly by participating in executive training programs. As in the private sector, faster promotion tracks are also available to those who are geographically mobile.

Third, we inquired about IRS efforts at developing a system for quickly and efficiently tapping into the specialized skill sets possessed by its experienced agents, whether that experience was acquired at the IRS or previously in the private sector. In particular, we believe that the IRS and taxpayers would benefit enormously if the IRS could draw on the experience and knowledge base of its newest hires from the private sector; to repeat, these new hires bring not only their acquired knowledge of substantive tax rules and industry practices, but also a very “real world” perspective on how taxpayers behave and operate. In response to our inquiries, we learned that skills assessments are currently “soft knowledge” possessed at the local level, where the local supervisor or training instructors know what an employee can do well. We also learned

that the IRS hopes to develop a new, nationwide skills database that would apply during the training period (i.e., during approximately the first year of IRS employment).

Fourth, we considered that an agent who has the specialized skills required for a particular audit may not live near the location of the audit. Mindful that geography represents a similar and significant challenge for private sector employers, we inquired what the IRS might do to bridge the geography gap. We learned that, to overcome geography as an impediment to getting the right people on the right tasks, the IRS employs audio and video conferencing, faster promotion tracks for geographically mobile employees, and targeted hiring in particular geographies.

Fifth, given that the pay scale at the IRS has traditionally been lower than in the private sector, we explored what the IRS might do to retain its experienced agents, so that they do not join or return to the private sector once the economy improves. We learned that, to retain its best people, the IRS has in place a system of retention bonuses, improved opportunities for advancement, and executive training programs.

Sixth, some organizations are facing a demographic bulge that could result in a large number of employees retiring at approximately the same time in the near future. Without an adequate succession plan, such a mass exodus could cripple the organization's capabilities. We learned that the IRS has begun to consider the demographic bulge issue, and as a partial response, has instituted a rehired-annuitant program whereby the IRS can rehire an employee and thus retain talent that might otherwise retire.

## **Recommendations**

First, we commend the IRS for using training modules and customized training plans. This is an excellent process for quickly integrating new, experienced hires from the private sector, and also for the new hires' job satisfaction. We recommend that the IRS continue to pursue this methodology and invest in it further, e.g., by developing more training modules on an as-needed basis.

Second, to challenge and motivate new hires from the private sector, and also to meet what is likely many of these new hires' professional expectations, the IRS should continue to create programs and opportunities for rapid advancement. For example, the IRS should identify any remaining seniority-based metrics for promotion, and consider whether these are still useful or necessary.

Third, the IRS should consider developing a skills database that lasts beyond the training period – perhaps something as simple as (1) an intranet of online “bios” that include an employee's subject matter and industry expertise, or (2) an intramural blog or bulletin board where technical knowledge and industry expertise can be shared. Any IRS employee could then use this database to seek out another person within the organization who may have specialized skills. Once this database is developed, the IRS should encourage and incentivize its employees to utilize the resource.

Fourth, a nationwide skills database, one which lasts beyond the training period, is the first step in learning where the talent resides and where the skills are needed. A nationwide database matching may also result in staffing agents on assignments that better utilize their individual skill sets independent of geography, as opposed to limiting

the agents to whatever assignments may be available in their geography (i.e., their posts of duty).

Fifth, in addition to its other retention incentives, the IRS should focus on particular nonmonetary incentives and messages, including, for example, the appeal of government/public service, the lower work-hour demands, and the opportunity for cutting-edge taxation assignments.

Sixth, the IRS should conduct a demographic bulge assessment of its workforce, not only for the IRS as a whole, but also at a more granular level based on functionality and (assuming it continues to be relevant) geography. To the extent consistent with applicable employment laws and union obligations, we also recommend that the IRS take advantage of the current, unprecedented applicant pool to round out its age demographics so that projected retirements occur in a smooth, staggered – as opposed to a cliff-effect fashion.

**ISSUE FIVE: RESPONSIBILITY FOR VALUATION SHOULD BE  
CENTRALIZED TO PROVIDE CONSISTENT POLICIES AND APPLICATION**

**Executive Summary**

IRS efforts at implementing the valuation reform provisions of the Pension Protection Act (and valuation provisions in other statutes) suggest a lack of coordination and consistency in Service policies, practices and procedures with respect to appraisers and appraisals. In one situation, for example, a unit of IRS established an appraiser penalty enforcement process without knowing that another unit of IRS had failed to define a key safe harbor provision without which enforcement is inappropriate. Such conflicts and inconsistencies could be avoided if an office or individual at IRS were assigned responsibility for overseeing appraisal policies on a Service-wide basis.

**Background and Analysis**

Unlike accountants and tax attorneys whose services and activities intersect virtually all provisions of the Internal Revenue Code and regulations, appraisers and tax-related valuations play a much narrower role in our tax administration system. Because IRS policies and practices pertaining to tax-related appraisal and those who perform them are established in various IRS venues, there are often inconsistencies and/or gaps in these policies and practices. Following are three examples of this lack of coordination and focus on the role of appraisers in tax administration that should illustrate the point.

One involves the subject matter of the first item noted above, i.e., the failure of IRS to define a critical exception to valuation misstatement civil money penalties before it embarked on a process for imposing such penalties. In October of 2009, it became publicly known that on August 18, 2009, the IRS' Office of Servicewide Penalties (OSP)

issued to IRS examiners, Revenue Agents, Estate and Gift attorneys and Tax Compliance Officers, detailed procedures for assessing civil money penalties against appraisers for valuation misstatements under IRC section 6695A (SBSE Memorandum 04-0809-015). It did so without knowing or recognizing that the IRS had failed to define the safe harbor exception to such penalties contained in 6695A (c). Without such definition and guidance, appraisers were effectively denied a realistic opportunity to assert, in response to a valuation misstatement enforcement action, the safe harbor defense Congress provided them. Appraisers and other stakeholders inadvertently learned of OSP's internal enforcement document and were able to intervene to stop enforcement proceedings pending resolution of the safe harbor and one other issue. But, this represents an internal, inadvertent yet avoidable, IRS misstep based on the absence of coordination and information sharing between two separate IRS venues – one which was responsible for establishing enforcement processes and another which was responsible for defining and implementing a key statutory provision.

A second example involves the IRS' decision two years ago (subsequent to the enactment of the Pension Protection Act's robust appraiser penalty provisions) that its new tax return preparer penalty regime should include appraisers as nonsigning return preparers. The appraisal organizations advised those at the IRS responsible for establishing the new return preparer penalties that appraisers were already covered by the penalty provisions of the PPA and that imposing a second layer of penalties on them was punitive and would not advance their compliance purposes. Nevertheless, final IRS regulations included appraisers if they met the requirements established for nonsigning preparers.

A third example involves the IRS Commissioner's praiseworthy program to register, competency test and regulate the tax preparer community in order to foster greater tax compliance. Again, with the different process used by appraisers whose valuations are material for tax compliance, this program or parts of this program do not conform easily.

### **Recommendation**

The IRSAC recommends that IRS actively consider a change in its organizational structure that would lead to creation of an office to serve as a clearinghouse for all policies, practices and procedures involving appraisers and tax-related appraisals. The imprint of tax-related appraisals on tax administration, while important, is sufficiently small to make creation of such a clearinghouse feasible.

**ISSUE SIX: DETERMINABLE STANDARDS OF CARE FOR VALUATIONS**  
**SHOULD BE DEVELOPED**

**Executive Summary**

Section 6695A(c) of the Pension Protection Act of 2006 (PPA) establishes a safe harbor against the imposition of civil money penalties for valuation misstatements. It provides that no valuation penalty shall be imposed if the appraiser can establish that the value in the appraisal was “more likely than not the proper value.” While this phrase may have meaning in other tax administration contexts, it has yet to be defined or guidance provided by the IRS in the context of valuation misstatements. Given the complete absence of such guidance, appraisers are effectively denied a fair opportunity to assert the safe harbor defense against valuation misstatement penalty actions under 6695A.

Accordingly, such enforcement of penalties should take into consideration the fact that these professionals do not have a safe harbor process on which to rely and that final valuation determinations are often very different from the appraised value for reasons unrelated to the valuation. For instance, most disagreements between taxpayers and the IRS involve a number of issues and final settlement is a negotiated agreement, the individual aspects of which are not separately negotiated. In addition, the IRS should consider the valuation method used by the appraiser, evaluating it for the reasonableness of the method and whether the application of the method was reasonably applied to the facts. Guidance should be developed with a combination of internal and external stakeholder participation.

## Background and Analysis

The Pension Protection Act of 2006 contains tax related appraisal provisions designed to improve the integrity and reliability of tax-related appraisals and to hold those who perform them accountable. IRC §6695A provides for civil money penalties on those whose valuations are found to contain “substantial” or “gross” valuation misstatements.

Determinations of whether an appraisal results in a substantial or gross valuation misstatement are based on certain statutory percentage tests. A substantial valuation misstatement exists under Chapter 1 if the claimed value of the property is 150 percent or more of the amount determined to be the correct amount of such valuation. For estate and gift tax purposes, a substantial valuation misstatement exists when the claimed value of property is 65 percent or less of the amount determined to be the correct. A gross valuation misstatement under Chapter 1 occurs when the claimed value is 200 percent or more of the correct value.

The amount of the valuation misstatement penalty imposed on any person with respect to an appraisal shall be equal to the lesser of (1) the greater of (A) 10 percent of the amount of the underpayment or (B) \$1,000 or 125 percent of the gross income received by the person for the preparation of the appraisal.

Importantly, in the legislation Congress established a safe harbor exception against a valuation misstatement penalty (§section 6695A(c)) which states that “No penalty shall be imposed under subsection (a) if the person establishes to the satisfaction of the Secretary [*Treasury thru IRS*] that the value established in the appraisal **was more likely than not** the proper value” (bolded for emphasis).

However, the meaning of the phrase **more likely than not the proper value** has not been defined in the context of an appraisal or other valuation. IRS regulations are replete with phrases like “realistic possibility,” “substantial authority,” and “more likely than not.” For example, in 2008 Treasury and IRS proposed regulations concerning tax preparer penalties in which the standard of conduct return preparers must meet to avoid the imposition of penalties moved from the “realistic possibility” standard to one requiring the return preparer to demonstrate a “reasonable belief that the position taken would more likely than not be sustained on its merits” to the final existing standard of “substantial authority.” During this rulemaking process, the phrase “more likely than not” was defined to mean that the preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50 percent likelihood of being sustained on its merits.

How does that interpretation apply to a valuation? What authorities or practices and procedures can be used to sustain such an argument? To date the IRS has provided no guidance as to the meaning of this safe harbor phrase, thereby effectively denying appraisers the opportunity to exercise this crucial penalty exception.

### **Recommendations**

The IRS should initiate a proceeding for the purpose of defining, or providing clear guidance on, the meaning of the safe harbor exception, “more likely than not the proper value.” The IRS should partner with appraisers and other external stakeholders involved in tax-related valuation issues to develop appropriate protocols, guidelines and examples for the exercise of the safe harbor provision.

Until such definition and/or guidance is operative, IRSAC recommends that 6695A valuation misstatement enforcement be used only in extreme cases involving only the valuation issue.

**INTERNAL REVENUE SERVICE  
ADVISORY COUNCIL**

**SMALL BUSINESS/SELF-EMPLOYED  
SUBGROUP REPORT**

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**NOVEMBER 17, 2010**



## INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Small Business/Self-Employed Subgroup (hereafter “Subgroup”) consists of eight tax professionals from wide-ranging backgrounds. Its members include attorneys, certified public accountants, enrolled agents and a certified business valuation professional. The Subgroup’s membership reflects the broad range of taxpayers served by the SB/SE Division of the Internal Revenue Service (hereafter “SBSE”).

This subgroup enjoys a close working relationship with the professionals within SBSE. The relationship has granted this subgroup the opportunity to consult with SBSE leadership on many issues over the past year. The Subgroup and SBSE consulted both formally and informally on all of the issues contained in this report.

This subgroup respectfully recommends the following seven actions relating to the seven issues raised in this report:

1. **The Filing Requirements for the Report of Foreign Bank and Financial Accounts (FBAR) are Confusing and Extremely Overbroad**

FBAR reporting should be streamlined and made consistent with the timing and methodology familiar to taxpayers. Policies should be developed to encourage compliance, particularly with respect to people who wish to cure inadvertent past failures to file, and exceptions from filing should be made where reporting should not be required.

2. **Collection Standards Should be Revised to Enhance Collection and to Reduce Installment Payment Default Rates**

Collection efforts can be enhanced by revising collection standards to reduce installment payment defaults.

3. **Tools and Techniques Should be Developed to Enhance Effectiveness of the Automated Collection Service**

Collection efforts can be enhanced by developing tools and techniques to expand the effectiveness of individuals working within the Automated Collection Service process.

4. **The IRS Should More Effectively Communicate the Appropriate use of Partial Payment Installment Agreements and Offers In Compromise to Maximize Collections and Manage Affordability**

Collection efforts can be enhanced by effectively communicating the availability of Partial Payment Installment Agreements and Offers In Compromise to maximize IRS collections and minimize taxpayer costs.

5. **The Reformed Lien Process Should be Made More Effective Through Further Enhancements**

Collection efforts can be enhanced by revising the lien process so that liens will most likely increase the collection of tax.

6. **Incentivize Businesses and Workers to Request a Determination of a Person's Worker Status**

Worker classification uncertainty can be resolved cooperatively by providing taxpayers with opportunities to remove the uncertainty of worker classification through incentivizing businesses and workers to voluntarily request a determination of a person's status as an employee or independent contractor.

7. **Reduce the Universe of Unresolved Worker Classification Issues by Providing Incentives for Businesses not Currently Under Audit to Properly Classify Workers Prospectively**

Worker classification uncertainty can be resolved cooperatively by providing taxpayers with opportunities to remove the uncertainty of worker classification through providing an incentive for businesses to classify workers to reduce the universe of uncertain, unresolved worker classification issues.

**ISSUE ONE: THE FILING REQUIREMENTS FOR THE REPORT OF  
FOREIGN BANK AND FINANCIAL ACCOUNTS (“FBAR”) ARE CONFUSING  
AND EXTREMELY OVERBROAD**

**Executive Summary**

The FBAR is required to be filed on Form TD F 90-22.1 each calendar year by each U.S. person who has a financial interest in or signature or other authority over foreign financial accounts, including bank, securities, or other types of financial accounts, in a foreign country if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year. It is due by June 30 of the following year.

The FBAR filing requirements should be modified to improve reporting compliance and IRS administrative efficiency. Thus, we recommend streamlining and integrating FBAR reporting so that it is consistent with the federal income tax self-assessment system. Our summarized recommendations include: (a) extending the due date to October 15 to coincide with the final filing deadline for most income tax returns; (b) providing coordinated electronic filing for income tax filers, developing an easy to use electronic filing portal for non-income tax filers, and adopting the well established “mailbox” rule for paper filers, (c) requesting guidance in connection with a reasonable cause penalty relief to encourage and accommodate filings when accounts have been disclosed and income has been substantially reported; (d) changing the filing threshold, and (e) providing an exemption from the filing requirement for employee benefit plans and U.S. officers and employees of publicly traded corporations and their subsidiaries.

## **Background**

The Bank Secrecy Act of 1970 was enacted, in part, to require reports or records where they “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.” Section 241 (31 U.S.C. §5314) provides statutory authority for the FBAR. In 1990, the Treasury Secretary established the Financial Crimes Enforcement Network (FinCEN), whose mission is to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes.

In 2001, the USA Patriot Act was enacted. Section 361(a) made FinCEN a bureau in the Treasury Department, and section 361(b) instructed the Treasury Secretary to study methods for improving compliance with the reporting requirements under 31 U.S.C. §5314. As a result of the study, FinCEN and the IRS announced in 2003 that FBAR enforcement authority would be delegated to IRS. The FinCEN director stated, “Unlike other Bank Secrecy Act reports, FBARs are filed mainly by individuals and are more closely related to tax enforcement.”

The American Jobs Creation Act of 2004 revised the penalties for failure to file a fully completed FBAR. As a result of these revisions, the penalty for non-willful violations is \$10,000, and there is a very narrow exception that may eliminate penalties only if the account balance was properly reported. The penalty for willful violations is the greater of \$100,000 or 50 percent of the account balance, and there are no exceptions. Other penalties, including a fine of up to \$500,000 and up to five (5) years of imprisonment, may apply.

In October 2008, due to an increase in IRS enforcement activity relating to foreign financial accounts, the FBAR and its instructions were revised to expand who

must file and increase the amount of information required to be included, effective for FBARs filed by June 30, 2009, for calendar year 2008. Significant changes included the following:

- Any person in and doing business in the U.S. with such financial interest or signature authority would be required to file the FBAR. Thus, a nonresident alien for income tax purposes could be required to file.
- A U.S. beneficiary of a trust whose trustee had a financial interest or signature authority would also be required to file if the beneficiary either had a present beneficial interest in more than 50 percent of the assets or from which the beneficiary received more than 50 percent of the current income.
- A U.S. person who established a trust whose trustee had a financial interest or signature authority would be required to file if a trust protector had been appointed.
- Filers would be required to report the exact maximum value in each foreign account during the year, and to identify the type of account.
- The definition of financial account would include foreign mutual funds, debit card accounts and prepaid credit card accounts, in addition to any bank, securities, securities derivatives or other financial instruments accounts.

In response to comments, the IRS subsequently released updated guidance several times:

- On June 5, 2009, Announcement 2009-51 suspended the FBAR reporting requirement with respect to those persons who are not U.S. citizens, residents, or domestic entities, but only for FBARs due on June 30, 2009.

- On June 24, 2009, the IRS published a revised version of frequently asked questions (FAQs) on its website concerning voluntary disclosure of Foreign Bank Account Reports. According to FAQ #43, U.S. persons who reported and paid tax on all their 2008 taxable income, or would timely report all their 2008 taxable income, but only recently learned of their FBAR filing obligation could file the delinquent FBARs in accordance with the directions contained in the FAQ by September 23, 2009. According to the FAQ, a U.S. person who meets the requirements of FAQ #43 would not be assessed a penalty for failure to file the FBAR. In all other circumstances, the deadline for filing calendar year 2008 FBAR was June 30, 2009.
- On August 7, 2009, Notice 2009-62 provided further relief to certain U.S. persons with signature authority but no financial interest in a foreign account and persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a foreign commingled fund. Such U.S. persons were given until June 30, 2010, to meet their FBAR filing requirements for calendar years 2003 to 2008.
- On February 26, 2010, Notice 2010-23 granted persons with signature authority over, but no financial interest in a foreign financial account until June 30, 2011, to report those financial accounts, applicable for FBARs for the 2010 and prior calendar years. Persons with a financial interest or signature authority over a foreign commingled fund that was a mutual fund would be required to file an FBAR, unless subject to some other exception, but the IRS would not interpret

“commingled fund” as applying to any funds other than mutual funds with respect to FBARs for 2009 and prior years.

- Also on February 26, 2010, Announcement 2010-16 suspends the requirement to file the FBAR for 2009 and earlier years for any person who is not a U.S. citizen, resident or domestic entity. All persons were permitted to rely on the definition of a U.S. person found in the July 2000 version of the FBAR instructions, and were permitted to disregard the current instructions that include a person in and doing business in the U.S. Under the July 2000 version of the instructions, a U.S. person was defined as (1) a citizen or resident of the U.S., (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust. Again, this applies for 2009 and earlier years. All other requirements of the 2008 version of the FBAR remained in effect.

### **Recommendations**

1. The filing deadline should coincide with or be later than the time for filing income tax returns so that the individual’s tax advisor will be able to timely discuss the filing with taxpayers. By using October 15<sup>th</sup>, all filers will have a consistent due date.
2. FBAR reporting should be accommodated through the IRS’s electronic filing system, just as state tax returns are similarly accommodated. A separate electronic filing portal should be available to non-income tax return filers. Some filers will have hundreds of accounts, making manual filing needlessly cumbersome.

3. The well-established “mailbox rule” should apply to paper FBAR filings, just as it applies to federal income tax filings (see IRC § 7502). It is unreasonable to hold individuals responsible for delivery delays beyond their control.
4. Disregarded entities should be respected so that filing responsibility is with the “tax owner” of the account.
5. To simplify prior year filings, prior year late filing for inadvertent non-filers should be limited to six years with the IRS agent able to take advantage of the ability to require additional returns if necessary consistent with Policy P-5-133. This would include cases in which income from the account has been reported and existence of the account has been noted on the annual income tax filing either by checking the box for its existence in the case of income tax returns that do not include balance sheets or by reporting on the entity’s balance sheet for other persons. The existing relief from penalties is not sufficient to encourage compliance when prior years’ filings are numerous and compiling information is excessively burdensome.
6. The IRS should provide guidance that revenue agents have greater authority to exercise discretion in waiving/abating FBAR related penalties based on well-founded reasonable cause exceptions applicable to the person’s facts and circumstances. The minimum \$10,000 penalty for non-willful violations is too severe and does not encourage compliance in many cases.
7. The IRS should consider supporting a legislative change for an exemption from FBAR filing for accounts with *de minimis* balances and minimal activity during the year. The cost of compliance for these accounts outweighs the benefit of the

- information collected. In addition, the current limits should be adjusted annually for cost of living increases.
8. There should be an exemption for employee benefit plans (both retirement and welfare plans). The purposes of the Bank Secrecy Act of 1970 are not served by requiring employee benefit plans to file FBARs, and these plans are already subject to detailed reporting obligations under the Employee Retirement Income Security Act of 1974 (ERISA).
  9. U.S. officers and employees of publicly-traded corporations and their subsidiaries should be exempt from filing because other controls exist to prevent abuse. Further, the term “publicly-traded corporations” should be broadly defined to include non-U.S. public exchanges.

**ISSUE TWO: COLLECTION STANDARDS SHOULD BE REVISED TO  
ENHANCE COLLECTION AND TO REDUCE INSTALLMENT PAYMENT**

**DEFAULT RATES**

**Executive Summary**

When a taxpayer requests an installment agreement for larger tax liabilities or proposes an offer in compromise, the IRS applies allowable expense standards. Total allowable expenses include those expenses that meet the necessary expense test. The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income. The expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family needs to live and serve as the basis for granting installment agreements and offers in compromise.

The current standards fail to provide adequate expenses for taxpayers residing in high cost communities. The IRS should revise its standards to allow cost of living adjustments for taxpayers in high cost communities that are equivalent to those provided to federal employees residing in those communities.

Many IRS collection employees fail to exercise discretion as allowed by the Code and the Internal Revenue Manual when applying the standards. Employees in Automated Collection Service (ACS) are even less likely to be flexible than revenue officers when applying the standards. The failure to exercise discretion results in more defaulted installment agreements, reduces the number of accepted offers in compromise, and incentivizes taxpayers to seek bankruptcy relief from tax obligations.

The IRS should empower its employees to exercise greater flexibility in applying the standards and thereby increase total tax collections.

### **Background**

When taxpayers owe taxes, the IRS has established collection standards for budgeting taxpayer expenses for purposes of establishing installment agreements and establishing taxpayer's ability to pay when considering offers in compromise.

In October 2007, the IRS revised its allowable expense standards to make them less flexible. In 2008, 2009 and 2010, the IRS again revised the standards but did not vary significantly from its 2007 standards. Instead of establishing national standards to recognize the need for higher living expenses appropriate for the production of income for certain higher income families, it began a system of one size fits all. The current standards also fail to recognize the varying cost of living in different regions and communities. Surprisingly, beginning in 2007, the IRS eliminated differentials for Hawaii and Alaska, our two most expensive states. In 2007, the IRS added a new category of expenses for out-of-pocket health care expenses. Although the Internal Revenue Manual and the Code allow the IRS collection personnel to vary from the standards, its employees rarely use this option because most are not adequately trained to do so and do not feel empowered to vary from the standards.

Total allowable expenses include those expenses that meet the necessary expense test. The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income. The expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family needs to live.

There are four types of necessary expenses:

- National Standards
- Out of pocket health care
- Local Standards
- Other Expenses

**National Standards:** These establish standards for (1) Food, Clothing and Other Items and (2) Out-of-Pocket Health Care Expenses.

The Food, Clothing and Other Items standard establishes reasonable amounts for five necessary expenses, included in one total national standard expense: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous. These standards come from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey. Taxpayers are allowed the total National Standards amount monthly for their family size, without questioning the amounts they actually spend.

The Out-of-Pocket Health Care standard establishes reasonable amounts for out-of-pocket health care costs including medical services, prescription drugs, and medical supplies (e.g., eyeglasses, contact lenses). The table for health care allowances is based on Medical Expenditure Panel Survey data. Taxpayers and their dependents are allowed the standard amount monthly on a per person basis, without questioning the amounts they actually spend.

**Local Standards:** These establish standards for two necessary expenses: housing and utilities and transportation. Taxpayers will normally be allowed the local standard or the amount actually paid, whichever is less.

**A. Housing and Utilities** - Standards are established for each county within a state and are derived from Census and BLS data. The standard for a particular county and family size includes both housing and utilities allowed for a taxpayer's primary place of residence. Housing and utilities standards include mortgage (including interest) or rent, property taxes, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, telephone and cell phone.

**B. Transportation** - The transportation standards consist of nationwide figures for loan or auto lease payments (referred to as ownership costs) and additional amounts for automobile operating costs broken down by Census Region and Metropolitan Statistical Area. Operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking and tolls. If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has a car, but no car payment only the operating cost portion of the transportation standard is generally used to figure the allowable transportation expense. There is a single nationwide allowance for public transportation for taxpayers with no vehicle. If the taxpayer owns a vehicle and uses public transportation, actual expenses incurred may be allowed if necessary for the health and welfare of the individual or family, or for the production of income.

**Note:** Vehicle Operating standards are based on actual consumer expenditure data obtained from the United States Bureau of Labor Statistics (BLS) which are adjusted with Consumer Price Indexes (CPI) to allow for projected increases throughout the year (These CPI are used to adjust all allowable living expenses

(ALE) standards.). Vehicle operating standards are not based on average commuting distances. Fuel costs, which are part of Vehicle Operating Costs, have a separate fuel price adjustment which is based on Energy Information Administration (EIA) data which allows for projected fuel price increases. The Internal Revenue Manual (IRM) specifically notes that national and local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation.

To support a deviation, the taxpayer must provide reasonable substantiation, which must be documented in the case file. Although deviation is allowed by the IRM, it is rare for a collection employee to vary from the standards. Many employees are not thoroughly trained in procedures and most do not feel empowered to vary from them.

Other expenses may be allowed if they meet the necessary expense test. The amount allowed must be reasonable considering the taxpayer's individual facts and circumstances.

**A. Conditional expenses.** These expenses do not meet the necessary expense test. However, they are allowable if the tax liability, including projected accruals, can be fully paid within five years.

**B.** Generally, the total number of persons allowed for national standard expenses should be the same as those allowed as exemptions on the taxpayer's current year income tax return. However, reasonable exceptions are permitted if fully

documented, e.g., to accommodate for foster children or children for whom adoption is pending.

C. A deviation from the local standard is not allowed merely because it is inconvenient for the taxpayer to dispose of valued assets or reduce excessive necessary expenses.

### **Five Year Test**

The amount allowed for necessary or conditional expenses depends on the taxpayer's ability to pay the liability in full within five years. If the liability can be paid within five (5) years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses. If the taxpayer cannot pay within five (5) years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses for up to one year in order to modify or eliminate the expense. (See IRM 5.14.1, Installment Agreements) [IRM 5.15.1.10]

### **Discretion**

With respect to offers in compromise, IRC §7122(d)(2) (A) & (B) provides:

“In General – in prescribing guidelines under paragraph (1), the secretary shall develop and publish schedules of national and local allowances designed to provide for basic living expenses.”

(B) Use of schedules. The guidelines shall provide that officers and employees of the Internal Revenue Service shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under subparagraph (A) is appropriate and *shall not use the schedules to the extent such use would result in the taxpayer not*

*having adequate means to provide for basic living expenses.* (Emphasis added)

With respect to installment agreements, the Internal Revenue Manual provides:

“Guidelines are designed to account for basic living expenses. In some cases, based on a taxpayer's individual facts and circumstances, it may be appropriate to deviate from the standard amount when failure to do so will cause the taxpayer economic hardship.”<sup>1</sup>

### **Application of the Standards**

In practice, it is rare for an IRS collection employee to vary from the standards. The problem is most apparent when a taxpayer is the subject of an ACS investigation. In contrast, Appeals is much more likely to vary from the standards. Individual employees lack confidence that they are empowered to vary from the standards and in many instances are unfamiliar with their right to use judgment in applying the standards.

Federal employees in high cost Metropolitan Statistical Areas (MSA's) are granted Cost of Living Allowances (COLA's) to account for those higher costs. A similar application of COLA allowances overlaid on the adjustments to the standards would be fairer to taxpayers in high cost areas like New York, Alaska and Hawaii.

### **Recommendations**

The IRS should implement the following changes to enhance the fairness and effectiveness of its Allowable Expense Standards:

1. Implement a system to apply COLA's to the National Standards for each MSA.
2. Publish the COLA adjustment standards on the IRS website with the standards.

Train each IRS collection employee on the application of COLA's to the

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<sup>1</sup> IRM 5.15.1.1.6

standards. Clearly note on the website that IRS employees have discretion to vary from the standards.

3. Implement a system that rewards employees who apply judgment to the individual facts and circumstances of each taxpayer. The current system discourages employees' use of judgment in reviewing the complex circumstances of individual taxpayers creating cases of undue hardship.
4. Create a range of expenses within which individual ACS employees could vary from the standards without managerial approval. This would empower employees to make decisions on allowable expenses based upon the individual facts and circumstances of the taxpayer.
5. Revise Publication 594 "The Collection Process" to reflect the changes noted above and to emphasize that IRS employees may exercise discretion when applying the Collection Standards.
6. Implement an extensive training system to apprise collection employees of their duty to review the individual facts and circumstances of a taxpayer before routinely applying the Standards. Each employee should be empowered to vary from the standards in appropriate circumstance.
7. Frontline collection managers must encourage their subordinates to apply the Collection Standards fairly and to vary from those standards in appropriate cases.

**ISSUE THREE: TOOLS AND TECHNIQUES SHOULD BE DEVELOPED TO ENHANCE EFFECTIVENESS OF THE AUTOMATED COLLECTION**

**SERVICE**

**Executive Summary**

The Automated Collection Service (ACS) can more efficiently resolve delinquent tax accounts to the mutual benefit of the taxpayer and the IRS by centralizing certain functions, and by providing more consistent training throughout all call centers. The system should be modified to synchronize the IRS call centers with incoming and outgoing correspondence and Powers of Attorney information to allow faster access to such information, and reduce duplication of effort. Establishing a practitioner division within ACS, or simply providing practitioners with direct call numbers can reduce excessive hold times and multiple call transfers to cut down on ACS call handling time and duplication of efforts.

**Background**

The ACS is the first line of contact for most taxpayers dealing with either a tax balance that cannot be immediately paid in one lump sum, or a delinquent tax account. Typically, a taxpayer is directed to call ACS after receiving correspondence from the IRS regarding a balance due. He may also be directed to call ACS if he does not qualify to use the streamline Installment Agreement (IA) system available on the IRS website.

**Raise the Maximum for Streamline Installment Agreements:**

The existing IRS streamline process allows taxpayers to make arrangements themselves to pay tax balances of less than \$25,000. This system has been very successful in arranging for the vast majority of IAs. In fact, the streamline system has

been so effective that the IRS should consider adjusting the maximum collection amount higher, to \$50,000, and then possibly to adjust this amount for inflation going forward. Raising the maximum agreement amount would allow additional taxpayers to participate in the streamline system while freeing up the ACS representatives to be available for more difficult taxpayer cases.

Allow Direct Dial Numbers for ACS Divisions:

The telephone numbers provided on IRS correspondence (e.g. 800-829-1040 or 800-829-0922) are often not the appropriate numbers to call (large case, issue other than liability, etc.). This initially creates a long initial wait time for the first stop of 10-20 minutes or more for a representative, if the call is not dropped at some point during the waiting period. Then there is a second or third equally long wait time after the initial screening by an ACS representative. Although many practitioners work with the large case division, there is no way to access a specific department directly without going through the initial customer service number. This inefficiency requires time and effort on the part of both the IRS and the practitioner since each ACS representative is required to request identical identification information from the caller. A call information screen that would transfer this information from one representative to another would dramatically reduce the time it takes for this screening effort.

Provide Practitioner Priority Function Within ACS:

Creating a tax practitioner priority function within ACS to allow direct communication with the correct department and avoid numerous call routing inquiries could dramatically cut down on call handling times for regular ACS users, such as practitioners. Even when the experienced caller knows where the call should be routed,

there is currently no way to avoid the initial screening process or to move such a practitioner call ahead in the queue.

Provide Central Processing for Correspondence and Powers of Attorney:

Mail sent in response to IRS correspondence is often lost or delayed in being posted to the system. Correspondence should be entered into the ACS upon receipt so that the letter, or at least the date of receipt of the letter, is made available to all ACS representatives. This will cut down in duplicate correspondence. Likewise, Powers of Attorney Forms 2848 (POAs) are often not available to the ACS representative, requiring the practitioner to fax and re-fax the POA each time a call is made to a new representative. The ACS representative should be instructed to input the POA into the ACS after receiving the fax so that it is available for future calls. This does not occur in most cases. From time to time, the representative does not allow the practitioner to fax the POA directly to them resulting in the need to call back again to speak with another representative or with another call center later in the day. Sometimes escalation to a supervisor resolves the problem if a supervisor is available. Not inputting such information requires additional call time that involves searches for information, consultations with supervisors, runs to the fax machine, et cetera; as well as additional and time consuming extra steps.

ACS generates letters from a number of offices (e.g., Cincinnati, Fresno, Holtsville). It is evident that these offices do not communicate with each other because a call to one of the offices often does not stop mail being generated from another. If responses to such multiple IRS correspondence are sent to more than one office, it then

becomes more difficult for the two offices to resolve the issue. Centralizing this function will result in more efficient response processing and resolution.

Train ACS Representatives to Use Discretion When Resolving a Collection Matter:

While the name ACS connotes a computer driven system without a human factor, it requires both. Using ACS computers is efficient to track deadlines, account for tax balances due (including interest and penalties), process Powers of Attorney, track correspondence, issue notices (from a simple installment plan payment reminder to notices of levy), but they are only as efficient as the people who provide them with input. This is where the breakdown in efficiency at ACS occurs.

ACS representatives vary widely in their approach to the taxpayer or his agent and this should not be the case. Some are very collector-like and not willing to discuss the account except from a collection viewpoint while others are willing to work with the taxpayer's unique issues and work out a "best possible" solution for future tax compliance. The differences can sometimes be traced to the location of the call center since calls made at different times during the day are handled differently.

Because taxpayers with tax balances over \$25,000 are not currently able to utilize the streamline process, they require IRS assistance to file for an IA. After completing the financial information on Forms 433A and B, the taxpayer and the IRS representative discuss the taxpayer's assets, income and monthly expenses, and ACS compares the taxpayer reported amounts with the National Standard tables in order to arrive at the greatest monthly amount the taxpayer can afford to pay.

The IRM allows the IRS representative to exercise discretion in allowing certain verified expenses over the National Standards allowances, but this does not often occur.

Again, the amount of discretion used in negotiating a final monthly amount varies from call center to call center.

ACS training is uniform for all call centers. However, in actual practice, such training is implemented differently. Although ACS representatives have the ability to use their discretion in arriving at a solution to a taxpayer's payment arrangement, they often do not. In this economy, unemployed people are having trouble keeping up with payments of all kinds, including taxes. Most people want to maintain compliance with the IRS, but they need assistance from ACS to resolve their payment issues. It is to the benefit of both the IRS and the taxpayer for management to allow ACS representatives some flexibility to use discretion when deciding whether to place liens, delay levy notices, or adjust installment payments to maintain taxpayer compliance and reduce the chance of default.

### **Recommendations**

1. Expand streamline level Installment Agreements by increasing the threshold of availability to \$50,000, and then consider adjustment for inflation each year.
2. Provide practitioners with direct dial numbers for ACS divisions in order to cut down on excessive transfers and hold times and the need to provide screening information numerous times during one call to more than one ACS representative.
3. Provide a practitioner priority function within ACS to allow for resolution of high dollar or otherwise complex, practitioner assisted cases.
4. Provide a system for scanning correspondence and Powers of Attorney so that each ACS representative can access it when speaking with a taxpayer or agent.

5. Issue mail and route correspondence through a centralized clearing system to minimize lost mail, overlap, or conflicting outgoing correspondence.
6. Train ACS representatives to encourage Installment Agreements, Partial Payment Installment Agreements and Offers in Compromise<sup>2</sup> in a manner that gives the taxpayer or his agent the option of choosing the best possible solution that will allow compliance and maximize payment of tax.
7. Train representatives and their supervisors from all call centers to use discretion in applying the National Standards and imposing liens<sup>3</sup>, and to be consistent in their approach to taxpayers' accounts. Encourage flexibility when an agent uses discretion in reviewing expenses.

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<sup>2</sup> Offers in Compromise and Partial Payment Installment Agreements are addressed in a separate Section of this Report.

<sup>3</sup> Liens are addressed in a separate Section of this Report.

**ISSUE FOUR: THE IRS SHOULD MORE EFFECTIVELY COMMUNICATE  
THE APPROPRIATE USE OF PARTIAL PAYMENT INSTALLMENT  
AGREEMENTS AND OFFERS IN COMPROMISE TO MAXIMIZE  
COLLECTIONS AND MANAGE AFFORDABILITY**

**Executive Summary**

The Partial Payment Installment Agreement (PPIA) and Offers in Compromise (OIC) programs for larger tax balances can be more effectively used by the IRS to resolve many otherwise negotiable tax accounts if the IRS follows through with the taxpayer to arrive at a mutually beneficial arrangement. More efficient use of such already available programs would allow taxpayers to avoid more drastic solutions such as bankruptcy or allowing the Collection Statute Expiration Date (CSED) to run while the account is unassigned in the ACS queue, thus increasing the ability for the IRS to collect the taxes due. The IRS should make information regarding the use of these programs readily available to taxpayers and practitioners.

**Background**

Under IRC §7122(a), the IRS has discretion to compromise any civil or criminal liability for taxes, interest, or penalties. If a taxpayer is unable to fully pay his tax under an Installment Agreement (IA), the taxpayer's Reasonable Collection Potential is less than the liability owed. If this is the case, but the taxpayer otherwise has some ability to pay, the IRS can enter into either a PPIA or an OIC, although an OIC may generally only be considered after all other payment options have been exhausted.

### Partial Payment Installment Agreement Program:

If the taxpayer is unable to pay the tax owed in the remaining months allowed before the CSED, a PPIA may be requested. This arrangement is somewhat of a hybrid between an IA and an OIC, since the amount of the tax is not reduced during the time allowed for collection of the tax but the IRS allows it to be paid over the remaining months leading to the CSED whether the entire balance will be fully paid or not. A PPIA gives flexibility by allowing lower payments in the first part of the arrangement, when necessary, possibly increasing to larger payments later. This collection vehicle seems particularly well suited for today's economic environment of unemployment.

IRC §6159 requires that PPIAs be reviewed every two years. At the two year review, the taxpayer's tax balance and finances are assessed to see if there is an ability to full pay the tax, or whether the monthly payments should be adjusted. There is, therefore, no apparent risk to the IRS in entering into a PPIA unless the CSED is two (2) years or less. If no determination can be made at the 2 year milestone (due to lack of information or otherwise), the case will simply be sent back to ACS, and the taxpayer has the option of filing an OIC.

### Offer In Compromise Program:

The OIC has become more difficult for taxpayers to use effectively in recent years. Although there are three categories of OICs, the most frequently attempted OIC is based on the taxpayer's inability to pay the full tax due when it has already been determined that the taxpayer is liable for the tax. These situations can be handled more efficiently. An OIC is best suited for taxpayers who owe an excessive amount of tax (a balance that is unlikely to be repaid during the statutory period), relative to their assets

and income, and/or for those taxpayers who are elderly or in ill health with little likelihood of increased or substantial future income to allow full payment of the tax. However, due to the increased frequency of rejection, this type of collection remedy has actually become more costly to the IRS since, if rejected, in addition to the time it takes to process the OIC, it then requires additional time to review updated documentation for an IA, the account might be put back into the ACS queue to eventually become uncollectible, or the taxpayer may file for bankruptcy. In substance, transaction costs and time reduce the amount of resources available to satisfy legitimate, but currently unaffordable, tax liabilities. If a rejection is warranted, an automatic default to an IA or PPIA would avoid some of these costs, shrinkage and perils.

Revenue Procedure 2003-71 states that an OIC amount may be accepted if it reasonably reflects what the IRS would expect to collect through litigation, which includes an analysis of the hazards of litigation. However, it does not appear that the IRS is weighing the costs of collectability against its lost revenues when statistics show that fewer and fewer OICs are being accepted each year.

#### Taxpayer Awareness:

The average taxpayer is inundated daily with television and radio ads placed by national taxpayer assistance companies that brag of their ability to obtain “pennies on the dollar” tax relief from the IRS. The IRS can reduce the negative impact that these companies have on both the taxpayer and the IRS by posting simple and easily available information on its website to educate the taxpayer in readily available collection options.

## **Recommendations**

1. Promote use of the Partial Payment Installment Agreement and Offers in Compromise programs. These underused programs can effectively assist taxpayers resolve tax debts that might otherwise end up uncollectible or in bankruptcy.
2. The IRS should use its website to educate taxpayers in available choices for collection alternatives and make such information easily locatable for the taxpayer and tax practitioners.
3. The IRS website information for Installment Agreements should list dollar limits, length of time to pay, refer the taxpayer to the National Standards tables to see if they qualify for such an agreement, explain how to use the online streamlined IA, and when to contact an IRS representative.
4. The IRS website information for a Partial Payment Installment Agreement and Offer in Compromise should explain the qualification criteria so that a taxpayer can see if he qualifies prior to contacting the IRS or a tax practitioner.

## **ISSUE FIVE: THE REFORMED LIEN PROCESS SHOULD BE MADE MORE EFFECTIVE THROUGH FURTHER ENHANCEMENTS**

### **Executive Summary**

With unemployment at an alarming rate of 10 percent, and an influx of liens as a result of the economic downturn, the IRS has begun to effectively and efficiently enhance its lien process in order to improve collection efforts. In 2009, the Subgroup made several recommendations to streamline the current lien process, as well as provided feedback that conveyed the economic concerns of taxpayers as a result of IRS liens used as the ultimate means of collection. While it is understood that the IRS has a duty to collect taxes as effectively and efficiently as possible, there is a window of opportunity for the IRS to improve and enhance its lien process to promote the charge of the Commissioner, ... “to assist in economic recovery as well as design programs that will assist the struggling taxpayer through difficult economic times.” In its continued effort to streamline and be most effective with the Lien Process, the IRS should consider enhancing its collection efforts by (1) training employees to use their discretionary abilities when considering filing a lien, (2) emphasizing that it is the collection agent’s responsibility to use all collection tools rather than automatically filing liens, and (3) increasing training and continued education to empower Revenue Officers to use judgment about when to withdraw or discharge a lien.

### **Background**

Historically, the lien process created inefficiencies and complexities in its efforts to collect tax dollars from the taxpayer. The recommended forms from 2009 for the subordination, subrogation, discharge, release, and withdrawal of liens facilitated lien

processing; however the need to educate the IRS employees on the IRS's general lien policies remains. The IRS employees should be empowered to use sound and knowledgeable discretion when analyzing each case. The agents should be advised of their ability to view the totality of the circumstances of each individual case, rather than applying a "one-size-fits-all" operating standard to all taxpayers.

In the 2009 IRSAC report, the Subgroup recommended the IRS revisit its policies regarding the lien process. However, the reformed lien process creates the need to review the variables that trigger liens in the Automated Processing system which automatically decides lien filings based upon aging and other nonhuman triggers. In addition, the reformed process creates the need for case-by-case analysis by its employees, all of which creates the need to revisit IRSAC's recommendation of increasing the available option of lien withdrawals versus lien discharges once the lien has been satisfied.

In 2010, statistics show that the number of lien withdrawals has not kept pace with the number of impoverished taxpayers affected by the economic downturn. In this time of financial turmoil and unemployment, and in following the intent of our government's focus on economic stimulus, it is imperative that the IRS recognize the need to assist the taxpayers with tools that will help boost the taxpayers' creditworthiness, help maintain tax compliance, and assist in igniting the economy as a whole. The National Taxpayer Advocate has made this same plea to IRS and Congress when it made clear the urgency to change the Lien processes, especially in the area of lien withdrawal.

The IRS is aware of the need for making efficiencies in the lien process, but deems that such changes will require significant resources and study time to operate in

the most effective and efficient manner. As quoted in *National Taxpayer Advocate, Report to Congress Fiscal Year 2011*, the Deputy Commissioner proclaimed:

“The IRS fully appreciates the views and concerns expressed by the Office of the National Taxpayer Advocate [and other advisory groups]. However, making significant fundamental changes to lien policies and procedures such as those directed in TAD 2010-1 have the potential to materially affect the revenue collected for the United States. Thus, any potential changes should be carefully considered and supported by clear and consistent data as to the effect of the changes including rights and obligations of taxpayers, effective and efficient resource allocation and revenue collected or foregone. In order to consider the specific directives of TAD 2010-1, additional study is necessary.”<sup>4</sup>

A sense of urgency is missing from the above statement of the Deputy Commissioner. In light of the taxpayers’ current and continuing state of economic turmoil, there is an urgent need for the IRS to escalate the need to streamline its reformed lien processes.

### **Recommendations**

1. Provide extensive training and continued education to IRS employees, reinforcing the IRS employees’ discretionary abilities in deciding whether or not to file a lien.
2. Reinforce and emphasize in the training process the employee’s responsibility to use all collection tools and the discretionary authority granted rather than automatically filing liens as the first option to collectability.

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<sup>4</sup> Memorandum to Nina E. Olson, National Taxpayer Advocate, from Steven T. Miller, on TADs 2010-1, 2010-2, 2010-3 (June 10, 2010).

3. Provide extensive training and continued education to its Revenue Officers to empower its Officers to use discretion on whether to withdraw or discharge a lien based upon the taxpayers' unique circumstances to enhance collectability, all the while being sensitive to how a lien discharge or lien withdrawal may affect the taxpayers' creditworthiness and affect the overarching goal of economic recovery.

**ISSUE SIX: INCENTIVIZE BUSINESSES AND WORKERS TO REQUEST A DETERMINATION OF A PERSON'S WORKER STATUS**

**Executive Summary**

The SS-8 process is perceived to be biased toward a conclusion of employee status with the result that it is only very infrequently used by service recipients. To encourage the use of Form SS-8 by service recipients, taxpayers need to believe that facts are properly understood. Classification for arrangements that have only recently begun is most difficult. By giving the IRS the ability to make a tentative conclusion of worker status under a specific fact pattern and the ability to review that tentative conclusion after a number of years, the IRS may be able to more accurately define worker status and taxpayers will be more confident that the arrangement being evaluated is dependent on actual facts and circumstances, thereby reducing current negative perceptions.

**Background**

A Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (Form SS-8) is used by a business or worker to request a determination regarding a worker's employment tax status as an employee or independent contractor. The information on the Form SS-8 is reviewed by a tax examiner in the SS-8 Program, and a determination is made based upon the common law relating to employment relationships. Employers believe that IRS determination is biased toward the conclusion that workers at issue are employees. In addition, there is a concern that the SS-8 process increases audit exposure.

Proper worker classification, whether as an employee or independent contractor, is critical. The effects of worker misclassification have significant consequences.

Workers may not be qualified for certain benefits, taxes are not collected as quickly as they otherwise would be and businesses may face unanticipated taxes and penalties.

### **Recommendations**

1. Waive prior year taxes that could apply if classification was applied retroactively for SS-8 filers or reduce them by applying the IRC Section 3509<sup>5</sup> rates if employee status is determined for an individual previously classified and reported as an independent contractor.
2. Allow taxpayers to apply for a provisional IRS review and determination based on expected facts and circumstances posed in good faith such that certain temporary conclusions are made with a later determination of facts as they develop.

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<sup>5</sup> Under IRC section 3509, if the business filed information returns as if its workers were independent contractors, then the income tax withholding rate is reduced to 1.5 percent of wages and the employee-share FICA/Medicare rates are equal to 20 percent of the full rates. If it did not file information returns, then the income tax withholding rate is reduced to 3 percent and the employee-share FICA/Medicare rates are equal to 20 percent of the full rates. In either case, the employer gets no reduction for the employer's share of FICA and Medicare.

**ISSUE SEVEN: REDUCE THE UNIVERSE OF UNRESOLVED WORKER CLASSIFICATION ISSUES BY PROVIDING INCENTIVES FOR BUSINESSES NOT CURRENTLY UNDER AUDIT TO PROPERLY CLASSIFY WORKERS PROSPECTIVELY**

**Executive Summary**

The IRS Worker Classification Settlement Program (CSP) has helped to resolve many worker classification issues. However, this voluntary program is currently available only to businesses facing an IRS audit. We recommend that the CSP be expanded to businesses that are not being audited by the IRS, but are seeking resolution to worker classification issues. We also recommend that the IRS publicize the expanded CSP to businesses and tax professionals.

**Background**

No simple or objective test exists to distinguish whether a worker is an employee or an independent contractor. The tests used to determine whether a worker is an independent contractor or an employee are complex and subjectively applied. Significant tax consequences result from the classification of a worker as an employee or independent contractor.

Under the CSP, the examiner must first determine whether the employer is entitled to relief under the guidelines for determining the employment status of a worker as set forth in §530 (a) of the 1978 Act, as amended by §269(c) of the Tax Equity and Fiscal Responsibility Act of 1982 (“Section 530”). Section 530 generally allows a service recipient to treat a worker as not being an employee for employment tax purposes, regardless of the worker’s actual status under the common-law test, unless the

service recipient has no reasonable basis for such treatment or fails to meet certain requirements. Section 530 was permanently extended by the Tax Equity and Fiscal Responsibility Act of 1982.

If the service recipient is entitled to §530 relief, under CSP there is no assessment and the service recipient can continue to treat the workers in question as independent contractors.

If the service recipient desires to begin treating the workers as employees, it can agree to do so in the future (no later than the beginning of the next year) without giving up its claim to §530 relief for earlier periods.

If the examiner determines that the service recipient is erroneously treating employees as independent contractors, a series of two graduated CSP settlement offers can occur. If the service recipient has met the reporting consistency requirement of §530 but clearly has no reasonable basis for its treatment of the workers as independent contractors or has been inconsistent in its treatment of the workers, the offer will be a full employment tax assessment under IRC §3509 (with the employer agreeing to reclassify the workers as employees on a prospective basis, ensuring future compliance).

In the event of a recharacterization of workers as employees from independent contractors under CSP or otherwise, no interest will be due on the additional liability arising as a result of the recharacterization if: (i) the employer agrees to the recharacterization with either the Examination Division or the Appellate Division of the IRS (following a timely Protest), and (ii) the additional FICA tax is paid in full before the date the current Form 941 would be due for the quarter within which there is an agreement with the IRS as to the recharacterization. See Revenue Ruling 75-464 and

IRC §6205. The foregoing represents a significant economic incentive for the employer to promptly agree to the recharacterization and satisfy the resulting liability.

Under present law, the determination of whether a worker is an employee or an independent contractor is generally made under a facts and circumstances test that seeks to determine whether the worker is subject to the control of the service recipient, not only as to the nature of the work performed, but the circumstances under which it is performed.

Before a service recipient can know how to treat payments made to workers for services, they must first know the business relationship that exists between the service recipient and the person performing the services. The person performing the services may be: (a) A common-law employee, (b) A statutory employee, (c) A statutory nonemployee, or (d) An independent contractor.

Under common-laws rules, a worker may generally be subject to classification as an employee if the service recipient can control what will be done and how it will be done. An individual is generally treated as an independent contractor if the person for whom the services are performed has the right to control or direct only the result of the work and not the means and methods of accomplishing the result. In Rev. Rul. 87-41, the IRS developed a list of 20 factors that may be examined in determining whether an employer-employee relationship exists. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. In 1996, the IRS published a training manual for examiners, entitled “Independent Contractor or Employee? Training Materials” which grouped the common factors in three categories: (1) behavioral control; (2) financial control, and (3) relationship of the parties.

In recent years, the IRS has addressed these 3 categories by focusing on the existence of entrepreneur behavior, thereby focusing on the less subjective financial control category.

The Subgroup has observed that worker classification and employment tax issues will become increasingly controversial with pressure put on businesses with respect to the 2014 requirement for employer-provided health insurance. In addition, the IRS has an employment tax initiative in which it is targeting this issue. The longer misclassification as an independent contractor continues, the more onerous correction becomes. Congress has provided relief from reclassification in circumstances which meets certain requirements outlined in §530 of the Revenue Act of 1978 and decreased the amount of employment taxes that can be assessed, many businesses are still reluctant to address this issue. Because of the decreased taxes on assessment, employers have little incentive to approach the IRS with an offer to confirm an individual's treatment or resolve prior years. By opening up the CSP to taxpayers not currently under audit, the IRS will be reducing future audit issues and accelerating resolution of unpaid taxes.

Businesses should be encouraged to take whatever steps are necessary to properly classify workers. Such proper classification will likely result in more workers being classified as employees, in accelerated future tax payments through income and employment tax withholding, less unreported income and fewer inappropriate income tax deductions.

### **Recommendations**

1. Expand the CSP by making it available as a voluntary disclosure program modeled after other IRS voluntary tax compliance programs. The employment

tax /worker classification voluntary disclosure program could provide for graduated CSP treatment for employers who voluntarily contact the IRS before:

- The IRS has initiated an examination or investigation of the service recipient, or has notified the service recipient that it intends to commence such an examination or investigation;
- The IRS has received information from a third party (e.g. informant, other governmental agency, or the media) alerting the IRS to the specific service recipient's potential noncompliance;
- The IRS has initiated a civil examination or investigation that is directly related to the employment tax liability of the service recipient.

2. Publicize the expanded CSP to the business and tax professional communities.

- To incentivize compliance, the IRS should consider sending letters to service recipients in industries having a history of noncompliance, offering a way to avoid penalties through an employment tax voluntary disclosure program. Service recipients should be encouraged to self-comply by receiving educational information regarding worker status and being given the opportunity to correct prior classification errors outside the traditional examination process.
- To increase taxpayer's awareness of this issue, the IRS should publish the Top 10 employment tax issues discovered on audit. This should include meaningful examples setting forth potential liabilities for taxes and penalties, both upon audit and under the voluntary CSP. Examples of

employees could include seasonal workers (such as retail help at holidays) and replacement workers for employees on long-term leave of absences.

**INTERNAL REVENUE SERVICE  
ADVISORY COUNCIL**

**OFFICE OF PROFESSIONAL RESPONSIBILITY  
SUBGROUP REPORT**

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**NOVEMBER 17, 2010**



## **INTRODUCTION/EXECUTIVE SUMMARY**

The IRSAC OPR Subgroup (hereafter “Subgroup”) is comprised of a diverse group of nine professionals, including lawyers, CPAs, enrolled agents, appraisers, and a representative of the tax software industry. All the members of the Subgroup are completing their third year on the Subgroup and they all greatly appreciate the opportunity they have had to work together with the Office of Professional Responsibility, especially this year with the promulgation of the registered tax return preparer regulations.

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

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

### **1. Recommendations regarding definition of “preparer”**

The IRSAC supports the IRS in its efforts to improve service to taxpayers and increase compliance through the registration of return preparers and the application of ethical rules to all return preparers. The IRSAC is concerned, however, about the lack of clarity and guidance regarding the definition of the term “preparer” for purposes of the new registered tax return preparer requirements and urges the IRS to consider postponing application of the new registration requirements to non-signing preparers. Some of the specific recommendations in this area as follows: 1) the IRS should postpone implementation of the registration requirements with respect to all non-signing preparers pending further study, 2) if the definition of return

preparer included in the final regulations is retained, additional guidance should be issued that provides a measurable standard to determine what constitutes the preparation of “substantially all” of a tax return, and 3) the IRS and OPR should not attempt to hold a firm/employer accountable for a non-signing employee’s failure to comply with the new registration requirements until clarifying guidance on the definition of return preparer has been issued.

## **2. Proposed CE program and sponsor requirements**

The IRSAC is concerned the proposed Circular 230 revisions, which require OPR review and approval of every continuing education program, will impede effective administration. Some of the specific recommendations in this area as follows: 1) develop an acceptable alternative to the full OPR review of every continuing education program that is required in proposed Circular 230, 2) consider an alternative more like the current sponsor arrangement in Circular 230, but increase oversight of providers to check compliance with Circular 230 requirements regarding qualified continuing education programs, and 3) develop some type of online system that will streamline and expedite the process for OPR approval of providers and programs, as well as the assignment of course numbers.

## **3. Enrollment of former IRS employees**

The IRSAC was asked to provide input and feedback regarding whether former IRS employees should be granted Enrolled Agent status (full or limited) simply by virtue of their past IRS employment. Some of the specific recommendations in this area as follows: 1) Treasury should revise Circular 230 to remove the authority to grant enrollment to former IRS employees simply based on their past IRS work experience, and 2) Circular 230 should require all persons, including former IRS employees, to take and pass the enrolled agent examination as a prerequisite to becoming an enrolled agent.

#### **4. Circular 230 definition of “willfully”**

Most ethical violations covered by Circular 230 require the Office of Professional Responsibility to establish that the conduct was “willful” before sanctions may be imposed. Currently, Circular 230 does not contain an explicit definition of “willful” conduct. In that regard, we recommend Treasury amend Circular 230 to clearly define “willful” as “a voluntary, intentional violation of a known legal duty.”

#### **5. Precedential guidance regarding ethical issues**

OPR requested that the IRSAC investigate the feasibility of creating a structure to provide information and precedential guidance to practitioners seeking to be compliant with the applicable rules and regulations of Circular 230. The Subgroup discussed and brainstormed this issue and offered a number of suggestions, including the creation of an “Information Network” staffed by expert volunteers.

#### **6. Oversight of preparers under Title 31**

With the implementation of the new regulations surrounding the registration of all tax return preparers there may be the temptation to focus the oversight of the new class of registered tax return preparers exclusively under Title 26 as opposed to under Title 31. While this may appear to be more effective and efficient, oversight of the ethical behavior of the new registered tax return preparers should be administered by OPR under Title 31 and the enforcement of the new PTIN rules and how registered tax return preparers apply the tax law when preparing tax returns should be administered under Title 26.

**ISSUE ONE: RECOMMENDATIONS REGARDING THE DEFINITION OF  
“PREPARER” FOR PURPOSES OF NEW REGISTERED RETURN PREPARER  
REQUIREMENTS**

**Executive Summary**

The IRSAC supports the IRS in its efforts to improve service to taxpayers and increase compliance through the registration of return preparers and the application of ethical rules to all return preparers. The IRSAC is concerned, however, about the lack of clarity and guidance regarding the definition of the term “preparer” for purposes of the new registered tax return preparer requirements and urges the IRS to consider postponing application of the new registration requirements to non-signing preparers.

**Background**

In December 2009, the Internal Revenue Service announced the results of a six-month long study of the paid tax return preparer industry and proposed new requirements for registration, testing and continuing education of return preparers, which are intended to improve service to taxpayers, increase confidence in the tax system and result in greater compliance. Since these new requirements only apply to return “preparers,” the definition of return preparer is the key to determining the applicability of these requirements. Unfortunately, no clear definition of the term currently exists.

The IRS Return Preparer Review report recommended that the requirement to register and obtain a Preparer Tax Identification Number (PTIN) be applied only to “signing preparers,” at least initially. A requirement applicable to signing preparers is clear and easy to apply because there is only one signing preparer per tax return. Registration of the signing preparer makes sense because the signing preparer is the one

with “primary responsibility for the overall substantive accuracy.” Registration of the signing preparer also meets the principal objectives of the regulation, which are “to enable the IRS to more accurately identify tax return preparers and improve the IRS’s ability to associate filed tax returns and refund claims with the responsible tax return preparer.” It is difficult to see how registration of a non-signing preparer will meet these objectives when the IRS will only have visibility to the PTIN of the signing preparer because only the signing preparer’s PTIN is transmitted with the return.

Despite the IRS’s initial recommendation regarding registration of signing preparers and the objective stated in the preamble to both the proposed and final IRC §6109 regulations, the final regulations issued September 30, 2010, extend the requirements beyond the signing preparer to include “any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax,” if the individual otherwise meets the definition of tax return preparer under Treas. Reg. §301.7701-15. Although the regulations contain several examples designed to illustrate the application of the definition of tax return preparer, the definition remains somewhat vague. For example, notwithstanding the scenarios in the PTIN FAQs, there are no specific guidelines for determining whether an individual prepared or assisted in the preparation of “substantially all” of a tax return. In addition, the regulations refer to the IRC §7701 definition of a preparer and seem to incorporate that definition, yet some of the wording in the regulation appears to be inconsistent with the definition found in §7701. One can clearly interpret the definition and examples in the §6109 regulations as an expansion of the class of individuals considered a preparer.

To add to the confusion, the proposed revisions to Circular 230, issued on August 19, 2010, contain yet another definition of “preparer.” Under proposed §10.2(a)(8), a preparer is defined as “any individual within the meaning of §7701(a)(36) and 26 CFR 301.7701-15.” There is also a provision in the proposed revisions to Circular 230 that makes the failure to obtain a PTIN an ethical violation subject to sanction by OPR. In addition, the proposed revisions to Circular 230 attempt to hold firms/employers accountable for an employee’s lack of compliance with Circular 230. As a result, a firm/employer could be sanctioned for failure of an employee to obtain a PTIN.

Although the goals of the new requirements are laudable, the new requirements should not impose an undue hardship on tax return preparers or their employers and should not unnecessarily increase tax preparation costs to taxpayers. They should be narrowly tailored to meet the IRS objectives of ensuring preparer competence and improving taxpayer compliance, while at the same time minimizing the burden on preparers and disruption in the industry. The regulations in their current form are burdensome and difficult to apply due to a lack of clarity regarding who is a return preparer. For example, the intern scenario (the third of the six scenarios) in the PTIN FAQs could lead to undue burdens on firms preparing tax returns. The regulations also potentially subject firms/employers to penalties and sanctions for an employee’s failure to comply with rules that are unclear.

The proposed and final regulations provide that the IRS may prescribe exceptions to any of the requirements in the regulations if necessary for effective tax administration. One example mentioned in the proposed regulations is an exception during the interim period while procedures are being implemented.

The IRSAC supports the IRS in its efforts to improve service to taxpayers and increase compliance through the registration of return preparers and the application of ethical rules to all return preparers but is concerned about the lack of clarity and guidance around the definition of return preparer and urges the IRS to consider the following recommendations.

### **Recommendations**

1. The IRS should postpone implementation of the registration requirements with respect to all non-signing preparers pending further study regarding how the term “preparer” can be defined in such a way as to provide clarity for practitioners and their firms/employers, as well as meet the IRS’ objectives of ensuring preparer competence and improving taxpayer compliance without unnecessarily increasing the burden to preparers and their employers.
2. The regulations and other guidance should align the definition of preparer for purposes of the IRC §6109 regulations with the definition in the proposed changes to Circular 230 and the definition under IRC §7701 in order to eliminate some of the confusion and complexity caused by having multiple definitions for the same term within the Code and Treasury Regulations.
3. If the definition of return preparer included in the final regulations is retained, additional guidance should be issued that provides preparers and their firms/employers a measurable standard they can apply to determine what constitutes “substantially all” of a tax return or claim for refund.
4. Any definition of the term “substantially all” for purposes of IRC §6109, and the regulations thereunder, should be consistent with other definitions of the

term found in the Code and regulations in order to eliminate some of the confusion and complexity caused by having multiple definitions of the same term.

5. The IRS and the OPR should not attempt to hold a firm/employer accountable for an employee's failure to comply with the new registration requirements until clarifying guidance on the definition of return preparer has been issued.

**ISSUE TWO: RECOMMENDATIONS REGARDING CONTINUING  
EDUCATION PROGRAM AND SPONSOR REQUIREMENTS UNDER  
PROPOSED CHANGES TO CIRCULAR 230**

**Executive Summary**

The IRSAC supports the IRS in its efforts to improve service to taxpayers and increase compliance through the registration of preparers and the application of the ethical rules to all return preparers but is concerned the proposed Circular 230 revisions, which require OPR review and approval of every continuing education program, will impede effective administration.

**Background**

In December 2009, the Internal Revenue Service announced the results of a six month long study of the paid tax return preparer industry and proposed new requirements for registration, testing and continuing education, which are intended to improve service to taxpayers, increase confidence in the tax system and result in greater compliance. One of the IRS's proposals requires ongoing continuing professional education for all paid tax return preparers, except attorneys, CPAs and EAs who are already subject to continuing education requirements. On August 19, 2010, Treasury released proposed revisions to Circular 230, which are intended, among other things, to implement the new continuing education requirements. Also included in the proposed revisions to Circular 230 are extensive changes to the continuing education provider requirements. Under proposed Circular 230, §10.9(a)(2), all continuing education providers are required to obtain OPR approval for any programs they wish to qualify for the IRS continuing education credit. Circular 230 does not specify the process OPR is to follow in approving programs; it

merely states that the approval must be obtained “in the time and manner required by forms or procedures established and published by the Internal Revenue Service.”

OPR has instituted procedures for approval of continuing education programs that require providers to submit a host of information, including complete course materials and resumes of instructors and program writers indicating their qualifications. Please see Exhibit A for a list of items OPR currently requires for approval of continuing education programs. Note the statement at the end of the list indicating this list “is not comprehensive, additional information may be requested.” These OPR procedures impose an undue burden on providers and make timely approval of programs impractical.

Prior to issuance of the proposed regulations on the registration of tax return preparers, the only preparers subject to the IRS mandated continuing education requirements were enrolled agents. Currently, there are approximately 46,000 EAs. Under the proposed regulations, the IRS estimates approximately 600,000 additional preparers will be subject to the new continuing education requirements. This dramatic increase in the number of preparers subject to the IRS continuing education requirements raises the following serious questions that must be considered:

- Will there be a sufficient number of qualified providers and qualified programs to meet the continuing education needs of an additional 600,000 preparers when the continuing education requirements take effect?
- Is OPR review of **every** program feasible given the number of providers and programs that will be needed to meet the continuing education needs of an additional 600,000 preparers?

- Does OPR have sufficient staff to adequately review every program?
- Will applications for program approval be reviewed on a first in first out basis? If not, how will OPR address the situation where there are many simultaneous submissions of applications?
- What criteria will OPR apply when judging the content of programs and qualifications of instructors?
- What will be the turnaround time for program approval; how will OPR ensure that programs are approved in a timely manner, particularly when late legislation is a common occurrence?
- What mechanism(s) does OPR have in place to ensure consistency in the review and approval of programs?

The IRS simply cannot review and approve every continuing education program, just as the IRS cannot audit every tax return that is filed. Providers should ultimately be responsible for ensuring their programs meet the IRS requirements and should be held accountable if the requirements are not met. The current sponsor program contained in Circular 230, §10.6(g) is fundamentally sound. There simply needs to be better oversight and enforcement of existing rules to ensure requirements are being met and that providers who are not meeting the requirements are dealt with appropriately.

OPR should enable approved providers to utilize some type of online template or system to electronically submit limited information regarding courses (such as name of course, date, location, instructor, CE hours, and outline of the topics to be covered) to OPR for expedited approval and assignment of course numbers. The template could

include a checklist or check boxes where the provider must certify compliance with all requirements (the program was developed by individual(s) qualified in the subject matter, program subject matter is current, instructors are qualified with respect to the program content, certificates of completion bearing a program number will be provided to participants upon successful completion, attendance records will be maintained, etc.) OPR could then do random reviews (or targeted reviews in the event of specific complaints) to verify provider compliance with the requirements.

The IRSAC supports the IRS in its efforts to improve service to taxpayers and increase compliance through the registration of tax return preparers and the application of the ethical rules to all tax return preparers but is concerned about (1) the feasibility of proposed Circular 230 revisions that would require OPR review and approval of every continuing education program; (2) the additional burden such a requirement imposes on continuing education providers and instructors; and (3) the potential negative impact on tax compliance that is likely to result if OPR is not able to review and approve programs in a timely manner. In light of these concerns, the IRSAC requests the IRS to consider the following recommendations.

### **Recommendations**

1. Develop an acceptable alternative to the full OPR review of every continuing education program that is required in proposed Circular 230, §10.9(a)(2).
2. Consider an alternative more like the current sponsor arrangement in Circular 230 §10.6(g), but increase oversight of providers to check compliance with Circular 230 requirements regarding qualified continuing education programs.

3. Develop some type of online system that will streamline and expedite the process for OPR approval of providers and programs, as well as the assignment of course numbers.

## **ISSUE THREE: CIRCULAR 230 ENROLLMENT OF FORMER INTERNAL REVENUE SERVICE EMPLOYEES**

### **Executive Summary**

The IRSAC was asked to provide input and feedback to the Office of Professional Responsibility (OPR) regarding the issue of whether former Internal Revenue Service (IRS) employees should continue to be granted Enrolled Agent (EA) status under Circular 230, §10.4 simply by virtue of past IRS employment.

### **Background**

Circular 230, §10.4(c) authorizes the enrollment of former IRS employees based on qualifying past job experience, which is defined as a minimum of five years continuous employment during which time the applicant was "regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and regulations pertaining to income, estate, gift, employment or excise taxes." The application for enrollment as an EA under this section must be made within three years from the date of the applicant's separation of employment from the IRS.

The OPR currently admits seven categories of former IRS employees (Customer Service Representative, Tax Compliance Officer, Revenue Officer, Revenue Agent, Tax Law Specialist, Appeals Officer, and Criminal Investigator/Special Agent) to full enrollment status based on standard positional descriptions, in conjunction with the employee's grade level and last two evaluations. Taxpayer Advocates may have also been added to the list of former IRS employees receiving full enrollment status. In addition, OPR typically grants full enrollment status to certain IRS executives (including District and Area Directors, Service Center Directors, and executives in technical

capacities) with more than five years of service. Circular 230, §10.4(c)(3) authorizes limited enrollment if a former IRS employee's experience is limited to certain types of cases, such as collections. According to a 2006 Treasury Inspector General for Tax Administration (TIGTA) audit report, the granting of enrollment to former IRS employees was far more restrictive prior to the creation of the Office of Professional Responsibility in 2003, and was far more likely to be limited.

In order to obtain a historical perspective and understand how the policy on enrollment of former IRS employees was administered prior to the creation of the Office of Professional Responsibility, the Subgroup interviewed Patrick McDonough, who was the former Director of Practice from 1998-2002. McDonough indicated that between 1981 and 1995, almost any former IRS employee with five years of experience with the IRS could apply for and obtain EA status. Although the Director of Practice did ask for recommendations from the IRS office to which the applicants were last assigned, almost all applications by former IRS employees were granted. When McDonough became the Director of Practice, according to him, the policy was changed and EA status was only granted to Revenue Agents and Appeals Officers who had previously been Revenue Agents. According to McDonough, as many as 1,000 former employees per year applied for EA status during his tenure. McDonough indicated that many of the EA disciplinary problems reviewed by his office involved former IRS employees who were Revenue Officers. In his opinion, many Revenue Officers are not equipped to deal with examination issues because they do not typically have the necessary tax law knowledge. McDonough firmly believes former IRS employees should be required to pass the Special Enrollment Exam (SEE).

Although Circular 230, §10.4(c)(5) requires former employees to “have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes,” it appears this requirement was routinely ignored by OPR until the current Director took over the position in early 2009. In September 2006, the Treasury Inspector General for Tax Administration (TIGTA) issued an audit report, which analyzed the means by which OPR admits former IRS employees as enrolled agents, pursuant to Circular 230, §10.4(c). The audit report concluded that OPR’s then-current methods of admitting former employees were inconsistent and inadequate to protect taxpayers from unqualified EAs. The TIGTA report recommended the discontinuance of the enrollment program for former IRS employees. Since Director Hawkins took over, OPR has reverted to strictly adhering to the provisions of Circular 230 by limiting the practice of former IRS employees wishing to “automatically” become enrolled agents.

### **Recommendations**

1. Treasury should revise Circular 230, §10.4 to remove the authority to grant enrollment to former IRS employees simply based on past IRS work experience.
2. Circular 230 should require all persons, including former IRS employees, to take and pass the SEE as a requirement to enrollment as an EA.
3. If Treasury does not revise Circular 230 to require passage of the SEE by all individuals desiring to become EAs, OPR should continue to strictly follow the requirements outlined in Circular 230, §10.4(c)(5) when reviewing enrollment applications of former IRS employees to ensure the employees

have the requisite tax knowledge and technical experience. In addition, if a former IRS employee wishes to prepare tax returns for compensation, they should be required to pass the registered tax return preparer exam that is required of other registered tax return preparers for the level of tax preparation services they will be providing.

**ISSUE FOUR: RECOMMENDATION REGARDING THE DEFINITION OF  
“WILLFULLY” USED IN CIRCULAR 230**

**Executive Summary**

Most ethical violations covered by Circular 230 require the Office of Professional Responsibility to establish that the conduct was “willful” before sanctions may be imposed. Currently, Circular 230 does not contain a definition of “willful” conduct.

We recommend Treasury amend Circular 230 to clearly define “willful” as “a voluntary, intentional violation of a known legal duty.”

**Background**

Under Circular 230, §10.52(a)(1), a practitioner may be sanctioned if the practitioner is shown to have “willfully” violated any Circular 230 provision (other than §10.33 which refers to best practices). A practitioner may also be sanctioned pursuant to §10.51 for incompetence and disreputable conduct, including “willfully” failing to make a Federal tax return. Circular 230 does not contain any guidance regarding when a practitioner is considered to have “willfully” violated a provision.

**CURRENT “WILLFUL” STANDARD**

In assessing whether a practitioner has willfully violated a Circular 230 requirement, the Appellate Authority has applied the criminal standard from *Cheek v. United States*, 498 U.S. 192 (1991). In *Cheek*, “willful” was defined as a “voluntary, intentional violation of a known legal duty” without regard to any “bad motive” or “evil intent” of the taxpayer. Thus, under this standard, the government must show that the law imposed a duty, the practitioner knew of the duty, and the practitioner voluntarily and intentionally violated the duty. *Cheek* also held that a good faith mistake, even if not

“objectively reasonable,” negates a finding of “willfulness” in the case of a violation of a Code provision, in view of the Code’s complexity.

There have been two recent decisions, wherein the Appellate Authority questioned whether the standard in *Cheek* is appropriate for disciplinary proceedings under Circular 230, notwithstanding the fact that the practitioner in each case was found to have “willfully” violated Circular 230 under the *Cheek* standard. These cases are: *Office of Professional Responsibility v. Juanita A. Gonzales* (December 9, 2009) and *Office of Professional Responsibility v. Kevin Kilduff* (January 20, 2010).

In *Gonzales*, the Appellate Authority suggested that the definition of “willful” under the Rules of Professional Conduct of the State Bar of California might be preferable:

For example, the California Supreme Court has determined that the term “willful” under the Rules of Professional Conduct of the State Bar of California means “simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.”<sup>6</sup>

The above quote could be read as supporting a “willful” standard that does not require a practitioner to know of the duty he is accused of having violated. The Appellate Authority was signaling a potential lowering of the *Cheek* “willful” standard for purposes of Circular 230.

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<sup>6</sup> Quoting *Richard A. Phillips v. State Bar of California*, 782 P.2d 587, 591 (1989), quoting *Durbin v. State Bar*, 590 P.2d 876 (1979).

## HOW TO DEFINE “WILLFUL”?

The basic *Cheek* test for defining “willful” — “a voluntary, intentional violation of a known legal duty” — seems sound in the Circular 230 context. A practitioner should not be considered to have “willfully” violated Circular 230 unless the government demonstrates that the law imposed a duty on the practitioner, the practitioner knew of the duty (even if he did not know the duty was in Circular 230), and the practitioner voluntarily and intentionally violated that duty.

This high standard of “willful” is appropriate given the quasi-penal nature of Circular 230, the vagueness of key requirements (such as the “due diligence” requirement), and the overall complexity of the tax code and regulations. Circular 230 not only reflects complex Code concepts, it also incorporates complex non-tax requirements, such as the conflict of interest provisions of §10.29. Additionally, §10.30 imposes detailed advertising and solicitation rules, including specific document retention requirements, which may not conform to the rules of a state in which a practitioner is licensed to practice. Further, although the *Cheek* “willful” test was adopted in a criminal setting, Circular 230’s standard of proof is lower than the “beyond a reasonable doubt” standard in criminal cases.<sup>7</sup>

The definition of “willful” for Circular 230 purposes should not encompass good faith mistakes but should permit consideration of the objective reasonableness of the practitioner’s position and the practitioner’s background and experience in assessing a practitioner’s knowledge regarding the duty he or she is accused of violating and in determining the existence of good faith. Such an exception is essential from the

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<sup>7</sup> See Circular 230 § 10.76(b) (imposing a preponderance of the evidence standard under Circular 230 if the sanction is censure or suspension of less than six months and a clear and convincing standard if the sanction is a monetary penalty, suspension of six months or more, or disbarment).

standpoint of fundamental fairness and helps to encourage voluntary compliance with our tax laws by both practitioners and their clients. Treasury previously has indicated that “willful” (as well as reckless and grossly incompetent) violations are inconsistent with reasonable cause and good faith.

### **Recommendations**

Circular 230 should contain a clear definition of “willful.” Due to the quasi-penal, complex, and vague nature of Circular 230, it is important that practitioners know the standard for discipline. Changes to the standard should be done through notice and comment process, instead of judicial determinations.

A “willful” violation should be defined as a voluntary, intentional violation of a known legal duty. In addition, Circular 230 should specify that the objective reasonableness of any assertions by the practitioner and the nature and extent of the practitioner’s familiarity with federal tax matters can be considered in assessing the practitioner’s knowledge with respect to the legal duty.

## **ISSUE FIVE: PRECEDENTIAL GUIDANCE REGARDING ETHICAL ISSUES**

### **Background**

Tax professionals practicing before the IRS are governed by Treasury Department Circular 230 and are subject to discipline by the Office of Professional Responsibility (OPR). The application of tax laws, rules and regulations to everyday practice is challenging and practitioners are often met with ethical and procedural situations for which there is little guidance or precedent. As the IRS has increased its attention to compliance, tax practitioners are in need of additional resources for timely advice and information on which they can rely upon to a certain degree. To this end, OPR is interested in investigating the feasibility of creating a structure to provide information and guidance to practitioners seeking to be compliant with the applicable rules and regulations of Circular 230.

### **Recommendations**

The Subgroup discussed and brainstormed this issue and offers the following suggestions:

One avenue for consideration is the creation of a formal body within OPR, which could generate authoritative responses upon which the inquiring practitioner could rely. The IRS does generate private letter rulings for taxpayers who are seeking an official ruling on complicated tax positions for which there is no clear precedential guidance. Such rulings are authoritative and the taxpayer may rely upon them. However, the generation of the private letter ruling is a lengthy and costly process. Furthermore, the IRS is not obligated to produce such rulings and only produces private letter rulings in instances in which it deems appropriate.

It has been observed that often the reason for a practitioner to seek external guidance relates to an issue encountered in the process of filing a tax return. That being said, the timeliness of resolving the issue is frequently critical. While the ability of OPR to respond authoritatively to inquiries would be ideal, the budgetary requirements for the ability to respond both authoritatively and timely make this solution impractical.

An alternative would be the creation of an “Information Network” staffed by expert volunteers from the many professional organizations to whom many tax practitioners belong. The entire process would have OPR oversight. Expert volunteers from the various professional organizations would be grouped into issue-centric specialty centers. These specialty centers would potentially consist of members of the ABA, AICPA, EA and appraiser communities. This Information Network would work through one of the social networks and perhaps utilize a listserv type of posting system. Questions would be submitted electronically via a special web address and form created by OPR. The identities of the requesters would remain anonymous to the viewers of the website, although OPR might need to require some form of authenticating identification in order to submit a question. At this point, it is thought that the primary viewers of the website will be tax practitioners so a possible requirement for access to the website would be that users must have a valid PTIN.

The current thinking is that an employee of OPR would serve as the coordinator and referee of the process. Questions would be forwarded first to the appropriate expert group. The group, when ready to respond, would post the question and the response to the appropriate web site. OPR would have the ability to review the response in case they chose to weigh in on the matter. Additionally, OPR could, for a desired issue, provide

formal guidance by issuing a formal advisory opinion. These formal advisory opinions could be posted on the OPR page of the IRS website so they are accessible by all practitioners. Many state bar disciplinary authorities use some type of advisory opinion system.

Part of the process would include an “Open Forum”, allowing registered users of the website to post comments. This would create an open discussion of various issues among the community as website users would be able to post comments regarding the issues being discussed. All communications would be time stamped, saved and searchable.

## **ISSUE SIX: REGISTERED TAX RETURN PREPARER OVERSIGHT – TITLE 26 vs. TITLE 31**

### **Executive Summary**

With the implementation of the new regulations surrounding the registration of all tax return preparers there may be the temptation to focus the oversight of the new class of registered tax return preparers exclusively under Title 26 (generally, the Internal Revenue Code) as opposed to under Title 31 (which contains the Circular 230 regulations). While this may appear to be more effective and efficient, it is the opinion of the IRSAC that the oversight over the ethical behavior of registered tax return preparers remain separate from the oversight of registered tax return preparers pursuant to §6694 of the Internal Revenue Code.

### **Background**

The Office of Professional Responsibility was created many years ago to administer the laws and regulations governing the practice of attorneys, certified public accounts, enrolled agents, enrolled actuaries and appraisers who represent taxpayers before the Department of Treasury and the Internal Revenue Service (31 U.S.C. 330; 31 C.F.R., Part 10).

Its mission is to foster excellence in tax professionals by setting, communicating, and enforcing standards of competence, integrity and conduct. These standards are embodied in the Treasury Department's Circular 230.

Under current proposed revisions to Circular 230, the definition of practice before the IRS has been expanded to include the preparation of income tax returns and other documents for submission to the IRS and the new registered tax return preparers were

added to the list of who may practice before the IRS. The administration of the new PTIN rules falls under Title 26 under §6109 of the Internal Revenue Code.

Although there is currently no indication that IRS or Congress intends to merge all of the oversight of registered tax return preparers under one Title, there has been a tendency in the past to want to consolidate.

### **Recommendation**

Oversight of the ethical behavior of the new registered tax return preparers should be administered by the Office of Professional Responsibility under Title 31 and the enforcement of the new PTIN rules and how registered tax return preparers apply the tax law when preparing tax returns should be administered under Title 26.

## **EXHIBIT A**

### **(OPR Requirements for Continuing Education Program Approval)**

#### **REQUIRED MATERIAL FOR CONTINUING EDUCATION**

- The scope and purpose of the program(s);
- Name of program(s);
- A general outline of the program(s);
- The level, content, and learning objectives of the program(s);
- When/where the program(s) will be held;
- Frequency of program(s);
- Resume of the instructor, discussion leader, or speaker;
- Resume of the program writer;
- The number of continuing education credits that will be given for the program(s);
- How the program(s) will be administered (e.g. web cast, conference, meeting);
- Targeted audience (enrolled agent or enrolled retirement plan agent);
- A copy of the certificate of completion;
- Method(s) used to evaluate the program's technical content and presentation;
- Method(s) used to maintain records verifying participants who attended and completed the program;
- How the sponsor organization is organized; and
- Certification of status as professional, fraternal or trade organization.

Since the above is not comprehensive, additional information may be requested.



**Internal Revenue Service Advisory Council  
2010 Member Biographies**

**David Bernard**

Mr. Bernard, CPA, recently retired as the Vice President for Taxes and Real Estate for Kimberly-Clark Corporation in Neenah, Wisconsin. Mr. Bernard joined Kimberly-Clark in 1974 and has held various positions within the Tax Department, including chief tax officer for the last 12 years. In 2005, his responsibilities were expanded to include the North American real estate management. His responsibilities included tax management, including tax strategies, risk management and talent development, and real estate. Mr. Bernard served as the Tax Executives Institute's ("TEI's") 2006-2007 International President and presently serves on the National Advisory Board for the Michigan Technological University School of Business and is a member of that Board's Executive Committee. He is a CPA, and he holds a BSBA from Michigan Technological University and an MBA from the University of Wisconsin-Oshkosh. **(LMSB Subgroup)**

**Michael Casey**

Mr. Casey, MAAT, CPP, EA, ATP, is an accountant with West, Christensen, PC in Flagstaff, Arizona. Mr. Casey has over 20 years experience in accounting and taxation, specializing in all aspects of individual, business, non-profit and payroll taxation. His responsibilities include a wide variety of tax planning and consulting services and have extensive experience in corporate, individual and payroll tax compliance, and in representing clients before the IRS. He has been a national speaker for the American Payroll Association and has published and written numerous articles for APA and Accounts Payable journals on the subject of IRS audits. In addition, he is an associate professor for Coconino Community College and teaches the individual and business tax classes. He also serves as APA's Chapter Government Liaison Officer. Mr. Casey holds a BA in Accounting from the University of Cardiff, Wales, U.K. **(W&I Subgroup)**

**Mark Castro**

Mr. Castro is the General Manager of the Bellevue, Washington, Office for Petz Enterprises, Inc. He has worked 18 years in the tax software field developing individual and business tax software as well as federal and state electronic filing programs. He is a member of the board of the National Association of Computerized Tax Processors (NACTP) and a member of the Council of

Electronic Revenue Communication Advancement (CERCA). He has a BS in Business Administration (Accounting) from California State University, Northridge, and has been a Certified Public Accountant since 1989. **(OPR Subgroup)**

**Conrad Davis**

Mr. Davis is a partner in the firm of Ueltzen & Company, LLP, in Sacramento, CA. He has been preparing tax returns for over 21 years. He was the co-chair of the AICPA taskforce for updating the Statements on Standards for Tax Services. Mr. Davis is currently serving as Chair of the California Society of Certified Public Accountants. He has a BS in Agricultural Science and Management from the University of California and an MS in Taxation, from the Golden Gate University. **(OPR Subgroup)**

**Thomas J. DeGeorgio**

Mr. DeGeorgio is Vice President Tax – Americas for BHP Billiton in Houston, TX. Prior to joining BHP Billiton, he worked for Shell Oil Company as the head of US Tax, Director of Tax Assurance and Operations. He has over 30 years experience in taxation including Excise Tax, State and Local tax, Federal Income Tax Compliance, and Federal Income Tax audits & appeals. He is a member of the Tax Executives Institute and currently represents the Houston Chapter on their International Board of Directors. He is a member of AICPA and Texas Society of CPAs. He has a BS in accounting from the Philadelphia University and a MBA with a concentration in taxation from the University of Houston. **(OPR Subgroup)**

**Teresa Douglass**

Ms. Douglass is a practicing CPA and attorney with MHC Certified Public Accountants, LLC, and MHC Law Group, LLC, in Mexico, Missouri. She has over 20 years of experience in tax practice that includes tax planning, tax return preparation and representation of taxpayers in IRS matters. Ms. Douglass is a member of the AICPA, Missouri Society of Accountants, ABA Tax Section, and Missouri Bar Probate and Trust Committee and Elder Law Committee. She is also admitted to practice before the US Tax Court. Ms. Douglass has a BS in Accounting and a JD from the University of Missouri-Kansas City and an LLM in taxation from the University of Florida. **(OPR Subgroup)**

**Ann Esarco**

Dr. Esarco, CPA, EA, is a Professor at McHenry County College in Crystal Lake, Illinois. She has owned and

operated her own accounting and taxpayer representation firm, AJE Associates, PC, since 1982. She partnered with McHenry County College and the Center for Economic Progress to form a VITA tax site. In addition, she 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. She has written numerous articles and books such as “IRS Now Considering Your Economic Reality,” “Taxpayer Advocate,” The Wall Street Journal. Dr. Esarco holds a Ph.D. in Education from Capella University, Minneapolis, MN, a MS – Taxation from Northern Illinois University, DeKalb, IL, and a BS – Accounting/Management from St. Mary of the Woods College, Indiana. **(W&I Subgroup)**

**Jay Fishman**

Mr. Fishman is a Managing Director of Financial Research Associates and has been actively engaged in the appraisal profession since 1974. He specializes in the valuations of business enterprises and their intangible assets including: patents, trademarks, customer lists, goodwill, and going concern. Mr. Fishman has co-authored several books, including the recently released *Standards of Value: Theory and Applications* and *Guide to Business Valuations* (both with Shannon Pratt), and written numerous articles on business valuation. He holds a bachelor’s and master’s degree from Temple University, as well as an M.B.A. from LaSalle University. Mr. Fishman is a Fellow of the American Society of Appraisers, Editor of the *Business Valuation Review*, and a former Trustee of the Appraisal Foundation. **(SBSE Subgroup)**

**William Frazier**

Mr. Frazier is Senior Managing Director and owner of Howard Frazier Barker Elliott, Inc. in Dallas, TX. He has 30 years of experience in business valuation and corporate finance. He is a member of the American Society of Appraisers (ASA). Mr. Frazier has a BS in Commerce from Spring Hill College and a Master of International Management from the American Graduate School of International Management. **(OPR Subgroup)**

**Lonnie Gary**

Mr. Gary is a partner in the accounting firm of Young, Craig & Co., LLP in Mountain View, CA. He has been a professional tax practitioner for 22 years, 17 as an enrolled agent specializing in representation. He has qualified as a non-attorney to practice before the U.S. Tax Court. Mr. Gary is a member of the Board of Directors of the National

Association of Enrolled Agents and serves on the Government Relations Committee. He is a past president and member of the California Society of Enrolled Agents and the East Bay Association of Enrolled Agents. He has a BS in Electrical Engineering with a business minor from the Illinois Institute of Technology. **(OPR Subgroup)**

**Larry Gray**

Mr. Gray is owner and partner of AGC-Alfermann, Gray & Co., CPAs LLC in Rolla, MO. Mr. Gray has been a tax professional for 30 years as well as a seminar instructor and tax author. He is a member and past-president of the National Association of Tax Professionals, a member of the American Institute of CPAs, the National Society of Accountants, the Missouri Society of Certified Public Accountants, Accreditation Council for Accounting and Tax, The National Association of State Board of Accountancy and the Missouri State Board of Accountancy. He has a BS in Business Administration from the University of Missouri-Columbia. **(OPR Subgroup)**

**Dean Heyl**

Mr. Heyl, JD, is an attorney and Director of Government Relations for Direct Selling Association in Washington, DC. He represents a variety of corporations and associations; develops and implements national legislative strategies; testifies before committees and regulatory boards; monitors and analyzes legislative/regulatory actions with a strong focus on tax and accounting issues, and negotiates contracts. Direct Selling Association is a national trade association of the leading firms that manufacture and distribute goods and services sold directly to consumers. Mr. Heyl holds a JD from the University of South Dakota Law School and a BS in Journalism from South Dakota State University. **(SBSE 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. In addition, he is a member of the National Association of Enrolled Agents (NAEA) and the California Society of Enrolled Agents. Mr. Hicks holds a Business Administration degree from Idaho State University and an MBA from Pepperdine University. **(W&I Subgroup)**

**Marshall Hunt**

Mr. Hunt, CPA, currently serves as Director, Tax Assistance Program for the Accounting Aid Society in Detroit, MI. Mr. Hunt directs one of the largest free tax assistance programs in the nation for low-income taxpayers. His responsibilities include volunteer recruitment, retention, training, publicity, outreach, tax site selection, scheduling, and return preparation procedures. Under his direction, Accounting Aid served over 17,000 low-income seniors and families in southeastern Michigan in 2010. He is also an adjunct lecturer in taxation at the University of Michigan-Dearborn. Prior to joining the Accounting Aid Society, Mr. Hunt was a Territory Manager for Heavy Manufacturing, Construction & Transportation, for the Large and Mid-Size Business Division at the Internal Revenue Service. Mr. Hunt holds a Masters of Science Degree in Taxation from Walsh College in Troy, MI, and a BBA Degree from the University of Michigan-Dearborn. **(W&I Subgroup)**

**Marc Korab**

Mr. Korab, JD, LL.M., is a Senior Vice President – Corporate Tax for Citigroup Inc., in New York, NY. Mr. Korab's responsibilities include providing tax counsel and advice to the corporation on a variety of matters, with a focus on representing Citigroup before the IRS in its Federal tax audits. Prior to joining Citigroup, he practiced law with the New York office of the law firm DLA Piper US, LLP, representing taxpayers in complex federal, state, and local tax controversies and litigations. Mr. Korab holds an LL.M. from Georgetown University Law Center, a JD from Rutgers School of Law, and a BA from Rutgers College. He is a member of the New York, New Jersey, and District of Columbia Bars. **(LMSB Subgroup Chair)**

**Joan LeValley**

Ms. LeValley, EA, is the owner of JCL and Company in Park Ridge, IL. She has been an accountant, tax preparer and financial consultant for more than 30 years. She is a member of the National Society of Accountants and Chaired the Federal Taxation Committee the past two years and was a member of the IRS Advisory Council (IRSAC) 2005-2007. She is the recipient of the "2008 NSA Accountant of the Year" award and the "2008 Person of the Year" award by the Independent Accountants Assn. of IL. Ms. LeValley was the Past President of the Independent Accountants Association of IL and has served on the Chicago, IL, Liaison Stakeholder Committee for more than 20 years. Ms. LeValley has a BA in Business

Administration and Accounting from Manchester College.  
**(OPR Subgroup)**

**David Lifson**

David Lifson, CPA, is a partner with Crowe Horwath LLP. He is a former president of the New York State Society of CPAs and is the recipient of the American Institute of CPAs 2009 Arthur J. Dixon Memorial Award, the accounting profession's highest award in the area of taxation. Mr. Lifson is a tax specialist who helps businesses and individuals manage their tax responsibilities and business operations. Experienced in both domestic and international matters, he spends much of his time monitoring ongoing tax and related operating issues for clients, and helping them manage changes to their personal or business circumstances. Industries served are broad, including communications; food/beverage manufacturing, distribution and resale; import/export; marketing/advertising; professional firms; real estate; software/IT; securities and commodities brokerage; trading and international shipping. He has written numerous articles, testified before Congress, is a frequent lecturer and panelist and regularly appears in the media, representing the American Institute of CPAs and the NYSSCPA. Mr. Lifson holds a BSBA (summa cum laude) from Babson College, Wellesley MA. **(SBSE Subgroup Chair)**

**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 is 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 B.A. degree in economics and sociology from Rice University and a Master of Management degree from Northwestern University. **(LMSB Subgroup)**

**Carol Markman**

Ms. Markman, CPA, is a Partner with Feldman, Meinberg & Company, LLP, in Syosset, NY. She is responsible for

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Mr. McKenzie is a Partner of the law firm of Arnstein & Lehr, LLP, of Chicago, Illinois, concentrating his practice in representation before the Internal Revenue Service and state tax agencies. He has lectured extensively on the subject of taxation. He has presented courses on representation before CPA's, attorneys and Enrolled Agents nationwide. Prior to entering private practice, Mr. McKenzie was employed by the Internal Revenue Service, Collection Division, in Chicago, Illinois from 1972 to 1978. He was Vice Chair Professional Services of the ABA Tax Section (2003 – 2005). He is past Chairman of the Chicago Bar Association Federal Tax Committee. Mr. McKenzie is the author of “Representation Before The Collection Division Of The IRS and co-author “Representing The Audited Taxpayer Before The IRS” and “Representation Before The United States Tax Court”. Mr. McKenzie has received an AV rating from Martindale and Hubbell and has been selected for listing by Law and Leading Attorneys and Super Lawyers. He has been elected to the American College of Tax Counsel and serves on its Board of Regents. Mr. McKenzie received his J.D. with High Honors from the Illinois Institute of Technology, Chicago Kent College of Law. **(SBSE Subgroup)**

**Daniel T. Moore**

Daniel T. Moore, CPA, operates the Accounting Solutions Division of The Moore Agency, Inc, a family-owned company, in Salem, Ohio. Mr. Moore provides tax

preparation and accounting assistance to families, individuals and small business. Mr. Moore also operates a payroll preparation and payroll compliance service. Mr. Moore graduated from Kent State University with a Bachelor of Business Administration degree in Accounting. He also has a Master's Degree in Public Administration from Gannon University. Mr. Moore is a member of the AICPA, Ohio Society of CPAs and the American Payroll Association. In 2008, Mr. Moore was selected as one of five MVP's for the Mahoning Valley 40 individuals under 40 awards. The 40 under 40 awards recognizes individuals for their commitment to community service. **(W&I Subgroup Chair)**

### **Ameek Ponda**

Mr. Ponda, JD, LL.M., 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 a frequent speaker on taxation topics and 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 LL.M. in Taxation from Boston University School of Law. **(LMSB Subgroup)**

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Tax Board; an elected Regent and Fellow of the American College of Tax Counsel; a Member of the Board of Trustees for the California CPA Education Foundation; and a Member of the Board of Advisors for the CCH Journal of Tax Practice and Procedure. He is a frequent lecturer before national, state and local professional organizations and has authored articles in many national, state and local publications. In addition, he writes regular columns for CCH Journal of Tax Practice and Procedure and for Tax Analysts- Tax Notes on tax procedure matters. Mr. Rettig holds a LL.M in Taxation from New York University, a J.D. (cum laude) from Pepperdine University and a BA in Economics from the University of California at Los Angeles. Mr. Rettig holds a LL.M in Taxation from New York University, a J.D. (cum laude) from Pepperdine University and a BA in Economics from the University of California at Los Angeles. **(Vice Chairman IRSAC & SBSE Subgroup)**

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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 is a member of Tax Executives Institute and previously served as Chair of its 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. **(LMSB Subgroup)**

**Bonnie Speedy**

Ms. Speedy is the National Director of AARP Tax-Aide at the AARP Foundation in Washington, DC. Ms. Speedy is a professional manager, coordinator and trainer with many years of professional experience in areas dealing with: strategic planning, policy development and application, grant-funded programs, accounting, the application of monitoring of federal regulations dealing with tax law, pensions and 501 (c) organizations with grant-funded

programs. In addition, she directs all aspects of AARP Tax-Aide, serving over two million taxpayers a year, including program outcomes, policy development, implementation strategies, evaluation of effectiveness and communication to program volunteers. Ms. Speedy holds a Bachelor of Science degree from the University of Maryland and attained Certified Pension Consultant status. **(W&I Subgroup)**

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Mr. Tatarowicz, JD, LLM, has worked in the tax field for over 30 years and is a Partner and Ernst & Young's National Director of State and Local Tax Technical Services in Washington, DC. He is responsible for assisting the firm's clients and offices worldwide in multi-state tax matters, coordinating the development and quality of its state and local tax practice, and ensuring that E&Y's services reflect the latest regulatory and precedent-setting developments. Mr. Tatarowicz is former Chair of the American Bar Association's Committee on State and Local Taxation, a member of the American Institute of Certified Public Accountants, and an adjunct Professor of Law at Georgetown University Law Center. He holds a BA in Accounting and Business Economics (Benedictine University); a Juris Doctorate (Northern Illinois University College of Law) and LLM (Tax) (Georgetown University Law Center). **(Chairman IRSAC)**

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Ms. Terens, EA, is the President of Accurate Bookkeeping & Tax Service Inc., in Tustin, CA. Her responsibilities include tax preparation and tax planning for individuals and businesses. She also specializes in taxpayer representation before the Internal Revenue Service and state taxing agencies. Ms. Terens teaches IRS Small Business Seminars, VITA classes and FEMA workshops. In addition, she has taught IRS Exit seminars at local military bases and specializes in tax issues for the military. She is the chairperson of the Southern California IRS/CSEA Practitioner Seminar. Ms. Terens holds an A.A. Degree in Accounting from Saddleback College, Mission Viejo, CA. **(W&I Subgroup)**

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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)**

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Ms. Trostin, JD, LL.M., is a practicing attorney with Marvin H. Glick & Associates in Chicago, Illinois. Having more than 20 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. Ms. Trostin holds a BSBA degree in business management from Roosevelt University, and a JD 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)**

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Ms. Turnbull, CPA, is the Director of Tax for Moore, Stephens and Tiller in Atlanta, GA. Ms Turnbull has extensive and broad experience assisting clients and other professionals in her firm with highly technical and complex federal, multi-state, and international C corporation, S corporation, partnership and individual tax issues. Her clients operate in a variety of industries, including manufacturing, warehousing and distribution, real estate, construction, health care, and professional services. Ms. Turnbull is a frequent lecturer on a variety of tax topics for various professional organizations. She serves on a national

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**Brian Yacker**

Mr. Yacker, JD/CPA, is a Partner in the Exempt Organizations Tax Group with Windes & McLaughry in Irvine, CA. He has practiced as a tax attorney/CPA for the past 18 years exclusively focusing upon addressing the tax and legal needs of his exempt organization clients. Mr. Yacker is a member of the Exempt Organizations Committee of the American Bar Association, the Exempt Organizations Committee of the California State Bar Association, and he is also a member of the AAA-CPA (and serves on their Finance Committee and Audit Committee). He also is the lead instructor in the exempt organizations area for the CalCPA Education Foundation and has published numerous technical texts addressing tax and legal

issues for exempt organizations. Mr. Yacker has a BS in Finance from McIntire School of Commerce, University of Virginia and JD from the Indiana University School of Law. **(OPR Subgroup Chair)**