INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

SMALL BUSINESS/SELF-EMPLOYED
SUBGROUP REPORT

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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, and enrolled agents serving the tax system in public practice, education and in private industry. The Subgroup's membership reflects the broad range of taxpayers served by the SB/SE Division of the Internal Revenue Service (hereafter "SBSE").

The 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.

The Subgroup respectfully recommends the following nine actions relating to the nine issues raised in this report:

1. **Empower Exam Managers as an Alternative to SBSE Fast Track Settlement Program**

The principles of the SBSE Fast Track Settlement pilot program should be implemented by giving examination managers broader authority and mediation training so they can be empowered to resolve disputes at the appropriate level within the examination process.

Worker classification uncertainty can be resolved cooperatively by providing taxpayers with opportunities to remove the uncertainty of worker classification through:

2. **Enhance Worker Classification Compliance with Increased Publicity for the Voluntary Classification Settlement Program**

Publicizing and embracing the recently announced Voluntary Worker Classification Settlement Program (VCSP) that allows employers to resolve past worker classification issues at a reduced cost by voluntarily reclassifying their workers, and

3. **Provide Tentative Independent Contractor Status for Appropriate Compliant Taxpayers that Provide Notice to the IRS**

Providing compliant taxpayers who have a reasonable basis to treat workers as independent contractors a forum for transparency within the IRS so they can manage their businesses with reduced uncertainty,

Wage reporting can be enhanced by:

4. **Update DeMinimis Fringe Guidance**

Updating *de minimis* fringe benefit examples to deal with changes in the business environment that have occurred over the past 20 years providing greater certainty to IRS examiners, employers and employees and reporting income,

Collection and examination efforts can be enhanced by:

5. **Revise IRS Streamlined Installment Agreement Program and Related Electronic Payment Systems Including Online and Direct Debit Programs to Improve Collection**

Taking unsecured debt into consideration to preserve the sustainability of a taxpayer's earnings to pay off all their debts,

6. **Enhance Collections by taking Unsecured Debt into Consideration**

Developing tools and techniques to expand the effectiveness of individuals working within the Automated Collection System process,

7. **Revise the IRS's Penalty Abatement Processes and the Reasonable Cause Assistant (RCA) to Provide Efficient and Consistent Treatment for Abatements**

Reviewing the penalty abatement process to reduce the chances that its automatic provisions could be a trap for the unwary and an excessive challenge for the under-informed taxpayer,

8. **Adopt Technology to make Taxpayer Examinations more Efficient and Less Burdensome to the Taxpayer**

Adopting and integrating technology such as electronic document submission, portals, its online schedulers, and automated audit tracking programs into the tax examination process to provide time and cost savings to both the Internal Revenue Service and the taxpayer, and

9. **Use Appropriate Performance Measures to Enhance Customer Service and Increase Collections**

Enhancing current evaluation standards to include standards that would promote voluntary taxpayer compliance.

ISSUE ONE: EMPOWER EXAM MANAGERS AS AN ALTERNATIVE TO SB/SE FAST TRACK SETTLEMENT PROGRAM

Executive Summary

In August 2006, SB/SE introduced the Fast Track Settlement Program (SB/SE Fast Track) as a pilot program to SB/SE taxpayers in select cities. The program was continued indefinitely in December 2010 to SB/SE taxpayers in additional cities. As evidenced by the decline in the number of cases received in SB/SE Fast Track from FY2009 to FY2010, taxpayers are not finding use of the program beneficial to resolving IRS issues promptly. The IRS should consider closing the SB/SE Fast Track program because it includes so few cases and because of taxpayers' reluctance to participate in the program. Based on the experience of IRSAC members and others, taxpayers are reluctant to participate in the program because it causes unproductive delays, there is too little incentive for the IRS to compromise its stated position, and it often adversely affects taxpayers' future bargaining positions. As an alternative to this program, the IRS should consider giving examination managers broader authority and mediation training so they are empowered to resolve more disputes on a variety of grounds.

Background

SB/SE Fast Track is a pilot program available to SB/SE taxpayers in select cities designed to expedite case resolution at the earliest opportunity.[1] SB/SE Fast Track enables SB/SE taxpayers that currently have unagreed issues in at least one open year under examination to work together with SB/SE and the Office of Appeals (Appeals) to

[1] SB/SE Fast Track Settlement is currently available to taxpayers under examination in Chicago, Illinois; Houston, Texas; St. Paul, Minnesota; Philadelphia, Pennsylvania; Central New Jersey; and San Diego, Laguna Niguel, and Riverside, California. Announcement 2011-5, 2011-4 I.R.B. 430. Additional locations may be identified and added to the program by mutual agreement between SB/SE and the Office of Appeals.

resolve outstanding disputed issues while the case is still in SB/SE jurisdiction. The taxpayer, examining agent, or the SB/SE Group Manager may initiate the process to take part in SB/SE Fast Track at any time after an issue has been fully developed, preferably before the issuance of a 30-day letter or equivalent notice. During the process, an FTS Appeals Officer serves as a neutral party using dispute resolution techniques to facilitate settlement between the parties. The parties must agree to the resolution of the case in order to settle. If a settlement is not reached the Territory Manager must concur with this result.

Potential taxpayer benefits of SB/SE Fast Track could include: (i) the opportunity to resolve an issue at the lowest level before the formal Appeals process begins; (ii) obtaining an objective opinion of the issues from the Appeals Officer; and (iii) utilization of Appeals settlement authority to effect a settlement based on hazards of litigation. The taxpayer may withdraw from SB/SE Fast Track at any time if the process is unsatisfactory. Furthermore, if the parties fail to resolve any issue in SB/SE Fast Track, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

Since its inception in 2006, SB/SE Fast Track received a total of 242 cases involving 572 tax returns. Of these cases, 124 were fully resolved (51 percent), 13 were partially resolved (5 percent), 59 were not resolved (totally unagreed) at the conclusion of the process (25 percent), and 46 were withdrawn or terminated by the taxpayer or the IRS before the process was completed (19 percent).[2] The method of case resolution, *i.e.*, agreed, partially agreed, unagreed, or withdrawn, fluctuated with no identifiable trend.

[2] These figures were calculated based on estimated totals provided by the Internal Revenue Service as of June 2011.

However, SB/SE Fast Track average cycle time, the time between the date the case is received in SB/SE Fast Track and the date the case is closed, steadily increased. In FY2010, the average SB/SE Fast Track cycle time was 86 days compared with an average of 58 days in FY2007.[3] By comparison, the entire process is estimated to be completed within an average of 60 days.[4] The trend shows a gradual increase over these four years, and the FY2011 average cycle time to date, based on cases closed through April 2011, increased to 104 days. Although the program was expanded to additional cities, the increase in the number of cases may be disproportionate to the increase in the cycle time. Thus, one of the most beneficial aspects of the program—efficient resolution of examination issues—seems not to have been realized.

Unfortunately, SB/SE taxpayers realize very few of the anticipated benefits of SB/SE Fast Track. SB/SE Fast Track could benefit both the IRS and SB/SE taxpayers if it provided a more expeditious and thereby less costly, resolution. A comparable Fast Track program has been more successful with LB&I taxpayers because the process assists in narrowing the scope of a large case to a smaller number of manageable issues to be resolved. We believe the reason for the perception of greater success in LB&I Fast Track lies in the nature of LB&I taxpayers' relationship with the IRS. LB&I taxpayers' relationship with the IRS is generally continuous and more trusting than the usual relationship that SB/SE taxpayers have with the IRS. SB/SE taxpayers' interaction with the IRS is more transactional and much less frequent. However, SB/SE taxpayers generally represent smaller cases where the scope of the examination is already fairly narrow. As a result, SB/SE taxpayers cannot count a narrowed scope of issues as a

[3] The cycle times are determined by excluding those cases terminated or withdrawn prior to conclusion by the taxpayer or the IRS.
[4] I.R.M. 8.26.2.2.1.

benefit of Fast Track and any efficiency gained from the process will be comparatively low. Moreover, participation in SB/SE Fast Track leaves SB/SE taxpayers more vulnerable because they reveal their reasoning and tax position but gain nothing in exchange from the IRS. Generally, participating in SB/SE Fast Track and having to reveal the reasoning for their tax positions without the benefit of understanding more about the IRS' position puts SB/SE taxpayers at a disadvantage.

We believe that a far better approach would be to have managers act as impartial parties in reviewing the work of their agents, striving to reach a settlement with the taxpayer as expeditiously as possible. Managers are accessible, "on the ground" and have a very real opportunity to mediate differences of opinion. In particular, and without limitation, managers should be authorized to resolve examination issues using hazards of litigation (factual and/or legal), subject to similar established processes for cases in Appeals.[5] This recommendation, if adopted, will require a change in the culture, from an adversarial relationship between the IRS agents and managers, on the one hand, and taxpayers on the other, to a customer-service-based organization focused on cooperatively reaching the correct conclusion.

Recommendations

1. Close SB/SE Fast Track.
2. Train and empower examination managers to reduce or eliminate impediments to the resolution of SB/SE examination issues, and to resolve such issues at the lowest possible level by using mediation and other appropriate skills.

[5] *Cf.* I.R.M. 8.26.2.8.3, paragraph 2 (requiring the preparation of a brief Appeals Case Memorandum when issues are resolved using hazards of litigation).

ISSUE TWO: ENHANCE WORKER CLASSIFICATION COMPLIANCE WITH VOLUNTARY DISCLOSURE

Executive Summary

The IRS Worker Classification Settlement Program (CSP) has helped to resolve many worker classification issues. We applaud the IRS for launching the Voluntary Worker Classification Settlement Program (VCSP) that allows employers to resolve past worker classification issues at a reduced cost by voluntarily reclassifying their workers.

Worker classification is a sensitive issue for business and the IRS. Many taxpayers are concerned about worker classification and until now have had no program for changing a worker's classification at a low tax cost. The VCSP will be well received and classify more workers as employees.

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 results 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.

Under the VCSP, employers accepted into the program will pay an amount effectively equaling just over one percent of the wages paid to the reclassified workers for the past year (10 percent of the employment tax liability determined under the reduced rates of section 3509(a), which, in 2011, is 10.28 percent for compensation up to

the OASDI wage base and 3.24 percent for additional compensation). No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years.

Interested employers can apply for the program by filing Form 8952, Application for Voluntary Classification Settlement Program, at least 60 days before they want to begin treating the workers as employees. Taxpayers accepted into the VCSP will enter into a closing agreement with the IRS and will be subject to a special six-year statute of limitations for the first, second and third calendar years beginning after the date on which the taxpayer has agreed under the VCSP closing agreement.

Recommendation

1. Publicize the Voluntary Worker Classification Settlement Program to the business and tax professional communities.
    a. 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.
    b. 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.

ISSUE THREE: PROVIDE TENTATIVE INDEPENDENT CONTRACTOR STATUS FOR APPROPRIATE COMPLIANT TAXPAYERS THAT PROVIDE NOTICE TO THE IRS

Executive Summary

Worker classification is highly fact-specific. It is often difficult to know in advance how the facts will develop, especially at the beginning of an arrangement. Even when taxpayers act in good faith, sometimes a worker who is initially believed to be an independent contractor appears in hindsight to have actually been an employee. By giving compliant taxpayers who have a reasonable basis to be treated as an independent contractor the ability to make an irrevocable election of independent contractor status and the IRS the opportunity to review that election after a specified time (e.g., two years), the IRS will enhance compliance with the worker classification rules and may be able to better enforce worker status rules and taxpayers may be more confident that their good-faith determinations are not later second-guessed.

Background

Significant tax consequences result from the classification of a worker as an employee or independent contractor. These include employment tax liabilities, income tax withholding obligations, information reporting, the permissibility of certain deductions, and eligibility for employee benefit plans. Despite the significance of these issues, no simple or bright line test exists to distinguish whether a worker is an employee or an independent contractor. The determination is generally made under a facts-and-circumstances analysis 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 also

the circumstances under which it is performed. In Rev. Rul. 87-41, the IRS enumerated 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 into three categories: (1) behavioral control, (2) financial control, and (3) relationship of the parties.

A Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (Form SS-8) may be 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 test. Many taxpayers believe that IRS determinations are biased in favor of the conclusion that workers are employees. In addition, there is a concern that the SS-8 process increases audit exposure.

Pursuant to §530(a) of the Revenue Act of 1978, as amended by §269(c) of the Tax Equity and Fiscal Responsibility Act of 1982, a service recipient may 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(b) prohibits the publication of regulations or revenue rulings by the IRS and Treasury Department with respect to the employment status of any individual for purposes of employment taxes. For this purpose, "employment status" is defined as "the status of an individual, under the

usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee)." Other forms of published guidance, such as revenue procedures, are not mentioned. Moreover, the IRS and Treasury may develop enforcement programs without issuing regulations or revenue rulings. A well-known example in the worker classification area is the Classification Settlement Program.

Finally, given the sustained high unemployment rate, companies should be encouraged to hire workers even if that means hiring them as independent contractors rather than as employees. Allowing taxpayers to self identify worker classification status for a period will enhance compliance and simplify enforcement by informing the IRS of these activities.

Recommendations

1. Create a pilot program to allow a service provider and service recipient to file an irrevocable election with the IRS to treat the service provider as an independent contractor, subject to the following conditions:
    a. Prior to making the election, the service provider must be given notice of the potential consequences of independent contractor and employee status. The notice must be written in a manner calculated to be understood by the average worker and sufficiently accurate and comprehensive to reasonably apprise workers of their rights and obligations as independent contractors or employees.
    b. The service provider and service recipient must both elect to treat the service provider as an independent contractor.

c. In order to be able to make the election, the service provider and service recipient must be in compliance with all filing and payment requirements.

d. The IRS may retroactively revoke the election on account of fraud, if the taxpayer treats similarly situated individuals differently or if there is no reasonable basis for independent contractor status.

e. The service recipient must comply with all information reporting requirements (e.g., Form 1099-Misc) with respect to this individual for the period subject to the election.

2. Require facts regarding the relationship between the service provider and the service recipient to be submitted to the IRS after a specified number of years (e.g., two).
3. Presume the taxpayers' election to be correct until the IRS reviews the facts and notifies the service recipient and service provider of a change in the service recipient's status.
4. Any IRS adjustments to the taxpayers' status as a result of reviewing the facts will be prospective and no penalties will be assessed.

ISSUE FOUR: UPDATE THE DE MINIMIS FRINGE GUIDANCE

Executive Summary

Business practices have changed considerably since Treas. Reg. 1.132-6 was issued in 1989. To encourage employers to accurately calculate and comply with income and employment tax withholding and reporting requirements, employers need modern examples regarding what fringes provided to employees are and are not considered de minimis by the IRS. IRSAC commends the IRS on the release of Notice 2011-72 and the use of the de minimis fringe rules to exclude personal use of cell phones that an employer provides primarily for noncompensatory business purposes.

Most taxpayers are content to apply the tax law consistent with IRS interpretation. When an IRS interpretation is not available, however, taxpayers and IRS examiners must develop their own interpretations, and these interpretations differ between agents, resulting in inconsistent application of the law. Updated de minimis fringe examples would help IRS examiners, employers, and employees by reducing ambiguity.

Background

De minimis fringes are excluded from the recipient employee's gross income and wages for federal income tax withholding and employment tax purposes. A de minimis fringe is generally any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable. Certain items, such as cash and cash equivalent fringes (e.g., fringes provided through a gift certificate or charge or credit card), cannot be de minimis fringes (except for special rules that apply to occasional meal money and transit passes). With

the exception of transit passes, as a general rule there is no guidance regarding what monetary values are deemed de minimis. Instead, taxpayers must review the facts and circumstances of each case and look to examples in the regulations to determine whether a fringe falls within the exception.

The current examples of de minimis fringes are: (1) occasional typing of personal letters by a company secretary; (2) occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes; (3) occasional cocktail parties, group meals, or picnics for employees and their guests; (4) traditional birthday or holiday gifts of property (not cash) with a low fair market value; (5) occasional theater or sporting event tickets; (6) coffee, doughnuts, and soft drinks; (7) local telephone calls; and (8) flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis). If a fringe is not listed in an example, both the IRS and taxpayer must rely solely on an examination of the facts and circumstances of each case, which inevitably creates uncertainty, disputes, and inconsistent positions within the IRS and among similarly situated taxpayers.

The current examples of items which are not de minimis fringes are: (1) season tickets to sporting or theatrical events; (2) the commuting use of an employer-provided automobile or other vehicle more than one day a month; (3) membership in a private country club or athletic facility, regardless of the frequency with which the employee uses it (4) employer-provided group-term life insurance on the life of the spouse or child

of an employee; and (5) use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend.

Among the items that are not addressed are (1) clothing (e.g., jackets, wind breakers, t-shirts, hats with the employer's logo) and other promotional items, such as luggage, brief cases, coffee mugs, key chains, pens, etc.; (2) goods and services offered to current and former employees by the employer in the ordinary course of its business that do not qualify as no-additional-cost services or qualified employee discounts; (3) sporting event tickets (e.g., box seats, regular seats, Super Bowl tickets); (4) employee assistance programs (EAPs); (5) wellness programs in which participation is not tracked due to privacy concerns; (6) small discounts and special promotions offered to employees by affiliated businesses, such as a firm's clients.

Recommendation

1. Provide updated and more comprehensive examples of items and services that the IRS deems de minimis fringes.

ISSUE FIVE: REVISE IRS STREAMLINED INSTALLMENT AGREEMENT PROGRAM AND RELATED ELECTRONIC PAYMENT SYSTEMS INCLUDING ONLINE AND DIRECT DEBIT PROGRAMS TO IMPROVE COLLECTION

Executive Summary

Since 1998 the IRS has had a program to grant streamlined installment agreements to individual taxpayers who owe less than $25,000.[6] During this time, the eligibility requirements for streamlined installment agreements have never been adjusted for inflation. $25,000 in 1998 had the same buying power as $33,970 in 2011.[7] The current great recession has caused more taxpayers to owe taxes as a result of unemployment and underemployment, and many taxpayers have incurred tax liabilities because they have used their retirement assets to meet family expenses.

The IRS should revise its streamlined installment agreement program to include taxpayers with liabilities of less than $50,000. In conjunction with the changes in dollar limits on installment agreements the IRS should begin a program of more aggressively promoting Direct Debit Installment Agreements and the availability of Online Payment Agreement.

Background

Since 1998 the Internal Revenue Manual has allowed taxpayers with individual liabilities of less than $25,000 to enter into streamlined installment agreements. Streamlined agreements benefit taxpayers because they may be processed quickly,

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[6] IRM 5.14.5.2 (Revised 03-11-2011)

[7] Dollar Times: www.dollartimes.com

without financial analysis or managerial approval. In addition, guaranteed agreements provide qualified taxpayers who have a one-time account delinquency the statutory right to an agreement if their taxes are $10,000 or less and certain other conditions are met.[8] Finally, a Full Pay Within 60 or 120 Day Agreement (Formerly Extension of Time to Pay) may be granted by W&I and SB/SE Campus Compliance and ACS employees to taxpayers who are able to pay by a certain date. [9] Current IRS procedures allow collection employees, other than Collection Field Personnel, to grant Full Pay Agreements (formerly Extensions).

Streamlined Installment Agreements

Streamlined installment agreements may be approved for taxpayers if the aggregate unpaid balance of assessments is $25,000 or less.[10] The aggregate unpaid balance of such assessments must be fully paid in 60 months, or the agreement must be fully paid prior to the collection statute expiration date, whichever comes first.

Streamlined agreements may be granted for accounts in any status, including: a) Notice status accounts; b) Balance due status accounts; and c) Pre-assessed accounts, for the following types of taxpayers:

Individual Master File;

Business Master File (income tax only); and

Out of business, Business Master File (any type tax).[11]

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[8] IRC 6159(c)

[9] See IRM 5.19.1.5.3

[10] The unpaid balance of assessments includes tax, assessed penalty and interest, and all other assessments on the tax modules. It does not include accrued penalty and interest. If pre-assessed taxes are included, the pre-assessed liability plus unpaid balance of assessments must be $25,000 or less.

[11] IRM 5.14.5.2 (Revised 03-11-2011)

A lien determination is not required for a streamlined installment agreement but may be made at the discretion of the revenue officer and liens may be filed.[12] No managerial approval is required and these agreements may be secured in person, on-line at www.irs.gov, by telephone, or by correspondence. As with all agreements, the taxpayer must be compliance with all tax returns that are due prior to entering into the agreement.[13] If the amount owed is greater than $25,000, taxpayers are encouraged to pay such assessed amounts greater than $25,000 prior to applying for a streamlined installment agreement to avoid the need for securing financial statements; and, ultimately qualify for a streamlined agreement. Penalties and interest continue to accrue throughout the duration of a streamlined installment agreement.

Streamlined installment agreements provide benefits to taxpayers and the IRS. Taxpayers avoid the need to provide an extensive financial statement with documentation. Taxpayers also avoid the need to bargain about the amount of payments and the duration of the agreement. The IRS benefits because it can efficiently resolve lower dollar liabilities without the need to review extensive financial data. By having a specific dollar criteria the Service can quickly and efficiently process lower dollar agreements. However, the $25,000 limit has remained fixed since 1998 and has not been adjusted to account for current economic conditions and inflation. By increasing the dollar limit for streamlined agreements the IRS would expand the benefits of streamlined installment agreements to a larger universe of taxpayers. The expansion of eligibility

[12]IRM 5.12.2.4 A lien determination is required by a specific date. If the case cannot be closed as a streamlined IA on or before the lien determination date, a lien determination must be made based on the facts of the case. The revenue office has the latitude to make a timely lien determination as a non-filing or deferral of the lien filing, then finish the negotiation and close the case to a streamlined Installment Agreement.

[13] See IRM 5.14.1.3 and IRM 5.14.1.4.1

would allow the IRS to more efficiently utilize its trained collection professionals to pursue higher employment tax obligations and larger income tax liabilities. More taxpayers with lower tax obligations would avoid providing extensive financial information and the uncertainty of bargaining about the installment amount and duration of agreements.

Although the IRS offers Online Installment Agreements (OPAs) for taxpayers meeting the guidelines for Streamlined Agreements it has not effectively promoted this option to practitioners and the public. OPAs offer greater efficiency for the IRS and the public. Taxpayers avoid extended telephone wait times and the IRS frees it telephone staffers for other duties. The Direct Debit Installment Agreement option (DDIA) has also not been effectively promoted to stakeholders. DDIAs have a lower default rate than regular installment agreements and therefore result in enhanced collections. The IRS should begin a coordinated campaign to alert stakeholders and the public to the availability of DDIAs and OPAs.

Recommendations

The IRS should implement the following changes to enhance streamlined installment agreements:

1. Increase the dollar limit to $50,000.
2. Periodically review any revised limits on streamlined installment agreements to assure that they meet the needs of the Service and taxpayers.
3. The IRS should begin a coordinated campaign to alert stakeholders and the public to the availability of DDIAs and OPAs.

ISSUE SIX: ENHANCE COLLECTIONS BY TAKING UNSECURED DEBT INTO CONSIDERATION

Executive Summary

When a taxpayer is unable to pay a tax debt in full, the IRS computes how much it believes the taxpayer can reasonably pay. As part of this computation, the IRS compares the taxpayer's income with the taxpayer's "allowable" expenses and requires the taxpayer to pay the excess, if any. In computing the taxpayer's "allowable" expenses, however, the IRS does not consider the taxpayer's obligation to make payments toward other unsecured debts for which he remains liable.[14] As a result, taxpayers may be required to commit to making payments to the IRS in excess of what they can realistically afford, thereby prolonging unresolved delinquencies, creating hardships, and leaving the taxpayers less able to pay taxes due in future periods.[15] Taxpayers may be sued by other creditors as a result of the preference of IRS payment over the unsecured obligations. Taxpayers might then be faced with the untenable choice of whether to pay an IRS installment payment or an unsecured creditor demanding payments, or possibly whether to file bankruptcy.

Current policy should allow collection employees greater discretion in allowing the taxpayer to make at least minimum monthly payments of unsecured debts.

Background

When the IRS analyzes a taxpayer's ability to pay it generally does not allow payments of unsecured debt. The IRS will only allow an unsecured debt if the taxpayer

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[14] IRM 5.15.1.10 (Revised 10-02-2009)

[15] National Taxpayer Advocate's 2010 Annual Report to Congress

meets the necessary expense test of health and welfare and/or production of income. Except for payments required for the production of income or for the health and welfare of the taxpayer and family, payments on unsecured debts will not be allowed if the tax liability, including projected accruals, can be paid in full.[16]

The IRS has not studied the impact of its unsecured debt policy on a taxpayer's ability to remain compliant on an installment agreement.[17] Practitioners have observed that for most taxpayers the failure to make payments on unsecured debt can result in serious consequences. An unsecured creditor that was previously receiving regular payments will promptly assign the obligation to its collection department and the taxpayer will receive delinquency notices and collection calls. In the absence of a resolution with the creditor, the taxpayer may face a private collection company or a lawsuit. Some taxpayers will choose to miss IRS installment payments in order to meet the increased demands and harassment of unsecured creditors. In many instances the taxpayer eventually defaults the IRS installment agreement and files for bankruptcy.

A more flexible policy would allow IRS collection personnel to apply judgment with respect to the individual facts and circumstances of the taxpayer with respect to unsecured obligations. Such a policy would benefit both the IRS and the taxpayer since the taxpayer would be able to meet his obligations to the IRS and make minimum monthly payments to unsecured creditors. Allowing payments to be made in this manner would increase the taxpayer's chance of remaining in compliance with IRS payments during the duration of the installment agreement and avoid drastic financial remedies

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[16] IRM 5.15.1.10 (Revised 10-02-2009)

[17] National Taxpayer Advocate's 2010 Annual Report to Congress

such as bankruptcy. Upon adoption of this change all collection employees should be trained in its proper application.

Recommendations

The IRS should implement the following changes to its policy on unsecured debt payments:

1. Allow IRS collection employees to review the individual facts and circumstances of each taxpayer to determine the necessity of continued payments for outstanding unsecured debts.
2. Allow the taxpayer to make minimum payments toward outstanding unsecured debts unless the IRS debt can be fully satisfied in 120 days or less.

ISSUE SEVEN: REVISE THE IRS's PENALTY ABATEMENT PROCESSES AND THE REASONABLE CAUSE ASSISTANT (RCA) TO PROVIDE EFFICIENT AND CONSISTENT TREATMENT FOR ABATEMENTS

Executive Summary

The penalty abatement process for first time and reasonable cause abatement requests should be reviewed to determine what can be done to resolve such requests more efficiently and effectively. The Reasonable Cause Assistant (RCA) is used for processing many of such abatement requests but it is still a manual-input system. IRS personnel resources currently allocated to reading letters and forms could be streamlined by shifting First Time Abatement (FTA) and simple reasonable cause requests from IRS personnel to a computer readable format. In addition, a more efficient use of the RCA would encourage trained IRS employees to exercise discretion more consistently to override the computer-determined decisions on more difficult fact-based requests, either to the benefit of the taxpayer or to the IRS.[18]

Background

Generally, penalties imposed under Sections 6651 or 6656 and other penalty sections allowing reasonable cause exceptions, such as described in Section 6664, do not apply if it is established that the taxpayer's failure to comply was due to reasonable cause and not due to willful neglect.[19] Reasonable cause determinations are required to be made on a case-by-case basis when taking all of the facts and circumstances into account. For example, for failure to file, pay or deposit penalties imposed pursuant to Sections

[18] The IRS also has a current IRM initiative to provide its employees with RCA abort function guidance.
[19] I.R.C. §6664, Reg. 1.6664-4(a), I.R.C. §6651, Reg. 301.6651-1(c), I.R.C. §6656, Reg. 301.6656-1, IRM 20.1.5.6.

6651 and 6656, reasonable cause relief is usually allowed when the taxpayer exercises ordinary business care and prudence in determining his tax obligations.

To assist in determining whether the taxpayer is entitled to reasonable cause relief in accordance with Sections 6651 or 6656, the IRS utilizes the RCA. The RCA is an IRS decision-support interactive software program developed to reach a reasonable cause abatement determination.[20] The RCA is designed to "ensure consistent and equitable administration of penalty relief consideration."[21]

In areas where the RCA is available, generally the RCA is used to process both first time abatement requests and reasonable cause requests. In instances when penalty relief thresholds amounts are not exceeded, oral statements regarding abatements may also be considered.[22]

The RCA first checks the taxpayer's account history for abatements and overall compliance during the three tax years prior to the tax year at issue. The RCA provides an option for penalty relief for the Failure to File (FTF), Failure to Pay (FTP) and/or Failure to Deposit (FTD) penalties if the taxpayer has not previously been required to file a return or if no prior penalties (except the Estimated Tax Penalty) have been assessed on the same account in the prior three years. If the history is clear, the RCA generates a FTA letter indicating that the penalty is being waived based "solely on compliance history," and warns that the taxpayer could be penalized for non-compliance in the future

[20] IRM 20.1.1.3.6.1 (12-11-2009).
[21] IRM 20.1.1.3.6(3) (12-11-2009).
[22] IRM 20.1.1.3.6.3. (2-22-2008).

if a similar situation should arise, and that future penalties will only be removed based on information that meets reasonable cause criteria.[23]

However, a problem arises here when the taxpayer has requested an abatement based on reasonable cause: when the RCA automatically abates based on FTA (an administrative waiver), the reasonable cause issue does not get considered, and the FTA is used up for any current abatement request, one that could yet arise for the past three year period and, potentially, for the next three years as well.[24] The Taxpayer Advocate has also noted that the taxpayers should have a choice between whether the FTA or reasonable cause should be applied.

In the case of a reasonable cause abatement, employees are prompted by the RCA system to answer a series of questions that address what happened, when it happened, where it happened, who is responsible, the reasons the taxpayer could not comply, or conversely, how the taxpayer did try to comply.

The RCA makes a computer-generated recommendation whether to accept or deny a penalty relief request. Only 45 percent of the initial penalty abatement determinations made by the RCA were accurate, according to the IRS. RCA users can accept or reject these recommendations; however, in order for users to efficiently administer the tax law a high level of training is required. The human, manual override is critical to the success of this system. More consistent training in the areas of RCA input choices, "guided selection," and override, "abort," procedures, are recommended to compensate for the high frequency of inaccurate computer-generated recommendations.

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[23] IRM 20.1.1.3.6.1 (12-11-2009); Journal of Tax Practice and Procedure; by Charles P. Rettig, Enhancing Voluntary Compliance Through the Administration of Civil Tax Penalties, page 20., April-May, 2011.
[24] The Office of Service-Wide Penalties is considering extending the look-back three year period to an additional three year look-forward compliance period.

Taxpayers and practitioners need clear, transparent and detailed guidance on the interpretation of penalties. Additionally, taxpayers and practitioners need to know that there are clear and standardized processes and procedures for requesting reasonable cause penalty abatement.

Taxpayer Choices for Requesting Abatement – Letter, Telephone Call, or Form 843

A taxpayer may currently request penalty abatement for reasonable cause by letter, telephone call, or Form 843. Currently, FTA and reasonable cause requests are manually processed.

The IRS Form 843 (Claim for Refund and Request for Abatement) is one way available to make a claim for abatement of penalty or interest on various taxes arising out of assessment made on a number of different tax returns. Checking Line 5(a) of the form allows the taxpayer to request a refund or abatement for reasonable cause penalties. However, the IRS Office of Service-wide Penalties does not advocate the use of Form 843 for FTAs or reasonable cause abatements unless they are accompanied by a request for abatement of tax or interest, since the form was not specifically designed for straightforward, reasonable cause abatements. When Form 843 is received for such an abatement request, it is processed manually, in the same manner as a letter request.

The instructions accompanying Form 843 allow the taxpayer to make a choice to file the form or not. "If you received an IRS notice notifying you of a change to an item on your tax return, or that you owe interest, a penalty or addition to tax, follow the instructions on the notice. You may not have to file Form 843." Form 843 Instructions provide it should be used for 1) a refund or abatement of interest or penalty in addition to tax due to reasonable cause or other reason (other than erroneous written advice provided

by the IRS) allowed under the law; or 2) a refund or abatement of interest, penalties, or additions to tax caused by certain IRS errors or delays, or certain erroneous written advice from the IRS.[25] The instructions are confusing at best.

The process and mechanism by which a request for abatement may be submitted is unclear and not uniform. Although requests are required to be reviewed by the IRS based on all facts and circumstances in each situation, taxpayers and practitioners need better guidance regarding what basic questions should be addressed in a request. Most practitioners request abatements by written correspondence.

To assess in a uniform manner if the taxpayer is entitled to reasonable cause relief the IRS reviews requests for information addressing the following questions:[26]

1) What happened and when did it happen?
2) What facts and circumstances prevented the taxpayer from filing a return, paying a tax, and/or otherwise complying with the law during the period of time the taxpayer was non-compliant?
3) How did the facts and circumstances result in the taxpayer not complying?
4) How did the taxpayer handle the remainder of their affairs during this time?
5) What attempt did the taxpayer make to comply once the facts and circumstances changed?

After a determination for reasonable cause has been made, the employee uses the following brief explanations to decide which IRM Penalty Reason Codes to use with their penalty abatement adjustment:

1) Death, serious illness, or unavoidable absence of the taxpayer or a member of their immediate family;

[25] Form 843 Instructions, page 1.
[26] IRM 20.1.1.3.2(5).

2) Records inaccessible/unable to obtain records/records destroyed by fire or other casualty;

3) Death, serious illness, or unavoidable absence of the person responsible for filing and/or paying taxes (i.e., owner, corporate officer, partner, etc.) or a member of their immediate family;

4) Other – combination of mistakes; normal business care and prudence followed, but documentation shows non-compliance was due to circumstances beyond the taxpayer's control.[27]

While some practitioners may be aware of the criteria set forth above and make use of it in their letter-request for abatement, others may not. A more standardized system for such requests would put taxpayers and their representatives on a more even playing field.

A simple, possibly computer-readable, form with a "check the box" for FTA or listed reasonable cause exceptions should be developed to take a large number of the now manually inputted penalty abatement requests from IRS personnel currently processing such requests and to provide a more equitable determination to the taxpayer. The contemplated form could provide input boxes for the date of the event generating the penalty and the type of penalty abatement requested, and could require manual review only in the event of a reasonable cause request that requires further consideration of a written statement attached to the form. The form could also require supporting documentation to verify taxpayer assertions.

Although generating a new form may be costly, it is likely that the long-term cost savings gained by eliminating the need for a manual review of every penalty abatement request would benefit the IRS and the taxpayer alike.

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[27] IRM, Exhibit 20.1.1-3.

Recommendation

1. Review the effectiveness of current penalty abatement practices and the RCA system and determine whether the use of a new form with directed inquiries as to FTA and reasonable cause abatement would provide the IRS with a more efficient and economical way to resolve simple abatement requests.
    a. Until a form can be created and implemented, provide consistent training on inputting reasonable cause criteria to representatives and their supervisors for all call centers; and provide direction for discretionary overrides of the RCA on a case-by-case basis so that RCA use can be effective and fair to all taxpayers who apply for abatement of penalties, and to be consistent in the IRS's approach to the taxpayers' accounts.

ISSUE EIGHT: ADOPT TECHNOLOGY TO MAKE TAXPAYER EXAMINATIONS MORE EFFICIENT AND LESS BURDENSOME TO THE TAXPAYER

Executive Summary

In keeping with the overarching goal of the IRS to promote efficiency, effectiveness, fairness, and consistency throughout the examination process, whether during field audits, office audits, or correspondence audits, the IRS should modernize its current information exchange business process.

While we recognize privacy concerns and IRS efforts to conduct examinations and audits as effectively and efficiently as possible, the current rate of technological change emphasizes the need for the IRS to keep up with the pace of change by modernizing, updating, and improving its business practices. The use of current technology should save the IRS and the taxpayers being examined time and money. The IRS should consider the following for immediate improvements:

1. Provide taxpayers with up-front electronic and paper options for document submission during the examination;
2. Provide an individual portal for taxpayers in order to facilitate document sharing during the examination;
3. Provide an online scheduler to allow both the taxpayer and examiner to schedule calls or meetings with each other; and
4. Incorporate an audit tracking program.

Background

Currently, the examination process may take several months or years to be completed, only to discover that excessive amounts of time were consumed in unnecessary or duplicative document submissions, inaccurate data matching, math errors on the part of both the taxpayer and the examiner, and long intervals between successive communications between the taxpayer and the examiner. In order to more effectively and efficiently operate in today's environment, the IRS should make use of available technology. Improvements to the current process, which are not presently technologically driven, could be made by creating portals, schedulers, and audit tracking to promote efficiency, effectiveness, fairness, and consistency throughout the examination process during field audits, office audits, or correspondence audits.

An examination usually starts with the completion of the exam questionnaire, followed by document submission and the establishment of a schedule for meetings and/or calls. After these steps are completed, the results of the examination are sent to the taxpayer, who can agree to the examination findings or appeal the results. This process is often both inefficient and burdensome to both the IRS and the taxpayer. The use of an online preliminary questionnaire would reduce costs to the taxpayer and the IRS by eliminating the need for paper, envelopes, and postage, and would also reduce or eliminate the time devoted to mailings, delivery, completion, and return delivery.

A secure portal for document review can be used as a tool for cost savings, eliminating paper overload, excessive intervals between correspondence, and missed deadlines for document submission. These portals allow for reliable and efficient tracking of submissions and reduce the inefficient use of time by all parties to determine

what has been done and what is missing. An online scheduler gives the taxpayer and the examiner the flexibility to schedule calls and meetings at times that are convenient for both parties, thus eliminating schedule conflicts and unanswered calls that may occur when trying to schedule a meeting. Finally, an online process for audit tracking allows the taxpayer to obtain current information regarding the progression of the audit. This tool may also be used internally to track and monitor the length of time it takes to process exams and track the initiation, progression, and resolution of an exam. This would eliminate or reduce the time and costs associated with unproductive and inefficient communications.

We understand that taxpayer information must be protected due to the special statutory requirements for the privacy and security of documents being shared between the taxpayer and the IRS. However, these concerns could be resolved by the creation of portals allowing for secure document uploads. Internally, the IRS could create guidelines to determine the appropriate levels of access to taxpayer information, for example, which information is accessible by lower-level employees and which information is accessible by more senior employees and executives. The guidelines should be established with the goal of promoting efficiency and effectiveness in the examination process.[28]

Although not without up-front costs, the long term savings from implementation of advanced levels of information technology within the examination process can reduce the time devoted to examinations by the IRS and taxpayers. These process improvements can in turn reduce the overall time to complete an examination, optimize

[28] Of course, any new information technology recourses and applications must also comply with existing guidelines established by the White House Office of Management and Budget (OMB). Such guidelines are currently set forth in OMB Circular A-130, Management of Federal Information Resources, which may be found at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a130/a130trans4.pdf.

document review, eliminate unnecessary correspondence, and allow taxpayer to track the progress of an examination.

We recognize that the IRS has taken some useful steps in the direction of adopting 21st century technology. The e-Services tool is a suite of web-based products that allow tax professionals to conduct business with the IRS electronically at any time of the day. In addition, recent public comments by an IRS official described a pilot encryption program, set to begin early in 2012, that will allow taxpayers and practitioners to communicate with the IRS through secure e-mail.[29] We commend the IRS for taking these steps, and encourage the IRS to make further advances in the use of technology in dealing with taxpayers and practitioners.

Recommendations

In order to achieve these objectives, we recommend that the IRS take the following actions:

1. Provide technology that allows the taxpayer to complete an online preliminary questionnaire at the beginning of the examination process, whereby the taxpayer can make selections on document submission, whether by mail, faxing, e-fax, or secure upload to a document portal.
2. Provide for document sharing between the examiner and the taxpayer by creating an individual portal for the taxpayer, whereby the taxpayer can upload the requested documents needed for a more efficient and productive process. The portal should be equipped to allow document review by the examiner and

[29] "Official Says IRS to Pilot E-Mail Encryption For Taxpayer Correspondence Next Year," 91 DTR G-2 (May 11, 2011).

taxpayer, which will assist in the reduction of time-consuming correspondence and promote efficiency.

3. Provide an online scheduler to allow both the taxpayer and examiner to schedule calls or meetings, and allow for meetings either in person or via webcam.
4. Incorporate an audit tracking program, which gives the taxpayer the ability to track the examination’s progress in real time.

ISSUE NINE: USE APPROPRIATE PERFORMANCE MEASURES TO ENHANCE CUSTOMER SERVICE AND INCREASE COLLECTIONS

Executive Summary

The 2010 report issued by the National Taxpayers Advocate office recommended four improvements to the performance measures used to evaluate its organization. It concluded that the IRS's organizational measures provide incentives for leaders to promulgate policies that maximize processing speed and focuses on generating direct enforcement activities at the detriment of activities that could prevent delinquencies or promote voluntary compliance. IRSAC further reviewed the Critical Job Elements which appear in the Performance Plans for Revenue Officers, Internal Revenue Agents, Customer Service Representatives, and Taxpayer Service Specialist. When each of these elements are examined during the review process the IRS employee's performance is rated "Consistently" which means Exceeds Expectations, "Generally" which means Meets Expectations, or "More than occasionally" which means Fails to meet Expectations.

After review of the standards supporting each Critical Job Element we noted several areas where additional standards for review would provide incentives for IRS employees to enhance customer service, increase collections, and promote voluntary compliance. We recognize that performance evaluation standards for bargaining unit employees must be negotiated with the National Treasury Employees Union and suggest that IRS expeditiously begin negotiations to create more customer centered goals.

Background

By most published information the IRS in practice evaluates success by measuring and reviewing statistics that do not measure IRS actions with the taxpayer. As stated in the National Taxpayers Advocate's report "….the collection performance section of SB/SE's BPR (Business Performance Review) reports only:

- The number of liens, levies, seizures, unfiled return case closures called "Taxpayer delinquency investigations" (TDI), and unpaid tax case closures called "taxpayer delinquent accounts" (TDA);
- The percentage of TDI/TDA cases that are overage (i.e., have been open for 16 months or longer); and
- The percentage of field offers in compromise (OIC) closed within nine months, along with an indication of whether Collection is on target to meet its production goals." [30]

Although these statistics indicate that there is obviously significant taxpayer interaction, the quality, consistency, and appropriateness of this interaction is not a significant measurement in evaluating IRS leadership. The National Taxpayers Advocate's report focused primarily on evaluation criteria for IRS leaders while IRSAC reviewed the evaluation criteria used for the following employees: Revenue Officers, Internal Revenue Agents, Customer Service Representatives, and Taxpayer Service Specialist. We recommend additional criteria for the Performance Plans that evaluates

[30] See SB/SE, Business Performance Review (May 2010); IRM Exhibit 3.13.12-1 (Jan. 1, 2010) (defining TDI and TDA). The IRS has targets for TDA Closures, TDI Closures, Percentage Overage – TDA/TDI Taxpayer Combo, and Percent OIC Field Closures in 0-9 months. SB/SE, Business Performance Review (May 2010).

appropriate use of discretion, customer satisfaction, timeliness, and effective use of tools to increase taxpayer voluntary compliance.

Performance Plan for Revenue Officer

The second Critical Job Element that is evaluated in the performance plan for a Revenue Officer is *II. Customer Satisfaction – Knowledge.* This area evaluates if the Revenue Officer is able to accurately identify and resolve issues with the correct interpretation of laws, rules, regulations and other information sources. The current performance plan has several evaluation criteria for 2.A. Taxpayer Rights. However, we feel the following additional elements should be added:

- Withholds enforced collection measures when appropriate
- Suggests that unsophisticated taxpayers seek the assistance of a low income taxpayer clinic or a qualified professional

The current performance review has several evaluation criteria for 2.B. Case Analysis. However, we feel the following additional element should be added:

- Analyzes financial information and varies from allowable expense standards when appropriate

The third Critical Job Element is *III. Customer Satisfaction – Application.* This area evaluates if the Revenue Officer's communications with the taxpayer is appropriate for the issue and encourages voluntary compliance. The current evaluation dictates three areas where this will be evaluated:

- Responsive, Courteous Service
- Communication, and
- Compliance

However, we feel the following additional elements should be added:

- Explain Taxpayer options in detail
- Withhold enforced collection measures when appropriate

Also evaluated in the *III. Customer Satisfaction – Application* critical element is 3.B. Communication. We feel the following additional elements should be added to the evaluation of this skill set:

- Thoroughly explains installment agreements, offers in compromise, and currently not collectible options to taxpayer

The fifth Critical Job Element that is evaluated is *V. Business Results – Efficiency*. This aims to evaluate if the Revenue Officer uses proper workload management and time utilization techniques. The current performance plan has several evaluation criteria for 5.A. Timely Actions. However, we feel the following additional element should be added:

- Promptly responds to taxpayer's and representative's communications

<u>Performance Plan for Internal Revenue Agent</u>

The third Critical Job Element that is evaluated in the performance plan for an Internal Revenue Agent is *III. Customer Satisfaction – Application.* This area evaluates if the Internal Revenue Agent communications to the customer are appropriate for the issue and encourages voluntary compliance. The current performance review has several evaluation criteria for *Customer Satisfaction – Application.* However, we feel the following additional element should be added:

- Informs taxpayers of positions on their tax return that would reduce their liability

Additionally, within *III. Customer Satisfaction – Application* is the criteria 3.B. Customer Relations. Although the current performance review has several evaluation criteria for 3.B. Customer Relations we feel the following additional elements should be added:

- Informs taxpayers of positions on their tax return that would reduce their liability
- Suggests that unsophisticated taxpayers seek the assistance of a low income taxpayer clinic or a qualified professional

The fifth Critical Job Element is *V. Business Results - Efficiency*. This area evaluates if the Internal Revenue Agent's use of proper workload management and time utilization techniques. The current performance review has several evaluation criteria for 5.C. Gathers Information and Develops Facts. However, we feel the following additional element should be added:

- Sets reasonable response deadlines for taxpayers

<u>Performance Plan for Customer Service Representative</u>

The third Critical Job Element that is evaluated in the performance plan for a Customer Service Representative is *III. Customer Satisfaction – Application*. This area evaluates if the Customer Service Representative communications to the customer are appropriate for the issue and encourages voluntary compliance. The current performance review has several evaluation criteria for Customer Satisfaction – Application. However, we feel the following additional element should be added:

- Explain taxpayer options in detail

Additionally, within *III. Customer Satisfaction – Application* is the criteria 3.C. Compliance Communication. Although the current performance review has several evaluation criteria for 3.C. Compliance Communication we feel the following additional elements should be added:

- Withholds enforced collection measures when appropriate
- Suggests that unsophisticated taxpayers seek the assistance of a low income taxpayer clinic or a qualified professional

Performance Plan for Taxpayer Service Specialist

The third Critical Job Element that is evaluated in the performance plan for a Taxpayer Service Specialist is *III. Customer Satisfaction – Application*. This area evaluates if the Taxpayer Service Specialists communications to the customer are appropriate for the issue and encourages voluntary compliance. The current performance review has several evaluation criteria for *III. Customer Satisfaction – Application*. However, we feel the following additional element should be added:

- Explain Taxpayer options in detail

Additionally, within *III. Customer Satisfaction – Application* is the criteria 3.C. Foster Taxpayer Relations and Rights. Although the current performance review has several evaluation criteria for Foster Taxpayer Relations and Rights we feel the following additional elements should be added:

- Suggests that unsophisticated taxpayers seek the assistance of a low income taxpayer clinic or a qualified professional

Note: IRSAC performed a preliminary review of the Performance Plans of the stated IRS positions. However, we did not review the methodology for applying the

Performance Plans. Specifically, we did not have the opportunity to review how the employees cases are selected to be included in the review, what data points are reviewed during the evaluation (i.e. # of taxpayer calls fielded, number of calls resolve in 1st attempt, etc.), and how these data points are selected.

Recommendations

After review of the standards supporting each Critical Job Element we noted several areas where additional standards for review would provide incentives for IRS employees to enhance customer service and increase collections. We recommend the following steps:

1. Increase incentives for IRS employees to promptly communicate with taxpayers, explain options and next steps to taxpayers in a manner they understand, protect their rights and facilitate their payment and compliance process.
2. Current Performance Plans have criteria related to taxpayer communications; however, we believe there must be greater weighting of these criteria in the overall performance evaluation.
3. Begin negotiations with National Treasury Employees to create an evaluation system that rewards taxpayer friendly actions by IRS contact employees.