

**INTERNAL REVENUE SERVICE  
ADVISORY COUNCIL**

**WAGE & INVESTMENT  
SUBGROUP REPORT**

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**WAGE & INVESTMENT  
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## I. INTRODUCTION

The mission of the Wage & Investment Operating Division (hereinafter “W&I” or “Division”) is to simplify compliance with the tax law for the diverse group of more than 144 million taxpayers served by the Division. Diversity within W&I can be found on many levels, including income, language, and education. The Wage & Investment Subgroup (hereinafter “W&I Subgroup” or “Subgroup”) is pleased that W&I leadership, in the Division’s Strategic Plan and Assessment, continues to recognize the Internal Revenue Service (hereinafter “IRS” or the “Service”) goal of providing top-quality service to taxpayers. A significant amount of planning and energy remains focused on developing strategies and systems that meet the demands of an extremely diverse customer base to effect timely, accurate, efficient, and automated services.

Compliance continues to be the watchword. As long as more than twenty-five percent of the taxpaying community believes that the “tax man” can be cheated, the viability of our voluntary tax system is at risk. While modernization and staffing efforts of the IRS continue, it is clear that until information systems are modernized and full staffing is achieved, the integrity of our system will continue to erode.

### **ISSUE ONE: ON MEETING THE CONGRESSIONALLY MANDATED EIGHTY PERCENT ELECTRONICALLY FILED RETURNS BY YEAR 2007 GOAL**

As we are all well aware, Congress has mandated that eighty percent of all returns filed be filed electronically by year 2007. Currently, over seventy-three percent of the Form 1040 family of returns come within the purview of W&I, and by year 2009, it is projected that seventy-one percent of these returns will fall under W&I. Of this seventy-one percent,

it is anticipated that only sixty percent will be filed electronically in year 2009. The W&I Subgroup believes that the Service does not yet recognize the complexities created by inconsistencies between electronic and paper filing that inure to both taxpayers and practitioners, i.e., requiring both practitioners and taxpayers to provide PINS respectively on Form 2688 (request for additional extension of time to file) whereas paper filing requires the practitioner's signature only. These inconsistencies have a chilling effect on *e-filing*.

**ISSUE ONE: RECOMMENDATIONS [ON MEETING THE CONGRESSIONALLY MANDATED EIGHTY PERCENT ELECTRONICALLY FILED RETURNS BY YEAR 2007 GOAL]**

While the W&I Subgroup is encouraged by IRS outreach efforts to practitioner organizations, the Subgroup believes that this effort, in and of itself, is insufficient. As in private business, the Service must reach out to the practitioner community. Last year the IRSAC recommended that the IRS create focus groups to determine why practitioners do not file electronically. We understand that the Service did conduct such Focus Groups at the Nationwide Tax Forum Program this year. Although it is too early to identify the results of these sessions, the W&I Subgroup recommends that the Service continue to conduct such Focus Groups until measurable results indicating the effectiveness of same can be obtained. The W&I Subgroup also recommends that the Service visit practitioner offices to see first hand what it takes to run an *e-file* office.

**ISSUE TWO: "FREE" ONLINE FILING CONSORTIUM**

The W&I Subgroup understands the need for IRS outreach to software providers for purposes of offering "free" online filing. However, as is the Taxpayer Advocate, we

are discouraged by the Service's oversight of this Consortium operation. The W&I Subgroup understands that all information has not been forthcoming from the Consortium which precludes statistical assessments. Another concern is the "pop-up" ads advertised by software providers. These ads offer additional services for a fee but do not make it clear that the services offered are not supported by the Service; i.e., Rapid Refund Loans (hereinafter "RALS").

**ISSUE TWO: RECOMMENDATIONS – [“FREE” ONLINE FILING CONSORTIUM]**

The W&I Subgroup recommends that the Service gather and study statistical information for purposes of determining the effectiveness of "free" online filing. The W&I Subgroup further recommends that the Service require disclaimers on "pop-up" ads – particularly those sourced in Consortium members - stating unequivocally that the additional services or products advertised are not offered nor supported by the Service.

**ISSUE THREE: REGULATION OF PAID PREPARERS**

An estimated fifty-four percent of all taxpayers engage paid preparers to complete their income tax returns. Data from the 1997 filing season estimates that 1.2 million tax preparers were identified on filed tax returns. Notwithstanding these figures, a minimum standard of competence for paid tax preparers does not exist. Present law does not address the need for tax preparers to possess baseline knowledge as regards tax law, procedure, and/or regulatory guidance. Likewise, imposition of minimum standards regarding skill, training and/or other basics necessary to reach a requisite level of competence does not exist among tax preparers. In general, taxpayers are not aware that

tax return preparers are not regulated, and that no threshold exists with respect to baseline competence. Few states regulate paid preparers and many are not likely to consider regulation due to the absence of a state income tax. The W&I Subgroup feels that this is not only a compliance issue but also a matter of public protection.

At present, no consistent data exists with which to compare error rates and the incidence of noncompliance as between regulated and unregulated paid preparers. In recent years, the Service has collected data regarding error rates and fraud as regards claims for the Earned Income Tax Credit (hereinafter "EITC"). The collected data provides that an estimated sixty-eight percent of all EITC claims are prepared by paid preparers. Through mid-October 2002, sixty-seven percent of the returns selected for EITC audit were filed and prepared by paid tax preparers, and the returns were selected due to a high probability of error. However, error rates among EITC paid preparers are not categorized by preparer type.

Recent support for regulating paid preparers has emerged from several sources. Included among supporters are the Commissioner's Advisory Group (1995 Report), the 1997 National Commission on IRS Restructuring, and New Mexico Senator Bingamen, who introduced the Low Income Taxpayer Protection Act of 2002. In addition to these and other proponents of paid preparer regulation, the National Taxpayer Advocate cites incompetent paid preparers as a significant source of noncompliance, particularly as regards EITC claims. In her 2002 Annual Report to Congress, Nina Olsen, the National Taxpayer Advocate, recommended paid preparer registration and certification.

Last year's W&I Subgroup Report cited as an issue of concern the low assessment rate of preparer penalties. The W&I Subgroup remains concerned that existing sanctions are not utilized to maximum benefit. Based on data reported by the Return Preparer Program (hereinafter "RPP"), as applied to EITC claims, only 101 due diligence penalties were assessed during fiscal year 2001. The RPP also reports that over the past three fiscal years, Criminal Investigation has identified at least 6,854 questionable returns from ninety-six criminal investigations of paid preparers related to EITC over-claims. During the same three fiscal years, fifty-three preparers have been convicted of EITC fraud. The Subgroup believes that related data indicating a large number of incompetent and fraudulent paid preparers is much higher.

**ISSUE THREE: RECOMMENDATIONS – [REGULATION OF PAID PREPARERS]**

The W&I Subgroup recognizes that specific data must be captured and evaluated to determine the size of the paid preparer problem, as regards the type of paid preparer and the dollars attributable to incompetence and fraud. Data is currently being collected through the National Research Program (hereinafter "NRP") and EITC. The W&I Subgroup recommends utilizing the paid preparer information generated by these programs to separate data as between regulated and unregulated preparers. By segregating error types and rates by type of preparer, the Service can more realistically determine the impact of unregulated preparers on noncompliance and fraud. When appropriate data is analyzed, the Service will be able to determine the costs of incompetence and fraud as regards unregulated paid preparers compared to regulated paid preparers.

The W&I Subgroup recognizes that regulating paid preparers will come at significant cost to the Service. However, the substantial cost associated with incompetence and fraud among unregulated preparers is equally significant. There are financial consequences to the taxpaying public who fall victim to paid preparer incompetence, and an increase in tax dollars expended to cover the cost of compliance enforcement for incompetent preparers. The W&I Subgroup recommends that the Service determine the costs of noncompliance among unregulated paid preparers, as well as the cost of regulation. The results should be evaluated using a cost-benefit model to determine the ultimate cost or benefit emanating from the regulation of paid preparers. Well designed studies will provide detailed information, i.e. break down categories of costs and benefits by type of error/noncompliance, demographic differences, and preparer education or training level.

Recognizing that regulation is a long-term effort, the W&I Subgroup encourages the Service to increase the public's awareness of compliance as related to paid preparers immediately. While preparer convictions are published in limited media sources, these sources are of particular interest to tax professionals and interested individuals. The W&I Subgroup recommends that the Service broadcast such convictions across a broader range of media types accessible to the general public.

In addition to publishing convictions, the Service should develop and implement a media-wide public service campaign to educate taxpayers as regards their responsibilities regarding compliance and the consequences of engaging a paid preparer. The public must

be aware that a paid preparer should sign the return along with the taxpayer and understand the consequences of a paid preparer failing to sign the return.

Finally, the W&I Subgroup understands that regulating paid preparers is a great undertaking for the Service. Therefore, the W&I Subgroup recommends that the Service look to other regulation models i.e., the National Association of Securities Dealers (hereinafter the "NASD") and request Congressional authorization for such regulations.

#### **ISSUE FOUR: MULTILINGUAL INITIATIVE**

Data gathered from the 2000 census provides that over 10.4 million residents of the United States are Limited English Proficient (hereinafter "LEP"). Spanish speaking residents represent seventy-one percent of the LEP population, while a substantial component is eligible for the EITC, a complicated tax formula/calculation. When IRS notices, letters, and forms are not understandable, taxpayers have a difficult time meeting their tax obligations. Thus, translation initiatives for forms, notices, and letters should yield increased tax compliance.

Pursuant to Executive Order 13166, the IRS, like other federal agencies, was required to develop and implement a program by which LEP persons obtain meaningful access to services normally provided to English proficient taxpayers. To comply with this order, the IRS created the Multinational Language Initiative (hereinafter "MLI") in November 2000. One of the MLI projects was to identify and translate vital documents to assist LEP taxpayers.

#### **The Multilingual Initiative**

During Fiscal Year 2003, the MLI conducted an assessment of language needs. This assessment consisted of three parts. First, the MLI conducted a demographic assessment to identify: (i) the number, proportion and location of LEP taxpayers; (ii) the top languages spoken by LEP taxpayers; and (iii) the characteristic profiles of the top languages. Second, the MLI conducted an agency assessment through which it identified where MLI resources existed in the IRS and the demand and frequency of MLI contacts within the IRS. Lastly, the MLI assessed the effectiveness of current MLI products and services and identified additional needs.

Further, the MLI identified 139 vital documents for translation, although the Subgroup is unclear as regards how such documents were submitted. A recent audit report by the Treasury Inspector General for Tax Administration (hereinafter "TITGA") Report No. 2003-40-163 (August 2003), indicated that the MLI used informal surveys of external stakeholders to identify vital documents.<sup>1</sup>

The methodology used to prioritize translation of the 139 vital documents was a scoring system and evaluation form based on the criteria of Executive Order 13166. Applying this methodology to the 139 identified documents, 104 documents were identified as vital for translation, twenty-six were not recommended for translation, and nine were recommended for further analysis. Of the 104 documents identified as vital for translation, seventy-three have been translated thus far. In identifying the documents vital

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<sup>1</sup> The TITGA report noted that the IRS had used informal surveys with external stakeholders to identify the documents most useful to assist LEP taxpayers comply with tax laws. However, the report noted that only 28 of the 58 documents identified through this process (or 28%) had been translated. The report recommended that the MLI develop a formal survey process to ensure that the IRS identify the documents that are the one LEP taxpayers believe are most useful to their ability to understand and comply with tax laws. TITGA also recommended that translation of documents would help taxpayers who may speak English well, but who may not be able to read and understand English.

for translation, the MLI assumed that the vast majority of taxpayers for whom Spanish is a first language use paid preparers to prepare returns.

**ISSUE FOUR: RECOMMENDATIONS – [MULTILINGUAL INITIATIVE]**

First, the W&I Subgroup shares the Inspector General's concern regarding the informality of the process used by the MLI to identify vital documents for translation and recommends that the process for identifying vital documents be formalized and publicized. While the W&I Subgroup applauds the MLI attempt to engage external stakeholders in the process of identifying vital documents for translation, such a process should be well developed and focus on engaging many disparate external stakeholders in diverse geographical areas of the United States. Further, the process should permit external stakeholders to contact the MLI if not contacted themselves.

Second, the W&I Subgroup is concerned as regards the assumption made by the MLI that Spanish speaking taxpayers often use paid preparers and the extent to which this assumption impacted the identification of documents. To the extent that this assumption gave rise to decisions not to translate documents, the W&I Subgroup urges the MLI to reconsider. Translation of documents, as with the initiative to rewrite IRS notices, letters and forms, should have focus on the ability of LEP taxpayers to comply with the tax law notwithstanding consultation with a tax preparer. Along these lines, the Subgroup supports the MLI recommendation of a pilot translation of Form 1040 instructions and the provision of teletax topic narratives in Spanish on the IRS Web site. Further, it seems to the W&I Subgroup that translated documents may assist preparers who do not speak the same language as their clients in preparing returns.

Third, the level of coordination between the MLI project and other IRS projects as regards rewriting of letters, notices and forms is not clear to the W&I Subgroup. The Subgroup believes that the MLI should coordinate with IRS rewriting initiatives to address low literacy rates of LEP taxpayers. The W&I Subgroup also urges the IRS to develop a formal process with which to identify various dialects within languages identified for translation for purposes of assisting low LEP literacy rates.

Fourth, regarding compliance recommendations, the MLI has recommended hiring Spanish-speaking employees, IRS budget permitting, providing limited Spanish language training, and providing a translation aid to non-Spanish speaking employees. The W&I Subgroup supports these recommendations. Within the LEP population, anecdotal information suggests that the inability of Spanish speaking taxpayers to communicate by phone is a source of non-response to IRS notices, letters, and forms. Increasing the number of Spanish speaking employees, and enabling employees to have, at the very least, a working ability to communicate with such taxpayers will positively impact responses to non-translated IRS notices, forms and letters.

#### **ISSUE FIVE: EARNED INCOME TAX CREDIT**

During the 2003 filing season, 20.6 million taxpayers received EITC benefits in excess of thirty-six billion dollars. Across the past ten years, this program has become the Nation's largest anti-poverty initiative and has also become a source of significant controversy due to its complexity and persistently high error rates.

In January, 2003, the W&I Subgroup was advised of plans for an EITC pre-certification initiative, although details of the plan were not available. In March, following

reports of briefings to other stakeholders, the W&I Subgroup conducted a conference call during which it learned that a new pre-certification initiative would consist of three components: (i) pre-certification of qualifying child status for up to twenty percent of taxpayers whose qualifying child was not a biological child (e.g., a grandchild, niece, step-child, foster child, etc). Two new forms, one verifying the qualifying child's residence, the other verifying the relationship of the qualifying child to the taxpayer would be sent to 45,000 taxpayers in the year 2003 and to several million taxpayers in subsequent years; (ii) filing status certification, to verify marital status for taxpayers suspected of filing incorrectly as single or head of household – 5,000 taxpayers targeted in the initial pilot phase; (iii) under-reported income certification, to verify the income of taxpayers who previously reported income incorrectly for purposes of inflating EITC benefits - 175,000 taxpayers targeted.

All taxpayers placed in the pre-certification program would have their EITC benefits frozen until adequate documentation of eligibility for EITC is presented to the IRS. In preparing for implementation of the pilot project, the IRS conducted focus groups consisting of taxpayers and income tax preparers in four cities for purposes of assessing the level of understanding as regards letters, forms and instructions.

In June, 2003 the IRS formally requested comments on the initiative. On August 5, 2003, following review of several hundred comments, the IRS announced a revised initiative to begin January, 2004, to coincide with the filing season. Further, relationship verification was eliminated from the initiative, and the number of taxpayers subjected to residence verification as regards the qualifying child was reduced to 25,000. Further, the

number of taxpayers subject to compliance review for suspected under-reporting of income would be raised to 300,000. The announcement omitted any reference to a status component of the certification initiative.

During 2003, other compliance activities continued: the IRS issued 821,000 Math Error Notices (hereinafter "MEN") and conducted examinations of 282,000 returns. Nearly \$1.3 billion of EITC claims were retained. In addition, outreach and education was directed to 20,000 preparers. For fiscal year 2004, the IRS intends to initiate due diligence visits of 250 preparers; visits which have not taken place for several years.

**ISSUE FIVE: RECOMMENDATIONS – [EARNED INCOME TAX CREDIT]**

The development and design of the EITC certification initiative did not include consultation with the W&I Subgroup. An EITC Task Force, whose existence was unknown until January 2003, met during 2002 to consider options and to design the certification initiative. Details of the initiative were provided during the first and second quarter of 2003. When draft forms were made available, the W&I Subgroup was advised not to share the drafts with non-IRS stakeholders. This restriction limited the ability of IRSAC members to offer advice and constructive commentary. An example of this occurred in a June briefing of the W&I Subgroup regarding the series of focus groups. Meetings with taxpayers and practitioners pertained to EITC taxpayers who were randomly selected, of which eighty percent were biological parents and thus not subject to the certification initiative. The practitioner focus groups did not include representatives of the Low Income Taxpayer Clinics (hereinafter "LITC") and only one practitioner had experience in the VITA program. The W&I Subgroup members noted that the focus

groups should have been comprised of people from the twenty percent of EITC taxpayers whose qualifying children are not biological children of the taxpayer, and that practitioner groups should have included representatives of LITCs and community tax programs.

In its 2002 report, the IRSAC recommended increased attention to compliance by paid preparers through enforcement of civil penalties. The W&I Subgroup therefore welcomes due diligence visits to paid preparers planned for fiscal year 2004. The Subgroup is very concerned, however, by the number of visits. The Subgroup believes 250 is far too few, both as compared to the apparent scope of compliance problems among non-enrolled preparers, and to the 25,000 individual taxpayers who will be subject to the new certification requirements. The W&I Subgroup therefore urges that the number of paid preparers targeted for due diligence visits be increased substantially. The W&I Subgroup supports efforts to explore more efficient alternatives to the use of revenue agents making due diligence visits.

Use of Math Error Authority (hereinafter "MEA") has become an important and efficient tool in recovering over-claims of EITC benefits. However, the W&I Subgroup is concerned about the twenty-seven percent of notified taxpayers who failed to respond, and the additional twenty-three percent who responded but failed to follow through. While many taxpayers may have decided and/or assumed that the MEA notices were correct, a significant number likely failed to respond due to fear, confusion, or because they did not understand the notices as a result of literacy or language barriers. It is critical that the IRS conduct studies to determine reasons for the non- or incomplete responses. Our analysis of the MEA issue is incomplete due to the fact that information regarding types of MEA

notices, the volume of the notices by notice-type, the response rates by notice-type, and the disposition rate by MEA-type could not be provided in time to be included in this report.

Finally, the IRSAC welcomes the appointment of David R. Williams as Director of the EITC Program. In the past, multiple initiatives designed to address compliance, education, and outreach were fragmented under the jurisdiction of different managers. The IRSAC looks forward to working with Mr. Williams in the coming year to improve the effectiveness of EITC initiatives.

#### **ISSUE SIX: NOTICE SIMPLIFICATION**

During the past year, the W&I Subgroup has worked with the IRS Notice Strategy Group, headed by Ann Gelineau. The Notice Strategy Group is charged with: (i) identifying notices that are difficult for taxpayers to understand; (ii) prioritizing the order in which notices should be rewritten and implemented; (iii) ascertaining which notices should be eliminated (as duplicative or otherwise unnecessary); (iv) rewriting and simplifying notices such that the average taxpayer can understand the message being communicated; and (v) preparing a style guide to assist IRS employees in rewriting notices.

Thanks to Ms. Gelineau, the W&I Subgroup has had the opportunity to work closely with the Notice Strategy Group, along with several other stakeholders, to prioritize the notices to be rewritten and implemented. During the prioritization process, one member of the W&I Subgroup met with the Notice Strategy Group several times to establish the order in which notices are to be rewritten and implemented. The W&I Subgroup methodology for establishing the priority of rewritten notices considered: (i) the volume of the notice, on average; (ii) the extent to which the notice imposes taxpayer

burden, in terms of a required response or generating a response when none is requested; (iii) the burden imposed by the notice on IRS employees responsible for issuing the notice, in terms of the time and effort required to resolve the issues raised by the notice; and (iv) the impact of a particular notice on the IRS, in terms of business result (e.g., cost to resolve, dollars involved, impact on future compliance, etc.).

Following the prioritization of notices, the W&I Subgroup worked with the Notice Strategy Group to review the revised notices. In some cases, the W&I Subgroup suggested changes to notice language for the purpose of assisting taxpayers in understanding the notice. To date, the IRS has rewritten and implemented twenty-five notices. The IRS projects that it will rewrite and implement fourteen more notices during 2004 and 2005.

In addition, the Notice Support Group is working on a Style Guide to assist IRS employees in rewriting notices and other taxpayer communications. The Style Guide will cover language usage, punctuation, presentation characters (e.g., bullets), “red flag” language to avoid, and recommendations for improving the written product to ensure that communications with taxpayers meet certain basic standards. To identify language to avoid and language to use, the Notice Support Group plans to reach out to stakeholders and taxpayers for feedback regarding various aspects of the Style Guide. The Notice Support Group plans to deliver the final Style Guide in 2004.

#### **ISSUE SIX: RECOMMENDATIONS – [NOTICE SIMPLIFICATION]**

The W&I Subgroup is pleased with the manner in which the Notice Strategy Group has worked with the Subgroup this year. The Subgroup’s work with the Notice Strategy Group is an excellent example of how the IRS can work effectively with outside

Although the W&I Subgroup attempted to address this issue during the year, the Subgroup was unable to make significant headway, due, in large part to changes in IRS staffing that precluded the Subgroup from meeting with IRS representatives who were intimately familiar with the issue. As a result, the IRS was unable to provide the W&I Subgroup with new information concerning the status of implementing TAC's recommendations. Because the W&I Subgroup views this as a significant tax administration issue, we discussed various aspects of the ITIN application process as well as the use of ITIN's and determined some recommendations for improving the efficiency of the process and curbing the opportunities for misuse of ITIN's. The Subgroup's recommendations are set forth below following a brief discussion of the particular aspects of the ITIN program which the IRS needs to address in the coming year.

1. From the IRS perspective, the misuse of ITIN's is problematic because it imposes significant additional administrative burdens on the administration of the tax law. For example, misuse requires the IRS to implement additional procedures to ensure that only those who apply for ITIN's qualify to receive them. In addition, where a mismatch occurs between an ITIN used on a tax return and the SSN listed on a Form W-2, the IRS must take additional steps to ensure that the rightful holder of the SSN is not taxed on the income earned by the alien who "purchased" the SSN. The IRS must then manually process the alien's return.

2. From the taxpayer's (and acceptance agent's) perspective, the ITIN application process is slow, often arbitrary, in terms of the documents required, and the proper use of an ITIN is poorly-understood. To obtain an ITIN, an alien must complete Form W-7, and

submit one document or a combination of documents to establish his/her identity and foreign status. *See* IRS Pub. 1915. Recently, taxpayers and acceptance agents have begun to encounter significant problems with the ITIN application process, including, for example, lengthy delays in ITIN application processing. Further, anecdotal evidence indicates that different IRS offices require submission of different documentation. For example, one IRS office or employee may deem a Mexican matricula consular card (a national identification card) sufficient to obtain an ITIN, while another may not. Other examples include: (i) different interpretations of the term “recent” as it pertains to the requirement that an alien provide a picture identification (*see* IRS Pub. 1915); (ii) requiring aliens to provide *two* forms of documentation, notwithstanding that one document establishes both identity and foreign status; and (iii) requiring information beyond that requested on Form W-7. The IRS has begun to address this aspect of the ITIN problem through additional educational outreach and the development of standards for processing ITIN applications.

A second factor that contributes significantly to the difficulties nonresident aliens experience with the ITIN process is language barriers. The IRS has an insufficient number of bi-lingual speakers (English and Spanish, in particular) in most offices. The lack of adequate bi-lingual personnel has made it difficult, if not impossible, for aliens who apply for an ITIN to understand what documentation the IRS needs, particularly where the IRS has deemed the applicant’s previously submitted documentation to be insufficient. This discourages aliens from obtaining ITIN’s, and ultimately undermines IRS tax collection goals. This aspect of the ITIN problem is not addressed by TAC’s recommendations.

3. ITIN misuse arises from states and other governmental entities permitting aliens to use ITIN's as a form of identification. This is the result of the lack of a consistent, well-publicized message to state and local government entities concerning the limited purposes for which an ITIN may be used. Currently, six states accept an ITIN as proper identification for obtaining a driver's license. Other states allow aliens to use ITINs to obtain governmental benefits, including in-state tuition, among others, and some employers accept ITINs as proof of eligibility to work in the U.S. Differing state treatment raises fairness issues, security concerns, as well as other policy issues. The IRS has begun to address this aspect of the ITIN misuse problem. As part of that effort, the Commissioner of Internal Revenue recently sent a letter to the governor of each state requesting that the state's motor vehicle department not accept ITIN's as a valid form of identification for purposes of obtaining a driver's license.

4. Finally, the ITIN problem is exacerbated by employers accepting false or stolen SSN's. Although many employers may be unaware that an employee has provided a false SSN, anecdotal evidence suggests that at least some employers know that given employees are not citizens or otherwise authorized to work in the U.S. Frequently, employers treat aliens as independent contractors notwithstanding the fact that aliens are performing work identical to that performed by employees. This practice avoids employment tax liability for such employers. This aspect of the ITIN problem is not addressed by TAC's recommendations.

**ISSUE SEVEN: RECOMMENDATIONS – [INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS]**

1. The W&I Subgroup commends the IRS for taking steps toward addressing the many problems associated with ITIN's. The Subgroup however, is disappointed that the Subgroup was not able to participate in the policy-making process. We strongly urge the IRS to involve the IRSAC in future ITIN issues to assist in the development of an effective program.

2. As the IRS has recognized, employees must receive better training as regards the ITIN application process, the types of acceptable documents with respect to demonstrating identity and foreign status, and the role of acceptance agents, among other aspects of the ITIN application process. Once the IRS implements standards for processing ITIN's and provides IRS employees with additional training, many problems should be alleviated.

3. The IRS must hire additional bi-lingual employees, or find a means through which it can provide better assistance to persons who do not speak English.<sup>2</sup> In the opinion of the W&I Subgroup, this is one of the primary causes of many problems associated with the ITIN program. In particular, the lack of sufficient bi-lingual employees has made it difficult for non-English speaking aliens to understand the ITIN application process.

4. The Subgroup concurs with TAC's recommendation that the IRS conduct a large-scale outreach campaign to states, other government entities, businesses, and the public in general regarding the legal purposes for which ITIN's may be used as well as the penalties for using an ITIN in an unauthorized manner. The Subgroup stresses that the

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<sup>2</sup> One possibility would be to have a hotline that IRS employees could call when a Spanish-speaking individual brings an ITIN application to an IRS walk-in site. The IRS employee could call the number and then have the individual speak with the hotline operator to obtain any necessary instructions or explanation, and the hotline employee could translate the individual's statements, questions, etc. for the IRS employee.

IRS invest significant resources in this area to make the public and employers aware of the ITIN misuse problem.

In the Subgroup's view, however, outreach is not the only solution. The IRS must begin an enforcement campaign against unscrupulous employers who encourage or turn a blind eye to ITIN misuse or theft and/or fraudulent production of SSN's. Absent the provision of employment to aliens, there would be less incentive to purchase SSNs. Even mere acts of negligence in failing to carefully check an employee's documentation prior to employment enables the theft, fraudulent production, and sale of SSN's. And although the Subgroup agrees with the TAC recommendation that the IRS begin taking enforcement action against aliens who misuse ITIN's, the Subgroup disagrees with the implicit assumption that this will cure the underlying problem. Because the cause of the ITIN misuse lies at the door of employers (and those in the black market who produce/steal SSN's), enforcement against aliens deals only with the symptoms of the problem, as opposed to the root cause. Consequently, the Subgroup urges the IRS to work with the W&I Subgroup and other stakeholders to craft a workable, effective solution for curbing this aspect of ITIN misuse.

5. One of TAC's twenty-two recommendations is to treat returns with a mismatch as unprocessable and to require the alien individual who filed the return to provide additional documentation to substantiate a refund claimed.<sup>3</sup> A related recommendation is to prohibit IRS walk-in sites and VITA sites from processing returns containing such a mismatch. The recommended changes, however, will not likely reduce the administrative

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<sup>3</sup> Currently, the IRS processes tax returns containing such a mismatch under the ITIN provided in the tax return.

burden on the IRS. In fact, this recommended change is likely to have the opposite effect. If such returns are not processed until the IRS obtains substantiation, there will be a significant slow down in the processing of such returns requiring employment or relocation of additional personnel to review submitted documentation. Precluding VITA sites from processing such returns will negatively impact the tax system by discouraging many alien individuals from filing tax returns, and causing others to spend hard-earned money on a tax return preparer, when they can ill-afford to do so. A decrease in the number of aliens who file tax returns will likely result in reduced tax revenues (one source estimates that the IRS collects about \$200 billion annually in taxes from aliens' returns that contain mismatches). If aliens do not file tax returns, the IRS must allocate additional resources to its nonfiler initiative, thus increasing the cost of administering the tax law as applied to these individuals. Because the W&I Subgroup views these two recommendations as likely to cause counter-productive results, the Subgroup urges the IRS not to adopt them.

#### **ISSUE EIGHT: STAKEHOLDER, PARTNERSHIP, EDUCATION, AND COMMUNICATION**

The Stakeholder, Partnership, Education and Communication Program (hereinafter "SPEC") stood up in October, 2000 with the objective to achieve much of its taxpayer assistance and outreach initiatives through partnerships with community, regional, state and national levels. At that time, full staffing for SPEC was set at 972 FTE's. The IRSAC Public Reports for 2001 and 2002 expressed concerns regarding funding and staffing shortfalls that limited SPEC's ability to achieve its strategic goals. Staffing for SPEC in 2002 was 561 FTE's (57.7% of the target), and 650 FTE's in 2003. Projected staffing for 2004 is 675 FTE's, less than seventy percent of the target.

Despite these difficulties, SPEC has made significant progress in establishing fifty national partners, and 150 partnerships at the state and regional levels. Through leveraged resources of partners, SPEC has improved the scope of outreach, education, and tax assistance services to individuals. For example, during the 2003 filing season, SPEC reports a total of 1.372 million returns completed by tax assistance programs, an increase of twenty-eight percent over the previous year.

Also in fiscal year 2003, SPEC established eleven balanced measures and thirteen diagnostic measures that are intended to provide quantifiable baselines for purposes of measuring and improving service.

**ISSUE EIGHT: RECOMMENDATIONS – [STAKEHOLDER, PARTNERSHIP, EDUCATION, AND COMMUNICATION]**

1) The W&I Subgroup applauds the vision of SPEC strategies in developing partnerships at the national, state and local levels, and in leveraging massive resources that have been made available through these partnerships. However, the Subgroup remains concerned about SPEC's continuing staff shortage. The 2002 and 2001 IRSAC Public Reports expressed similar concerns. While the Subgroup notes that SPEC staffing increased by ninety in 2003, a projected increase of twenty-five in 2004 is allocated to the Child Tax Credit program. While the Subgroup supports the addition of staff to conduct outreach and education on this expanded and important credit, the Subgroup continues to urge the IRS to increase SPEC staffing to its targeted level.

2) One of SPEC's Balanced Measures concerns the coverage rate for low income tax assistance. The established measure for "coverage" is whether a county or city has low

income taxpayers within forty-five minutes of a SPEC or partner-sponsored tax assistance site. This measure is not accurate for access to tax assistance. For example, a rural county might have 10,000 families, twenty-five percent of whom are low income. That county might have a single tax assistance site, with a capacity for 100 returns during the filing season. To conclude that the county is “covered” provided all residents reside within forty-five minutes of the site is unreasonable.

3) The Subgroup is also concerned about a need for tax assistance that exists among low income taxpayers which has not been met. However, there is no consensus on the extent of that need. The Subgroup therefore urges that SPEC undertake to develop a process for assessing the extent of this need. Taxpayers in need of such assistance may include:

- non-filers eligible for EITC
- persons relying on paid preparers who have excessive error rates
- persons who prepare their own returns and have excessive error rates
- persons who are paying excessive fees
- persons for whom paying a “reasonable fee” is an unreasonable burden, due to extreme poverty or other extenuating circumstances.

The W&I Subgroup recommends that a process be designed to develop an assessment of this need and that this process involve SPEC partners and the IRSAC.

4) Another SPEC Balanced Measure concerns “Partners’ Overall Satisfaction.” Based on a survey of partners, reported satisfaction increased from 4.13 to 4.30 on a scale of 5. This positive trend is tempered by anecdotal reports received by W&I Subgroup

members from the low income taxpayer clinic (LITC) that indicate some dissatisfaction with uneven responses or lack of cooperation from local SPEC staff, and also concerns that pressure to establish new partnerships may in some cases limit essential support to recently created partnerships that are not yet self-sufficient. The Subgroup recommends creation of a communication link, either through an 800 number, or vis-à-vis email to SPEC headquarters such that local partners may communicate both positive and negative concerns about local SPEC support. Such a communication process would facilitate timely review and correction, if necessary. Further, a compilation of such reports and disposition of same would be a useful complement to other assessment tools.

### **III. CONCLUSION**

The W&I Subgroup appreciates the opportunity to be of service to the Internal Revenue Service. The Subgroup appreciates the time, commitment, cooperation and resolve of the W&I representatives and management with whom the Subgroup has met to solve these many problems and issues. The Subgroup continues to be amazed at the leadership shown by W&I management, given their limited financial resources and staffing. The Subgroup is confident that future advisory members will continue to work closely in assisting W&I management.