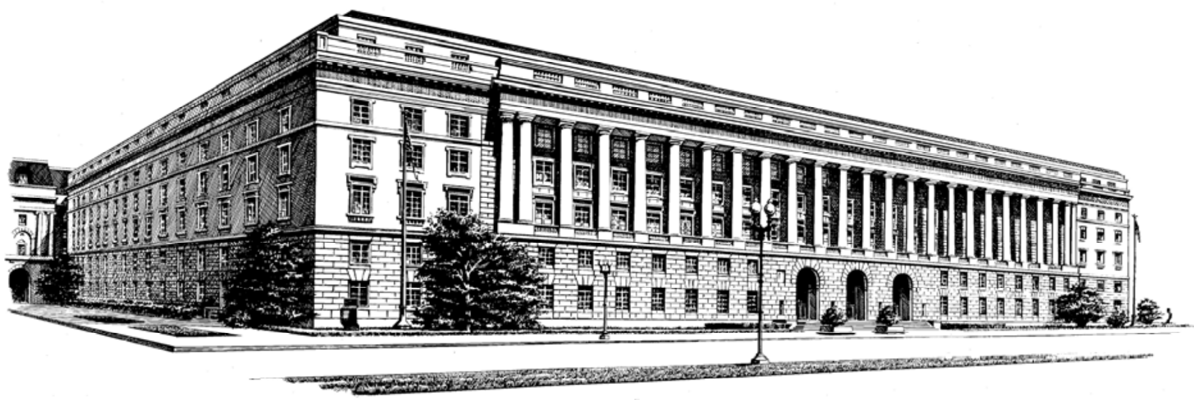


INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE PUBLIC MEETING

OCTOBER 24, 2012

DOUBLETREE BY HILTON
1515 RHODE ISLAND AVENUE, NW
WASHINGTON, DC

COMMITTEE PUBLIC REPORT
TABLE OF CONTENTS

COMMITTEE PUBLIC REPORT
TABLE OF CONTENTS

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

GENERAL REPORT

C. LEONARD JACOBS, CHAIR
JEFFREY N. MASON, VICE-CHAIR
SUSAN R. BOLTACZ
BOYD J. BROWN
DUNCAN W. BRENAN
JULIA K. CHANG
TERENCE C. COPPINGER
CANDACE B. EWELL
REBECCA M. HARSHBERGER
ANNE W. JETMUNDSEN
KRISTIN JOHNSON
TONY Y. LAM
ANNE C. LENNAN
MICHAEL M. LLOYD
DONALD C. MORRIS
MARJORIE A. PENROD
PATRICIA L. SCHMICK
PAUL P. SCHOLZ
HOLLY L. SUTTON
KATHRYN S. TRACY
ARTHUR B. WOLK
LONNIE YOUNG

2012 IRPAC Public Report Letter from the Chair

Dear Commissioner Shulman,

The Information Reporting Program Advisory Committee[1] ("IRPAC") over the past 20 plus years, by working side-by-side with the IRS, has been a vital aid in advancing the cause of effective tax administration. I believe that this working relationship has been a benefit to both the IRS and the reporting community.

Within the past few years, legislative action has increased the focus on the role of information reporting in closing the tax gap and has enhanced the effort to bring all taxpayers into compliance with both existing requirements and new complex tax laws. In such an environment the roles of the Service and IRPAC become even more critical. Given this new legislative action, the IRPAC Committee has worked ever closer with IRS representatives during the writing process of these new regulations along with its traditional advisory role. To effectively work through this legislative action and other issues, we continue to organize IRPAC into four subgroups- Emerging Compliance Issues, Burden Reduction, Employee Benefits & Payroll, and International Reporting & Withholding. The key focus areas of the subgroups for 2012 are described below, and we thank the Service for its continuing efforts to address our concerns in these areas:

1. Employee Benefit & Payroll (Rebecca Harshberger, Chair): This group focused on the reporting implications of health care reform (with immediate consideration of Shared Employer Responsibility under ACA). The group has also worked closely with TEGE regarding reporting concerns raised by the employee benefit community. Additionally, a recommendation has been made by the group regarding Third Party Sick Pay reporting that is now being reported to the Social Security Administration.

---

[1] IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities and state taxing agencies.

2. Burden Reduction (Kathryn Tracy, Chair): This group focused on the proposed Regulations regarding the cost basis reporting for debt instruments that are consistent with existing requirements, practices and capabilities of providing information to taxpayers. The group also made recommendations regarding the use of a *de minimis* threshold for corrections to Forms1099. A letter from the group regarding this issue is included in the report. The group has also made recommendations regarding the clarification and use of Forms 1097-BTC, Bond Tax Credit and Form 2678, Employer/Payer Appointment of Agent.

3. Emerging Compliance Issues (Susan Boltacz, Chair): This group has focused on the Form 1099-K credit card and third party network reporting requirements. As was stated in last year's report IRPAC recommends that the IRS provide clear guidance to further address many open questions regarding IRC §6050W. The group continued to work with the IRS regarding the correct reporting and withholding for U.S. source payments for freight, shipping and other transportation expenses under IRC §§1441 and §1442. We appreciate your taking our concerns into consideration and issuing much needed guidance in these two areas.

4. International Reporting & Withholding (Donald Morris, Chair): The group has continued to work closely with the IRS and Treasury representatives regarding the implementation of the Foreign Account Tax Compliance Act ("FATCA") and on Chapter 3 withholding. After much discussion throughout the year with all the participants, the group has made a series of nine recommendations relating to the Act.

Although a great deal has been accomplished throughout the past year, much work remains. The Committee urges you to continue to focus on our 2012-2013 Guidance Plan comment letter (see Appendix A), where we emphasized that (1) IRPAC plays a critical role in implementing information reporting and should be consulted early in the regulation process, (2) any changes to information reporting systems and returns takes considerable time and resources, this is especially true given the recent legislative action, and (3) the addition of a *de minimis* dollar threshold with respect to the correction of information returns would significantly reduce taxpayer and Service burden alike and have potentially no effect upon the tax due by the taxpayer.

IRPAC also supports the efforts of the Office of Service Wide Penalties ("OPS") in its review of the Service's administration of civil penalties. The assessment of civil penalties and the administrative adjudication of civil penalty disputes by the IRS are of significant concern to IRPAC. Two particular areas of concern to IRPA are (1) the breakdown of communication between the IRS and taxpayer following the issuance of notices and (2) the belief among IRPAC members that reasonable cause assistant ("RCA") program used by the IRS to analyze penalty abatement requests too frequently results in the erroneous denial of meritorious claims for reasonable cause relief. IRPAC recommends that the IRS consider creative approaches that allow for better monitoring of communications between IRS and taxpayers during this process and additionally IRPAC encourages the IRS to consider modification s to the RCA program to better ensure that meritorious claims for reasonable cause relief are granted.

Lastly, IRPAC will continue to offer our support to the "real-time" project and we look forward to continuing our communication with the IRS and the SSA concerning this vision. During our discussion with the IRS concerning this subject our Committee made various suggestions, one specifically, we believe would improve the effectiveness of the "real-time" reporting and reduce burden for everyone is the inclusion of a *de minimis* threshold dollar value for Form 1099 corrections. This suggestion was, likewise, made in our comments regarding the Guidance Plan above. We believe this has significant merit. We look forward to working with you to overcome the challenges to create a more efficient reporting process for all concerned.

As my term on the IRPAC comes to an end, I believe that the Committee has been engaged in many significant issues to the IRS and the reporting community. The Committee has offered recommendations that will benefit all concerned. On behalf of IRPAC I wish to thank you and the Service and a special thank you to the Office of National Public Liaison for your continued recognition of the importance of IRPAC. Together our goal has been and will continue to be the fulfillment of IRPAC's mission to reduce taxpayer burden and improve the administration of information reporting.

Respectfully Submitted,

Leonard Jacobs

Leonard Jacobs
2012 IRPAC Chair

Employee Benefits and Payroll

A. Employer and Insurer Shared Responsibilities Under the Patient Protection and Affordable Care Act

With respect to the above Act, IRPAC encourages the IRS to continue to work with IRPAC in developing educational materials for employers to assist in their understanding of the shared employer responsibility provisions and assessment process. IRPAC strongly urges the IRS to release proposed regulations immediately on the shared employer responsibility provision in §4980H as it is effective January 1, 2014. We recommend the IRS provide an alternative affordability safe harbor in addition to the currently proposed safe harbor that is based on an employee's Form W-2 wages. Since most employee W-2 wage income will be less than many employees' 'two wage earner' household income, there is a need for an alternative safe harbor.

B. Employer and Insurer Reporting Under the Patient Protection and Affordable Care Act

IRPAC would like to highlight the need for a separate form other than the Form W-2 to report this new information and IRPAC encourages the IRS to review those recommendations in the 2011 IRPAC Public Report.

C. $2,500 Limit on Health Flexible Spending Arrangements

IRPAC recommends that the IRS provide transitional relief for all health flexible spending arrangements that adopted the $2,500 limit before Notice 2012-40 were issued.

D. Health Care Valuation on Form W-2

IRPAC created a health care value chart for Form W-2 to facilitate compliance reporting to employees on the cost of group health care insurance. IRPAC commends the IRS for publishing this chart with modifications.

E. Patient-Centered Outcomes Research Trust Fund

IRPAC has requested the IRS to clarify the applicability date for self-insured

F. Integrated Plans

IRPAC requests the IRS to clarify that non-Health Reimbursement Account (HRA) integrated plans are not required to satisfy the lifetime and annual rules on a stand-alone basis provided that the combined benefit satisfies the requirements.

G. Third Party Sick Pay

The third party sick pay is now reported to the Social Security Administration (SSA) who does not need or use the information. The SSA is revamping their Annual Wage Reporting System and wants to eliminate third party sick pay reporting. IRPAC recommends that the IRS receive and process the third party sick pay filings.

H. Proper Reporting for Flexible Spending Arrangement improper payments

IRPAC recommends that the IRS provide guidance in the form of Frequently Asked Questions ("FAQ") on IRS.gov to address the steps involved in correcting improper payments from cafeteria plan flexible spending arrangements/accounts by employer contracted Third Party Administrators and/or employers.

I. Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, Penalty Relief

Prior to an August 2012 revision, the Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, could accommodate the listing of up to three plans for an extension request. IRPAC recommends relief of penalties for late filing of Form 5500 in certain circumstances where the filer can demonstrate that the failure to file timely is due to a lack of knowledge, before the applicable extension request due date, that the IRS had rejected an otherwise timely filed extension request.

J. Employee Stock Ownership (ESOP) and Cash Balance Plan Prototypes

IRPAC recommends the IRS develop prototype and volume submitter procedures for ESOPs and cash balance retirement plans. IRPAC would wholeheartedly endorse an IRS effort in this area, and would provide assistance and input into the process as applicable.

K. Withholding of Tax on Nonresident Aliens and Foreign Entities

IRPAC recommended corrections to the Tax Treaty Tables in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, to royalty income withholding rates for Film & TV for Egypt, Germany, Netherlands, Norway and Switzerland.

Burden Reduction Issues

A. Cost Basis Proposed Regulations for Debt and Options

Through its public comment letter and subsequent interactions with the IRS, IRPAC has recommended a variety of measures to be considered in formulation of final regulations regarding cost basis reporting for debt instruments and options. Our recommendations are intended to ensure that new reporting requirements are consistent with existing requirements, practices and capabilities while providing information to taxpayers and practitioners in a consistent, understandable and efficient manner.

Toward those ends we have highlighted areas where reporting for income is inextricably tied to basis and have proposed consistent application of requirements across both realms. These concerns are particularly concentrated on areas such as original issue discount. Also of concern was the relatively small subset of fixed income securities that were excluded from the definition of covered securities. Here we have proposed similar treatment (or delayed implementation) for contingent payment debt instruments, inflation protection securities and structured investment products.

The requirements for including cost basis and related information in transfers of assets between financial institutions were also addressed in IRPAC's recommendations. In particular, we have proposed the standard for this information be concentrated on basis at the time of transfer rather than requiring receiving firms to recalculate basis from the time of acquisition. This distinction ensures that no implied changes to prior year income recognition are imposed on the taxpayer, minimizes the number of data elements that must be transmitted and captures correctly any wash sale adjustments that have occurred since the initial purchase of a tax lot.

For reporting cost basis for options, IRPAC's recommendations have addressed the proposed presentation of information and the differing needs of equity and nonequity options. We have proposed that equity options be presented on information returns in a manner consistent with how other investments are reported. This differs from the net gain or loss methodology illustrated in the proposed regulations. Further, we suggested that the approach to reporting options under §1256 be reconsidered because such instruments do not require determination of term as either long or short and are taxed on a mark to market approach rather than any gain or loss that is derived from purchase cost.

Since information returns are intended to give taxpayers the data necessary for completing their tax returns, IRPAC provided some addition recommendations to address scenarios that provide information on Form 1099-B in the new cost basis regime that are not adequately identified on the information return or accommodated on the Form 1040 Schedule D/Form 8949. In particular, IRPAC identified classes of assets for which gains are treated as income rather than capital such as currency shares subject to § 988 or contingent payment debt instruments.

B. Substitute Information Returns

Financial institutions that are required to file forms 1099 and other information returns are permitted to create substitute versions of these forms within the guidelines of Publication 1179 distributed annually by the IRS. Modifications are made to this document annually, but, over time, the publication has not received a thorough overhaul that is required by technological changes and the realities of the marketplace. In fact, the IRS asked IRPAC for *"assistance in updating, streamlining, and simplifying"* the Publication. In addition to the observations shared in meetings throughout the year, IRPAC furnished a marked up copy of the current publication.

IRPAC's recommendations were intended to help modernize the approach to substitute statements since much of Publication 1179 is devoted to filing paper copies of returns. There are also several instances of important information spread across multiple sections. Our proposed revisions sought to consolidate these situations. We further recommended that subtle distinctions between *substitute* and *composite* statements be removed and that the publication be more oriented toward directing which data elements must be part of a substitute statement and less on how the information should be formatted. For example, the publication encourages information to be presented in the order of box numbers on the official form, yet from 2011 to 2012, information on Form 1099-B that was in box 15 one year was moved to box 2b the next. Another item moved from box 8 to box 1c. And we have had years in which items have moved from numbered boxes to unnumbered boxes. The redesign suggested by such changes, if followed explicitly by a filer, would serve only to make year to year presentation to taxpayers inconsistent and confusing. Also with regard statement formatting, IRPAC has recommended that superfluous repetitions of information be eliminated from the requirements.

To further promote modernization of this guidance, IRPAC proposed that explicit direction be given that allows filers to include additional or alternative information that fulfills established goals. For instance a phone number is required on forms 1099, but no explicit provision is given for inclusion of web addresses or email addresses that are established by form filers to similarly serve taxpayer needs. Additionally, explicit prohibitions on inclusion of extraneous information with substitute forms dampens the likelihood of filers risking inclusion of this information. For these reasons, IRPAC has also recommended clarification about the use of logos on permitted enclosures.

The structure of securities has gotten more complex over time. It is now possible for a single investment vehicle to generate several types of income, for example, interest, dividend, royalties and rents. Nevertheless, Publication 1179 restricts some forms and even specific boxes from certain forms from being presented on a consolidated statement. The result is that a taxpayer will see all the income and other relevant tax information for a given investment spread across several documents. IRPAC has proposed that such restrictions be eliminated.

C. Reporting Tax Credits on Form 1097-BTC, Bond Tax Credit

Increased authorizations of tax credit bond issuance has created the need for a new information reporting regime. IRPAC has worked over the last 3 years to assist the IRS and Treasury with the development of Form 1097-BTC, Bond Tax Credit, which is intended to cover the amounts of tax credit allowances earned to bondholders and the IRS. In this area we have made recommendations regarding the granularity and frequency of reporting. We have additionally, addressed issues of how corrections should be handled and helped to minimize the number of data elements required on the form without compromising its utility. As the first reporting deadline approaches in November of 2012, a variety of IRPAC recommendations have been implemented in the final forms being used.

D. *De minimis* Threshold for Form 1099 Corrections

In an effort to reduce overall burden to information return filers, taxpayers and the IRS, IRPAC recommends that the IRS adopt a *de minimis* dollar threshold for corrections to information returns. IRPAC specifically recommends a threshold $50 be adopted so that net changes of $50 or less (up or down) do not require the filing of a corrected information return. Regulatory changes under IRC §§ 6721 and §6722 should be considered so that filers of Forms 1099 have clear authority for suppressing these immaterial corrections. Specifically, a failure to correct a *de minimis* amount of previously reported income should be defined as an “inconsequential error” that is not subject to the penalty provisions of IRC §§ 6721 and §6722.

Currently, in instances where information returns and payee statements are found to contain an error, substantial resources are being expended by withholding agents, including financial institutions (for printing, mailing, reputation, etc.), taxpayers (for filing amended returns), and the IRS (for processing and data matching, etc.) to correct and process corrected statements that, in many cases, have no impact on tax liability. This burden on resources is unnecessary when the correction is for an inconsequential sum that changes neither the taxpayer’s liability nor the Government’s revenues.

In response to the IRS's request for burden reduction assistance, IRPAC has forwarded this issue to Chief Counsel for possible inclusion in the 2013 Priority Guidance Plan. Further, IRPAC has discussed the need for a *de minimis* threshold amount with The National Taxpayer Advocate, Nina Olson, and her staff.

This is not a new issue, and the lack of guidance in this area has created a long history of on-going concerns and wasted resources. Everyone involved in the process, including issuers, recipients and processors of information returns would be well served by the IRS putting a protocol in place to reduce the number of unnecessary corrected filings.

E. Third Party Agent Reporting Using Form 2678, Employer/Payer Appointment Agent

IRPAC recommends that the IRS clarify the liability of an agent reporting using Form 2678, Employer/Payer Appointment Agent, such that the agent is only responsible for the acts authorized by the employer. IRPAC recommends that the IRS also provide more detailed and updated instructions for an agent who reports and deposits backup withholding taxes for payers under § 3.02 of Rev. Proc. 84-33.

An agent who is authorized by an employer to pay the wages of the employer's employees generally has the same withholding tax liability as the employer. When the agent is authorized to pay only a portion of the wages to some of the employees, then the agent should only be responsible for withholding taxes with respect to the wages it paid, not all of the wages of the employer. Prop. Reg. § 31.3504-1(a), Third Party Arrangement Chart on www.IRS.gov, and instructions to Form 2678 should be revised to clarify this limitation. Form 2678 should provide space for employer to specify the particular type or portion of wages and compensation for which the agent is responsible.

In addition, the instructions to Form 2678 refer to Rev. Proc. 84-33, which allows an agent to deposit backup withholding taxes on behalf of a payer. Rev. Proc. 84-33 should be updated, and Form 2678 should also have more detailed and updated instructions, for an agent who reports and deposits backup withholding taxes for payers under § 3.02 of Rev. Proc. 84-33. This updated information should cover the withholding aspect of all relevant forms in the 1099 series.

Emerging Compliance Issues

A. IRC § 6050W and Form 1099-K, Payment Card and Third Party Network Transactions

IRPAC recommends that the IRS clarify in instructions to Form 1099-K, Payment Card and Third Party Network Transactions, that payment settlement entities and third party settlement organizations that do not use merchant category codes (MCCs) to classify payees in their trade or business do not need to complete box 2 and clarify in the instructions that box 3 is optional. The IRS adopted this recommendation in the 2012 Instructions for Form 1099-K. As stated in its 2011 Report, IRPAC continues to believe the IRS must provide clear guidance to further address many open questions regarding IRC § 6050W.

B. Form 1098-T, Tuition Statement

IRPAC recommends clarifying in IRS publications and instructions that information reported on Form 1098-T, Tuition Statement, in boxes 1 and 2 might not be the appropriate amount used to calculate education tax credits.

C. Withholding and Reporting on Payments for Freight, Shipping, and Other Transportation Expenses under IRC §1441 and §1442

Significant confusion has long existed regarding the proper withholding and reporting treatment of U.S. source payments for freight, shipping, and other transportation expenses. This confusion relates to the interplay between the 4% excise tax on U.S. source Gross Transportation Income under IRC § 887 and the 30% gross-basis withholding tax under IRC §§ 871 and §881 as well as the documentation necessary to establish the responsibilities of withholding agents for the latter. In its 2010 and 2011 reports, IRPAC provided a detailed discussion of this issue and other related issues, including recommendations for improvements to forms and instructions. Although the IRS has heard repeatedly about the challenges regarding this issue and the potential compliance benefits to the Government of adopting IRPAC's recommendations, the IRS has made little progress in addressing these concerns. IRPAC renews the recommendations it made in its 2010 and 2011 reports, recommends specific changes to new Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities), and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, and also recommends that the IRS promptly correct the discussion of this issue included in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, because the existing discussion is misleading to taxpayers and withholding agents.

D. Electronic Furnishing to Recipients of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding

Prompted by the guidance issued in Rev. Proc 2012-17 with respect to the electronic furnishing of Schedule K-1 to partners, IRPAC recommends that the IRS issue guidance to permit the electronic furnishing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to the recipient.

E. Central Withholding Agreements: Addressing Needs of Venues and Foreign Artists Through a Mini-CWA Program and Problems Encountered by Foreign Artists when Applying for U.S. Social Security Numbers

IRPAC began discussions with IRS LB&I regarding Central Withholding Agreements (CWA) in 2010 and diligently worked during 2011 to develop a mini-CWA process and to address concerns about missing Social Security Numbers/Individual Taxpayer Identification Numbers. A structure for a new simplified CWA was developed during 2011 and IRPAC believed that it would become part of a revenue procedure that was under revision at that time. Nevertheless, no changes have been made, so IRPAC plans to continue pursuing a solution.

F. Form 8938, Statement of Specified Foreign financial Assets, and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, Requirements

The Foreign Account Tax Compliance Act has resulted in a new annual compliance responsibility on Form 8938, Statement of Specified Foreign Financial Assets, used by U.S. citizens, resident aliens, and certain other individual taxpayers to report their specified foreign financial assets, as required by IRC § 6038D. This filing was required beginning with 2011 income tax returns filed in 2012. Individual taxpayers who are required to file Form 8938 often also have an obligation to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). IRPAC recommends that the IRS supplement the instructions to Form 8938 to include the chart entitled "Comparison of Form 8938 and FBAR Requirements" that appears on the IRS website. IRPAC also recommends that the IRS consider alternatives to eliminate or reduce duplication and confusion associated with compliance with these two separate sets of filing requirements.

International Reporting and Withholding

.

A. Preexisting Account Definition

The Proposed Regulations define the term preexisting obligation to mean an account, instrument or contract maintained by a withholding agent as of January 1, 2013. In the case of a participating foreign financial institution, a preexisting obligation is one maintained prior to the effective date of its agreement with the IRS (July 1, 2013 or later). IRPAC recommends that the definition of preexisting obligations of all withholding agents be changed to obligations maintained as of January 1, 2014.

B. Reason to Know Standards

IRPAC recommends that the Final Regulations clarify that the reason to know standards under Chapter 4 should be applied only to accounts of a customer found on a common computer system of the withholding agent.

C. FFI Verification Process

The Proposed Regulations provide that a withholding agent who receives a Form W-8 that states that the entity furnishing the form is a participating FFI or registered deemed compliant FFI must verify that the entity is on a list published by the IRS.IRPAC recommends that the verification be based primarily on FATCA ID and that a name on the Form W-8 that is reasonably similar to the name on the published list should be considered a match.

D. Presumption Rules for Certain Exempt Recipients

The Proposed Regulations provide that certain entities that may be treated as exempt under Chapter 24 and Chapter 61 without the need for furnishing a Form W-9 will be presumed foreign under Chapter 4. IRPAC recommends that such entities should not be presumed foreign unless there are indicia of foreign status associated with the entity's account.

E. Ordinary Course of Business Payments

The Proposed Regulations provide that payments made in the ordinary course of a withholding agent's business for nonfinancial services are excluded from the definition of a withholdable payment under Chapter 4. It is unclear how a withholding agent should distinguish between payments for financial services and nonfinancial services. IRPAC believes that both types of payments represent a low risk of tax evasion and, therefore, recommends that all payments made in the ordinary course of business for services be excluded from the definition of withholdable payments under Chapter 4.

F. Model Intergovernmental Agreements

The model Intergovernmental Agreements (IGAs) appear to include in the definition of FATCA Partner Financial Institution a branch of a U.S. Financial Institution located in the FATCA Partner, as well as a controlled foreign corporation (CFC) resident in the FATCA Partner. As a result, it is possible that such branches and CFCs may be subject to reporting obligations to the FATCA Partner. IRPAC believes that the Regulations under Chapter 4 and the terms of an IGA entered into with a FATCA

Partner should provide that a branch of a U.S. Financial Institution and a CFC will only be subject to reporting to the IRS.

G. New Forms W-8BEN, Certification of Foreign Status of Beneficial Owner for United States Tax Withholding

IRPAC reviewed the early release draft versions of the new Form W-8BEN and Form W-8BEN-E. IRPAC is pleased that the IRS adopted the recommendation in the 2011 IRPAC Annual Report that there be two separate versions of the Form W-8BEN- one for individuals and one for entities. IRPAC provided several comments on the draft forms and will continue to discuss the draft forms with the IRS.

H. Coordination of Chapter 3 and Chapter 4

IRPAC discussed with the IRS the need for the Regulations under Chapter 3 and Chapter 4 to be coordinated. In particular, IRPAC renewed the recommendations discussed in the 2011 IRPAC Public Report concerning Chapter 3 issues. IRPAC is pleased to note that certain of these issues, such as the capacity line on Forms W-8, are being addressed by the IRS.

I. Short-Term Debt

IRPAC recommended that interest (including original issue discount) on debt having a term of 183 days or less be excluded from the definitions of “withholdable payment” and “financial account” under Chapter 4. IRPAC is pleased to note that the Proposed Regulations do exclude such interest (including original discount) from the definition of withholding payment. We believe that the Final Regulations should provide a similar exclusion from the definition of financial account.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

EMPLOYEE BENEFITS & PAYROLL SUBGROUP REPORT

BOYD J. BROWN
ANNE C. LENNAN
HOLLY L. SUTTON
REBECCA HARSHBERGER, SUBGROUP CHAIR

A. Employer and Insurer Shared Responsibilities Under the Patient Protection and Affordable Care Act

Recommendations

1. IRPAC strongly urges the IRS to release proposed and temporary regulations as soon as possible on the shared employer responsibility provision in IRC §4980H.

2. IRPAC encourages the IRS to develop a process to generate the substantiation documents that should accompany the shared employer responsibility assessment.

3. IRS should provide an alternative affordability safe harbor in addition to the currently proposed safe harbor that is based on an employee's wages reported on Form W-2, Wage and Tax Statement.

4. IRPAC encourages the IRS to work with IRPAC in developing educational materials for employers to help them understand the shared employer responsibility provisions and assessment process.

Discussion

Section 4980H was added to the Internal Revenue Code by §1513 of the Patient Protection and Affordable Care Act, and amended by §1003 of the Health Care and Education Reconciliation Act of 2012. IRC § 4980H is effective for months beginning after December 31, 2013.

The employer shared responsibility provisions provide that a large employer (defined as an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year, which for this purpose includes full-time equivalent employees) could be subject to an assessable payment if any full-time employee is certified to receive a premium tax credit or cost-sharing reduction payment. Generally, this may occur where either: 1) the employer does not offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; or 2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plans that either is unaffordable relative to an employee's household income or does not provide minimum value.

The IRS released Notice 2011-36 describing potential approaches, which could be incorporated in future proposed regulations. According to the Notice, the IRS contemplated that the proposed regulations would make clear that an employer offering coverage to all, or substantially all, of its full-time employees would not be subject to the IRC §4980H(a) penalties.

The determination of affordability remains a critical issue for employers in designing their benefit plans. Will the affordability determination for purposes of IRC §4980H(b) apply based on the affordability of self-only coverage and not on the affordability of employee plus one dependent, or employee plus family?

IRPAC appreciates the guidance in Notice 2012-58 that addresses some discrete issues in determining full-time employees. However, this notice does not address the broader issues of calculating the assessment and whether employers will be penalized for not offering dependent coverage or offering dependent coverage that is not defined as affordable under the statute.

Employers that provide health care offerings to their employees generally begin the plan design process 18 months to two years before the beginning of a new plan year. For those companies or industries that engage in contract bids, the bidding process is now underway for years 2014 and beyond. The uncertainty with respect to IRC §4980H provisions is currently impeding the bidding process for employer offerings for plan years beginning January 1, 2014, and this uncertainty is already creating long-term employment consequences for large employers (50 or more full-time employees).

The Employee Benefits and Payroll Subgroup of IRPAC has been working this year to map the information flow that will take place among the federal agencies, the exchanges, individuals, employers, insurers and plans. Based on our understanding of the statutory language, it is the IRS that will calculate the actual premium tax credit (not the advance premium tax credit) and send employers a shared employer responsibility assessment. It is imperative that the assessment notice is accompanied by documents substantiating the amount and demonstrating the number of employees who actually received and were entitled to premium tax credits. For those employers declining to use the proposed affordability safe harbor, a thoroughly documented substantiation will be vital to secure taxpayer compliance with IRC § 4980H provisions. The assessments could be potentially very large and an assessment notice without adequate supporting documentation will cause major collection problems for the IRS.

IRS Notice 2011-73 requested comments on a potential proposed safe harbor for determining the affordability of coverage under an eligible employer-sponsored plan for purposes of the IRC §4980H(b) liability. Coverage under an employer-sponsored plan is considered affordable to a particular employee if the employee’s required contribution for the self-only premium for the employer’s lowest cost plan does not exceed 9.5 percent of the employee’s household income for the taxable year.

Household income for this purpose is defined as the modified adjusted gross income of the employee and any members of the employee's family (which would include any spouse and dependents) who are required to file an income tax return.

The IRS acknowledged in Notice 2011-73 that employers may encounter practical difficulties in assessing whether the coverage they are offering is affordable to certain employees given that household income is determined by variables that are generally unknown to employers (i.e. an employee's other sources of income or loss, as well as the income and losses, if any, of spouses and dependents). To address these unknowns, Treasury and the IRS expect to propose an affordability safe harbor for § 4980H purposes, whereby the affordability of an employer's coverage would be measured by reference to an employee's wages from that employer and not household income. Wages for this purpose would be the total amount of wages as defined in §3401(a), which is the amount required to be reported in Box 1 of Form W-2. Notice 2012-58 also permits reliance on the Form W-2 safe harbor at least through the end of 2014.

It is important for the IRS to recognize that not all employers will use the currently proposed affordability safe harbor (an employee's Form W-2 wages), as this will, in most cases, lead to a penalty assessment that is far greater than the assessment that would result from an employee's household income. This is because a large number of employees live in households with two-income earners. Since most employees' wages reported on Form W-2 will be less than their household income, there is a need for an alternative safe harbor. IRPAC suggests the following alternatives for consideration.

1. Since the applicant for the premium assistance tax credit must complete an application and submit this to the Exchange, it would be appropriate to ask that the applicant provide the anticipated household income for the year. The employer/plan would provide the Exchange with the required employee contribution and the Exchange would determine affordability and notify the employer. No anticipated household income information would be shared with the employer/plan. The Exchange would simply notify the employer/plan whether or not the coverage was affordable and the employer/plan would rely on that in determining the liability.

This approach would build on the methodology proposed by the Department of Health and Human Services to determine whether an individual's household income meets the eligibility requirements for advance premium tax credits. Under this proposal, the Exchanges would project an individual's household income for the plan year using household income reported on the applicant's most recently filed tax return.

2. The Exchanges would use the prior year's household income for an applicant, provided by IRS records, to determine affordability and notify the employer. The Exchanges would not provide any household income information to the employer.

After guidance is released addressing the issues surrounding the shared employer responsibility provision, IRPAC believes the employer community will need plain language explanations, along with tools to help employers understand their responsibilities and the consequences of various approaches. IRPAC offers its combined industry expertise to assist the IRS in this endeavor.

IRPAC encourages the IRS to work with consumer advocates in developing educational materials for individual taxpayers who will access the premium tax credits and cost-sharing reductions.

B. Employer and Insurer Reporting Under the Patient Protection and Affordable Care Act

Recommendation

IRPAC made numerous recommendations in the 2011 IRPAC Public Report. We encourage IRS to again review those recommendations. IRPAC would also like to highlight the need for a separate form other than the Form W-2 to report this new information.

Discussion

IRC §§ 6055 and 6056 were added by the Patient Protection and Affordable Care Act, Public Law 111-148, which was amended by the Health Care Education Reconciliation Act of 2010, Public Law 111-152. The reporting requirements apply to coverage provided on or after January 1, 2014. The first information returns will be filed in 2015.

According to IRS Notice 2012-32, IRC §6056(d) permits the Secretary to provide, to the maximum extent feasible, that any return or statement required under IRC §6056 may be provided as part of a return or statement under IRC §6055 or IRC §6051 (relating to reporting by employers on the Form W-2.) The inclusion of additional data on the Form W-2 will undoubtedly cause this form to become a multiple page form and will make the preparation of the form increasingly difficult and costly.

In response to IRS Notice 2012-32 and Notice 2012-33, IRPAC submitted two comment letters on June 11, 2012, which are attached in the Appendix B.

C. $2,500 Limit on Health Flexible Spending Arrangements

Recommendation

IRPAC recommends that the IRS provide transitional relief for all health flexible spending arrangements (Health FSAs) that adopted the $2,500 limit before Notice 2012-40 was issued. The transitional relief should permit an exception to the cafeteria plan election change rules for these Health FSAs that would allow plan participants to increase their elections for the 2012 plan year and allow the increase to apply for the entire plan year.

Discussion

In response to the issuance of IRS Notice 2012-40 that provides guidance on the effective date of the $2,500 limit (as indexed for inflation) on salary reduction contributions to Health FSAs under §125(i), IRPAC submitted a comment letter (see Appendix C) on July 13, 2012.

D. Health Care Valuation on Form W-2

Recommendation

IRPAC created a health care value chart for Form W-2 to facilitate compliance with the interim guidance on informational reporting to employees of the cost of group health coverage (IRS Notice 2011-28). The chart provides a quick visual reference.

Discussion

IRS published a chart in early 2012 on IRS.gov after making modifications to the chart submitted by IRPAC. The IRS chart is found in Appendix D. The reporting community has enthusiastically praised this chart and applauds the IRS for offering this assistance to the reporting community.

E. Patient-Centered Outcomes Research Trust Fund

Recommendation

IRPAC requests that the IRS clarify the applicability date for self-insured plans.

IRPAC requests that the IRS publish a chart showing which plans are subject to the fee and which plans are not subject to the fee.

Discussion

The IRS released a proposed rule on the fees imposed by the Patient Protection and Affordable Care Act on issuers of certain health insurance policies and plan sponsors of certain self-insured health plans to fund the Patient-Centered Outcomes Research Trust Fund (REG-136008-11). The applicability date has served as a source of confusion. As stated in our July comment letter, found in Appendix E, IRPAC requests some examples that clearly demonstrate the effective date.

IRPAC created a chart to assist the employer/plan community in understanding the plans that were subject to the fee and provided this chart to the IRS.

F. Integrated Plans

Recommendation

IRS should clarify that non-Health Reimbursement Account (HRA) integrated plans are not required to satisfy the lifetime and annual rules on a stand-alone basis, provided that the combined benefit satisfies the requirements.

Discussion

The Patient Protection and Affordable Care Act prohibits group health plans from imposing lifetime and annual limits on the dollar value of essential health benefits, but allows “restricted annual limits” for plan years beginning before January 1, 2014. The preamble of the Interim Final Rule on lifetime and annual limits (26 CFR 54.9815-2711T) distinguishes between stand-alone health reimbursement arrangements (HRA) and HRAs that are integrated with other group health coverage. The preamble states that when an HRA is integrated with other health coverage, if the other coverage alone would meet the lifetime and annual limits requirements, the HRA need not satisfy the requirement on its own because the combined benefit satisfies the requirements.

Non-HRA plans exist that are integrated with other health coverage which satisfies the lifetime and annual limit rules. These non-HRA plans do not permit unused portions of the maximum dollar amount to be carried forward to increase the maximum reimbursement amount in subsequent coverage periods. These integrated plans should be given the same treatment as integrated HRAs for purposes of the lifetime and annual limit rules, as contemplated by the statute.

G. Third Party Sick Pay

Recommendations

IRPAC recommends that IRS should receive and process the third party sick pay filings.

Discussion

Third party sick pay is now reported to the Social Security Administration (SSA) who does not need or use the information. The SSA is revamping their Annual Wage Reporting System and wants to eliminate third party sick pay reporting.

Many employers use third party sick pay providers to handle Forms W-2 for short-term and/or long-term disability payments. These providers operate on separate systems from employers and in most cases do not have access to health coverage data on individual employees. Reporting directly to the IRS would decrease the burden on third party sick pay providers as they would only need to interact with the IRS on reconciliation matters.

H. Proper Reporting for Flexible Spending Arrangement improper payments

Recommendations

IRPAC recommends that the IRS provide guidance in the form of Frequently Asked Questions (FAQ) on IRS.gov to address the steps involved in correcting improper payments from cafeteria plan flexible spending arrangements/accounts (FSAs) by employer contracted Third Party Administrators (TPAs) and/or employers. These FAQs would specifically address the “basic rule” governing these improper payment corrections (i.e., to restore the participant and plan back to original status as if no error had occurred), who is responsible for correcting the improper payment (i.e., TPA or employer), and the listed/ordered steps necessary to accomplish an employee and plan restoration under such “basic rule.”

IRPAC recommends the below FAQ be released to the public on IRS.gov**.**

Category: Flexible Spending Arrangements/Accounts

Question: In the event of an administrative error resulting in a cafeteria plan FSA improper payment to an employee, what are the corrective steps necessary to restore the employee and the cafeteria plan back to their/its original status?

Answer: The basic rule is that the employer is responsible for restoring the employee and the cafeteria plan back to where they/it would have been if the error had never occurred. The steps involved in correcting a cafeteria plan FSA improper payment are listed below:

1. The employer requests that the improper payment be returned by the employee to repay the cafeteria plan in an amount equal to the improper payment. In the event that this does not occur in full then,
2. The employer should include the improper payment in the employee’s taxable income or withhold the amount of the improper payment from the employee’s pay or other compensation, to the full extent allowed by law. In the event that this does not occur in full then,

3. The employer should apply a claims substitution or offset to future reimbursements in the amount of the improper payment. In the event that none of the above occur in full then,
4. The employer should treat the improper payment as it would any other business indebtedness.

When employee/account restoration is reached by following the above listed steps, cafeteria plan FSAs will alleviate any jeopardy of losing their overall tax-favored status.

Category: Flexible Spending Arrangements/Accounts

Question: In the event that a TPA, engaged by an employer to manage the payments to its employees from a cafeteria plan FSA, distributes an improper payment to an employee, who carries the burden of correction for this improper payment? Is it the TPA's responsibility to issue a Form 1099-MISC, Miscellaneous Income, to the individual who received the improper payment? Or, does the burden rest with the employer to include such improper payment in the employee's Form W-2?

Answer: The responsibility for the plan ultimately rests with the employer. Employers may contract with TPAs to perform administrative duties at the employer's direction, but this type of relationship does not relieve an employer's responsibility of reporting correct taxable income to its employees. The responsibility of the correction for such improper payments rests ultimately with the employer. Only an employer can authorize and control increases in the taxable wages of its employees.

Discussion

IRPAC is concerned with the clarity of the guidance within IRC §125 related to the corrective steps for improper payments from FSAs that are not specifically incurred by debit card plans. It is IRPAC's opinion that the guidance available within IRC §125, Prop. Treas. Reg. §1.125-6(d)(7), Rev. Rul. 2003-43 and various other sources, while offering reasonable approaches, is unclear as to the corrective steps to be taken when such administrative errors result in improper payments from FSAs. Also, this guidance is unclear about who (i.e., TPA or employer) carries the burden of correction. The underlying questions that need resolution are:

1. Is the correction of the improper payment the responsibility of the employer or the TPA, in the event that there is a TPA involved?
2. What is the proper order of events in which to reach corrective resolution on FSA improper payments (*e.g.*, request return of money from plan participant; include in taxable income; offset future reimbursements; add to gross income through Form 1099-MISC)?

IRPAC recognizes that legitimate administrative errors resulting in FSA improper payments, although rare, can occur. When these errors occur, plan/participant restoration should be key and corrective measures considered without threat of the overall disqualification of the plan involved.

I. Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, Penalty Relief

Recommendations

1. Consideration of non-enforcement of penalties for late filing of the Form 5500, Annual Return/Report of Employee Benefit Plan, if the filer can demonstrate that a Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, requesting an extension was timely filed, and subsequently the Forms 5500 were timely filed by the extension-requested due date.

2. Clarification whether in the above-mentioned situation it is all plans listed in the filing, or only those listed in any attachments and not in the three lines provided for plans on the form itself, that will be considered not to have timely filed an extension.

3. Consideration of similar relief for those Form 5558 filers whose filings received by the IRS before July 31, 2012, were returned, but not received by the filers before the July 31, 2012 due date, unless specific transition relief was provided with the return of the original filing.

Discussion

Form 5558 is used by employers, plan sponsors and plan administrators to request an extension of time to file the Form 5500. For a calendar year plan, Form 5558 is due July 31. Prior to an August 2012 revision, the Form 5558 could accommodate the listing of up to three plans for an extension request. (The August 2012 revision requires a separate Form 5558 for each plan requesting an extension.)

Employers, plan sponsors and plan administrators have over the years routinely included attachments to their Form 5558 filings to include additional plans, beyond the lines for three plans that are on the form. In early 2012 the IRS alerted taxpayers that it would NOT process a Form 5558 requesting extensions for more than three plans. The IRS noted that Forms 5558 received through July 31, 2012, that requested extensions for more than three plans would be returned to the filer to submit separate Forms 5558 to request the extension. Further, the IRS indicated that Forms 5558 requesting extensions for more than three plans that were received after July 31, 2012 would NOT be returned, nor would they be processed.

The IRPAC acknowledges that the IRS provided taxpayers adequate warning about its position regarding the attachment of lists of additional plans to Form 5558. However, we believe the IRS should consider providing some transitional relief under certain circumstances. Filers of a timely filed Form 5558 that was received by the IRS after July 31, 2012, but that was not processed or returned, are left with no knowledge that the requested extensions have not been accepted or processed.

J. Employee Stock Ownership (ESOP) and Cash Balance Plan Prototypes

Recommendations

IRPAC recommends the IRS develop prototype and volume submitter procedures for ESOPs and cash balance retirement plans. The IRPAC would wholeheartedly endorse an IRS effort in this area and would provide assistance and input into the process as applicable.

Discussion

The IRS has established a series of procedures for taxpayers to submit applications for advanced determination letters on the tax-qualified status of retirement plans. These procedures give sponsors of prototype and volume submitter plans the opportunity to receive an advanced determination letter on plan document templates that can be adopted by different employers and plan sponsors with no or only a limited opportunity for variation. The prototype and volume submitter program permits plan sponsors to gain assurances about the tax-qualified status of the form of their plans without the necessity of submitting individualized determination letter applications, saving taxpayers time and money. Further, the prototype and volume submitter programs afford the IRS the opportunity to review and provide guidance to an increased number of plan sponsors in an efficient and cost effective manner.

The prototype and volume submitter programs, however, are not available for all types of tax-qualified retirement plans for which individual plan determination letter applications can be filed. TEGE has requested the IRPAC's thoughts on the development of prototype and volume submitter processes for both ESOPs and cash balance plans.

The IRPAC believes that the development of prototype and volume submitter procedures for ESOPs and cash balance retirement plans would be welcomed by the retirement plans community, and would be a valuable addition to the guidance and compliance programs developed by the IRS. The IRPAC wholeheartedly endorses an IRS effort in this area, and looks forward to providing assistance and input into the process as applicable.

K. Withholding of Tax on Nonresident Aliens and Foreign Entities

Recommendations

IRPAC recommended corrections be made in Table 1 on page 40 and 42 in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, with respect to royalty income withholding rates for Film & TV for Egypt, Germany, Netherlands, Norway and Switzerland. The table indicates 30% withholding while the appropriate rate for these countries is zero.

Discussion

The entertainment industry, a supporter of IRPAC, noticed the IRS changes in the rates made to Publication 515 in 2011 for Egypt, Germany, Netherlands, Norway and Switzerland, but found there were no changes to the income tax treaties for these countries that would have justified the changes to the rates. The table in the publication indicates that 30% withholding applies while the rate for these countries under the applicable treaties is zero. The industry brought this concern to the IRPAC. Although definitive guidance is provided in the treaties themselves and not the publication, IRPAC recommended that the IRS review the table and correct the errors due to the then upcoming 2012 Summer Olympics. The IRS accepted the IRPAC recommendation and made the changes within 24 hours in time for the 2012 Summer Olympics. IRPAC understands that the publication will be updated during its next revision.

Information Reporting Program Advisory Committee

Burden Reduction Subgroup Report

Julia K. Chang
Tony Y. Lam
Arthur B. Wolk
Lonnie Young
Kathryn S. Tracy, Subgroup Chair

A. Cost Basis Proposed Regulations for Debt and Options

Recommendations

Through its public comment letter and subsequent interactions with the IRS, IRPAC has recommended a variety of measures to be considered in formulation of final regulations regarding cost basis reporting for debt instruments and options. The highlights of these recommendations are as follows:

HARMONIZE REPORTING FOR BASIS AND INCOME

Implicit in the cost basis for debt are elements of income such as bond premium and original issue discount. Due to inadequate availability of information and other restrictions, there have always been limits to the requirements for reporting income. Even though these limits exist, the proposed regulations assumed them away. IRPAC therefore has recommended that these circumstances be reviewed to ensure that well established and long recognized industry capabilities and circumstances are honored and given due consideration in the formulation of cost basis reporting requirements.

1. **Tax exempt original issue discount**
   Since 2006 payees have not been required to report tax exempt Original Issue Discount (OID) to payees until further guidance is forthcoming from the IRS. Additionally, where capabilities exist to compute these amounts it is limited to issues that have amounts of OID beyond the de minimis threshold as would be measured for taxable instruments. IRPAC recommends that basis reported for tax exempt discount instruments be optional until such time as these issues are addressed and industry has been given ample time to implement any required systematic changes.

2. **Treasury Separate Trading of Registered Interest and Principal Securities (STRIPs)**
   Reporting of OID income on Treasury STRIPs may be done based on a table of income approximations available in Publication 1212 Guide to Original Issue Discount. These amounts are recognized as likely to differ from the payee’s actual income and, therefore, adjustment to basis.

EXCLUDE ADDITIONAL TYPES OF SECURITIES FROM THE DEFINITION OF COVERED SECURITY

Some types of debt instruments have basis computation requirements that differ from traditional debt. Due to this complexity IRPAC recommends that the following types of instruments be considered for inclusion in the definition of covered securities only after reporting for traditional debt obligations has been well established.

1. Contingent payment debt
2. Structured products containing debt
3. Inflation protection securities

ADJUSTED BASIS AT THE TIME OF TRANSFER

1. **Required elements for transfer statements**
   The proposed regulations have a large number of data elements that are to be included in transfer statements for debt instruments. IRPAC has recommended limiting this list only to items needed to continue schedules of accretion and amortization from the adjusted basis as of the transfer date.
2. **Working from adjusted basis rather than recomputing**
   Two approaches can be used when receiving a position in a debt security through a transfer. The recipient can either compute any premium or discount based on the original purchase date and price or evaluate the position by comparing the adjusted basis to the adjusted issue price on the transfer date. IRPAC has recommended the latter approach for several reasons.
3. **Wash sale adjustments would not be captured**
   The impact of wash sale adjustments to the original transaction will not necessarily be captured if the transferor must go back to the beginning of the tax lot's history. On the other hand, the adjusted basis as of transfer date should reflect the impact of such activity.
4. **Respects the prior year reporting of income**
   If there are differences in the computation routines used by the transferor or transferee, recomputing from the tax lot's inception would potentially imply changes to income recognized by the taxpayer in prior years.
5. **No material difference**
   If both parties use identical methodology there will be no material difference and if the computations for initial years were faulty, the successor, picking up at the reported adjusted basis, has the opportunity to put income recognition and basis adjustment on a proper path for the duration of the tax lot's life.

HAVE INFORMATION REPORTING FOR OPTIONS STRUCTURED THE SAME WAY AS DEBT OR EQUITY

Proposed regulations established a routine in which the net gain or loss for cash settled options was reported rather than a traditional basis and proceeds approach that is familiar to taxpayers. IRPAC has recommended an approach more consistent with the treatment of equities because this is complementary to the taxpayers responsibility with regard to Form 8949 Sales and Other Dispositions of Capital Assets and Schedule D Capital Gains and Losses as well as matching the way the transactions are captured by existing industry practice. To make information returns more consistent with the nature of the financial instrument, it was further recommended that the 1099-B Proceeds From Broker and Barter Exchange Transactions designation of “Cost or other basis” be modified to “Basis or cost to open or close.”

DISTINCT GUIDANCE FOR EQUITY AND NONEQUITY OPTIONS

The single approach to options envisioned by the proposed regulations does not address the fact that the tax treatment of options under section 1256 does not require either a determination of long- or short-term or a traditional gain/loss recognition based on purchase cost. IRPAC has recommended that distinct and different approaches be considered for equity and non-equity options. Further consideration must be given to the existing capabilities of the industry’s existing systems.

MODIFICATIONS TO FORM 1040 SCHEDULE D

Information regarding sale of financial assets generally flows from Form 1099-B to the Form 8949 to Schedule D of Form 1040 U.S. Individual Income Tax Return. There is a special provision on Schedule D to account for the fact that collectibles are taxed at a different rate than capital gains for other financial instruments. There is no similar provision; however, to segregate assets that are reported to the payee on Form 1099-B, but also require treatment that is other than usual capital gains. For several types of assets, there is no capital gain or loss. Rather, the closing transaction results in ordinary income or loss which is accounted for elsewhere on Form 1040. Accordingly, Schedule D requires a mechanism to properly treat:

1. Currency shares and other issues subject to Section 988
2. Contingent payment debt instruments

Discussion

IRPAC’s comment letter of February 2012 goes into great detail on these issues and others. Both prior to and following the comment period, there have been productive sessions that have enabled both the IRS and IRPAC to explore the implications of these issues and to address other matters that have been found in the industry. Appendix F to the public report contains the public comment letter as well as other recommendations provided in an IRPAC Cost Basis follow-up correspondence.

B. Substitute Information Returns

Recommendations

PUBLICATION 1179 GENERAL RULES AND SPECIFICATIONS FOR SUBSTITUTE FORMS 1096, 1098, 1099, 5498, AND CERTAIN OTHER INFORMATION RETURNS

Financial institutions that are required to file forms 1099 and other information returns are permitted to create substitute versions of these forms within the guidelines of Publication 1179 (or its concomitant revenue procedure) issued annually by the IRS. Modifications are made to this document annually, but over time, the publication has not received a thorough overhaul that is required by technological changes and the realities of the marketplace. In fact, IRS asked IRPAC for "assistance in updating, streamlining, and simplifying" the publication. In addition to the observations shared in meetings throughout the year, IRPAC furnished a marked up copy of the current publication draft that focused on the following modifications and recommendations.

1. **Eliminate distinction between <u>substitute</u> and <u>composite</u> statements.** There are subtle differences pertaining to substitute forms as opposed to a conglomeration of several substitutes in a single document. The reasons for these differences are unclear and they generally lead to uncertainty in creation of comprehensive tax statements that financial institutions would like to supply to their customers.
2. **Concentrate on specifying what information is required rather than formats.** The publication includes directives to do things such as present data elements in the numerical order of the box numbers on the official form. This is impractical and ill conceived; in 2012, for example, an item on form 1099-B was numbered "1c" when it had been "15" on the prior year's form. This type of annual shuffling and renumbering of boxes is confusing and cumbersome to both the filer and recipient of the form. Taxpayers generally prefer the information on their tax statements to follow the same flow as their monthly (or other applicable period) statements.
3. **Eliminate multiple references to the same requirements to reduce ambiguity.** In 2011 there were three different areas of the publication that governed the IRS legends that should appear on form 1099-B. IRPAC's revisions reduced this to one.
4. **Allow for all boxes of Form 1099-MISC Miscellaneous Income to appear on a composite form.** When a filer creates a composite form, only some types of income from Form 1099-MISC may be included in the document. Therefore, when certain trusts make distributions of interest and rent, for example, only the interest may appear on the composite form, with the rent relegated to a separate document.

5. **Eliminate the reference to "Copy B."** When multipart paper forms were prevalent, the various form layers were given alphabetic designations. The publication still requires that a payee copy carry the "Copy B" designation although no other paper copies actually exist. This is confusing and prompts unnecessary questions. When only one copy of a form is delivered to the payee and the payer files electronically with the IRS, the "Copy B" designation should not be required.
6. **Avoid superfluous repetitions.** With the advent of cost basis reporting, the IRS has required that amounts reported on substitute Forms 1099-B be organized according to term (long or short) and whether basis is reported to the IRS. Additionally, an indication of status (covered or noncovered) is required. Since the official form includes these items for each reportable amount it should be clear that where the substitute is organized within sections that bear these data elements in the title, they do not have to be repeated with each line item.
7. **Clarify the use of logos.** Publication 1179 should be clear that logos are permitted on permissible enclosures within the same guidelines as payee statements.
8. **Permit inclusion of modern equivalents.** The name and address of the payer is required on the substitute forms along with a contact phone number. It should be specified that additional information such as an email address or web URL that would guide the payee to the same contacts or a repository of additional relevant information is permissible on payee statements.

STATE TAX WITHOLDING

Provisions for reporting state income tax withholding on Forms 1099 were added for tax year 2012. There are some limitations and inconsistencies to these new form boxes.

1. **State tax reporting boxes on 1099-MISC.** The presentation on this form is inconsistent with the equivalent boxes on Forms 1099-DIV Dividends and Distributions, 1099-INT Interest Income, 1099-B and 1099-OID Original Issue Discount. The wording differs and a single box is used for the state and state ID number. This should be harmonized with the other forms.
2. **Withholding in multiple states.** For the instances in which withholding has been deposited in more than one state, guidance should explicitly state that the use of the word "Various" is proper and supplemental reporting of the applicable details to the payee is encouraged. This would also be consistent with the approach used to convey foreign tax withheld on the same forms.

Discussion

Over the past several years, IRPAC has had the opportunity to provide important input to the IRS with regard to substitute forms. This was particularly true with the changes required by the initial cost basis reporting requirements. This process has continued for the current year as we have provided substantial changes to the draft of Publication 1179 to address deficiencies and future needs. We have welcomed this opportunity and look forward to the continued collaboration.

C. Reporting Tax Credits on Form 1097-BTC Bond Tax Credit

Recommendations

1. PUBLISH SUBSTITUTE STATEMENT REQUIREMENTS SEPARATELY FROM PUBLICATION 1179

Form 1097-BTC is a new form that has a quarterly reporting requirement to payees. Therefore, IRPAC has recommended that guidance for substitute statements be published separately from Publication 1179, the traditional repository of that information.

2. ELIMINATE ALLOWANCE DATES IN FAVOR OF A CALENDAR MONTH

Early drafts of Form 1097-BTC required reporting the tax credits associated with specific quarterly allowance dates and an additional box for anything falling outside those dates. This arrangement could have required filers to issue multiple forms in certain circumstances. IRPAC has recommended that a total of credits for each calendar month be adopted instead.

3. LIMIT THE FREQUENCY OF REPORTING TO QUARTERLY

Form 1097-BTC provides payees with the value of tax credits earned throughout the year. Although the form provides the amounts applicable to each calendar month, IRPAC has recommended that reporting be limited to the end of each calendar quarter.

4. PUBLISH GUIDANCE ON CORRECTION PROTOCOLS

Since this form must be provided to payees quarterly, IRPAC has requested that the IRS provide guidance on how corrections should be provided. Should they appear on the subsequent quarter's report? As a separate document? Would the annual report to the IRS be considered "corrected" under such circumstance?

5. REPLACE THE UNIQUE IDENTIFIER

Initial drafts of Form 1097-BTC required a unique identifier (created by the filer) that would be associated with each credit allowance date on each form. IRPAC has recommended the use of a single unique identifier associated with each account.

6. Use plain language labels instead of cryptic numeric designations.

Form 1097-BTC has a box for bond type. The current requirements are to populate the box with a value of 101 for Clean Renewable Energy Bonds (CREB) and 199 for any other type of tax credit bond. IRPAC recommends that the bond be identified as either CREB or non-CREB since a taxpayer is more likely to recognize a description of the asset owned than the numeric designation.

Discussion

The form and instructions posted in late August incorporate many of the committee's recommendations. Unfortunately, since the series 1097 was used for this new form rather than 1099, the provisions of Taxpayer Identification Number (TIN) truncation that were established by Notices 2009-93 and 2011-38 do not apply to this new form. This is probably an unintended consequence that the IRS should consider addressing expeditiously.

D. *De minimis* Threshold for Form 1099 Corrections

Recommendation

In an effort to reduce overall burden to information return filers, taxpayers and the IRS, IRPAC recommends that the IRS adopt a *de minimis* dollar threshold for corrections to information returns. IRPAC specifically recommends a threshold of

$50 be adopted so that net changes of $50 or less (up or down) do not require the filing of a corrected information return. Regulatory changes under IRC §§ 6721 and 6722 should be considered so that filers of Forms 1099 have clear authority for suppressing these immaterial corrections. Specifically, a failure to correct a *de minimis* amount of previously reported income should be defined as an "inconsequential error" that is not subject to the penalty provisions of IRC §§ 6721 and 6722.

Discussion

Currently, in instances where information returns and payee statements are found to contain an error, substantial resources are being expended by withholding agents, including financial institutions (for printing, mailing, reputation, etc.), taxpayers (for filing amended returns), and the IRS (for processing and data matching, etc.) to correct and process corrected statements that, in many cases, have no impact on tax liability. This burden on resources is unnecessary when the correction is for an inconsequential sum that changes neither the taxpayer's liability nor the Government's revenues.

An actual industry example, as set forth in Appendix G, has been provided to the Service as evidence of the impact of a *de minimis* dollar threshold for corrections. In this example, for this particular brokerage firm, 5150 accounts were held in a particular a Unit Investment Trust (UIT) in 2009. The 2009 Forms 1099-DIV, Dividends and Distributions, issued to those accounts included income attributable to that UIT. In the first quarter of 2011 (nearly a year after the associated income tax returns of UIT account holders would have been filed), the trustee's accounting firm discovered an error in the factors that the trustee had supplied to the industry allocating its distributions between dividend and non-dividend distributions for information return reporting. The trustee published amended factors that required corrected Forms 1099-DIV. The chart shows the distribution of those accounts across various dollar correction levels. If corrections were not required for changes of $50 or less, nearly 45% of the corrections could have been avoided - and at no loss of revenue to the Government.

In instances involving large scale corrections where a filer discovers a systemic problem or faulty data source, there is often a desire to create some sort of settlement between the financial institution and the IRS to avoid the inconvenience to customers of amending payee statements. This desire to avoid amended statements increases as the time between the original statement and potential correction increases.

Further, the IRS has already recognized the need for certain *de minimis* exceptions, and IRPAC believes that the IRS should recognize that this is an additional area where a *de minimis* exception makes sense. Treasury Regulation § 301.6721-1(d) already permits an exception for a *de minimis* number of failures to include correct information on certain information returns if certain criteria are met. Unfortunately, it falls short of remedying the issue at hand as it does not offer a *de minimis* dollar amount exception for corrections.

In response to the IRS's request for burden reduction assistance, IRPAC has forwarded this issue to Chief Counsel for possible inclusion in the 2013 Priority Guidance Plan. Further, IRPAC has discussed the need for a *de minimis* threshold amount with The National Taxpayer Advocate, Nina Olson, and her staff.

This is not a new issue, and the lack of guidance in this area has created a long history of on-going concerns and wasted resources. Everyone involved in the process, including issuers, recipients and processors of information returns would be well served by the IRS putting a protocol in place to reduce the number of unnecessary corrected filings.

E. Third Party Agent Reporting Using Form 2678, Employer/Payer Appointment of Agent

Recommendation

IRPAC recommends that the IRS clarify the liability of an agent reporting using Form 2678 such that the agent is only responsible for the acts authorized by the employer. IRPAC recommends that the IRS also provide more detailed and updated instructions for an agent who reports and deposits backup withholding taxes for payers under § 3.02 of Rev. Proc. 84-33.

Discussion

An agent who is authorized by an employer to pay the wages of the employer's employees generally has the same withholding tax liability as the employer. When the agent is authorized to pay only a portion of the wages to some of the employees, then the agent should only be responsible for withholding taxes with respect to the wages it paid, not all of the wages of the employer. Prop. Reg. § 31.3504-1(a), Third Party Arrangement Chart on www.IRS.gov, and instructions to Form 2678 should be revised to clarify this limitation. Form 2678 should provide space for employer to specify the particular type or portion of wages and compensation for which the agent is responsible.

In addition, the instructions to Form 2678 refer to Rev. Proc. 84-33, which allows an agent to deposit backup withholding taxes on behalf of a payer. Rev. Proc. 84-33 should be updated, and Form 2678 should also have more detailed and updated instructions, for an agent who reports and deposits backup withholding taxes for payers under § 3.02 of Rev. Proc. 84-33. This updated information should cover the withholding aspect of all relevant forms in the 1099 series.

Burden Reduction Subgroup Report

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

EMERGING COMPLIANCE ISSUES SUBGROUP REPORT

CANDACE B. EWELL
ANNE W. JETMUNDSEN
MICHAEL M. LLOYD
PATRICIA L. SCHMICK
PAUL P. SCHOLZ
SUSAN R. BOLTACZ, SUBGROUP CHAIR

A. IRC § 6050W and Form 1099-K, Payment Card and Third Party Network Transactions, Reporting

Recommendations

As we explained in our 2012-2013 Guidance Plan IRPAC Comment Letter (See Appendix A), which references IRPAC's March 28, 2011, comment letter in Appendix D to the 2011 Report, IRPAC makes a number of recommendations related to IRC § 6050W and Form 1099-K, Payment Card and Third Party Network Transactions. Most of the recommendations relate to the need for additional guidance. These recommendations are set forth below as numbered items.

1. IRPAC recommends that the IRS provide additional official guidance (*e.g.*, revenue rulings, notices, revised regulations) to further address open questions regarding IRC § 6050W. Official guidance is necessary to address open questions regarding the meaning and scope of the terms in the statute and Treasury Regulations.

2. Key terms integral to the meaning of "third party payment network" must be defined in official guidance in order for reporting organizations to reasonably apply the rules. These terms include "central organization," "guarantee" and "substantial number of providers of goods or services." IRPAC's detailed recommendations related to the definition of these terms can be found in its March 28, 2011, comment letter in Appendix D to the 2011 Report. During meetings with the IRS in 2012, IRPAC redelivered its draft definitions of these key terms. IRPAC also suggested additional guidance regarding the meaning of "aggregated payee" is needed as well as whether the definition should be applied to third party payment networks that do not meet the reporting threshold.

3. The definition of "third party payment network" can be interpreted broadly to include transactions not apparently considered by Congress when it drafted the statute. Guidance should be issued to clearly set forth the IRS's understanding of the scope of the statutory and regulatory language to various arrangements that involve three parties but may not constitute a "third party payment network." For example, guidance should address whether certain common three-party arrangements involving the transfer of accounts receivable constitute third party payment networks for purposes of Form 1099-K reporting. Further, other third party arrangements are rapidly arising in the marketplace, such as new ways for sellers to accept payment using credit cards and three party transactions where one party facilitates the sale of goods or services as well as payment. It is not clear based upon the guidance provided to date whether certain arrangements are subject to IRC § 6050W reporting, and if so which reporting standards under IRC § 6050W apply. IRPRAC recommends that the IRS provide guidance that distinguishes when such arrangements must be reported under IRC §

6050W, including the promulgation of ordering rules when concepts such as third party payment networks and aggregated payees both apply to the same transactions.

4. IRPAC believes that certain three party transactions should remain reportable under IRC § 6041. These include transactions in which payments are made on behalf of another person under Treas. Reg. § 1.6041-1(e), such as accounts payable processing arrangements (both related-party shared-services arrangements and third-party total-outsourcing arrangements). The final IRC § 6050W regulations provide that in all instances in which transactions are otherwise subject to reporting under both IRC § 6041 and IRC § 6050W, the transaction must be reported under IRC § 6050W and not IRC § 6041. IRPAC recommends that Treasury and the IRS grant certain limited exceptions to this rule. See IRPAC's March 28, 2011, comment letter in Appendix D to the 2011 Report.

5. Guidance is necessary to address how the transaction-based reporting approach applicable in the payment card context applies to arrangements involving third party payment networks. The narrow scenarios applicable in the payment card context are not easily or readily applied to the varying scenarios that can arise in the context of third party network transactions. Guidance is needed to address reporting in this area.

6. The documentation requirements for U.S. payers to foreign merchants should be relaxed to conform to the current requirements for non-U.S. payers making payments under IRS § 6041.

7. Additional time to report on Form 1099-K should be permitted for the deemed participating payee under aggregated payee arrangements because the date on which reporting is due is the same date that the Form 1099-K is due to the deemed participating payee from the payment settlement entity.

8. Guidance is needed to identify the entity deemed to be the payment settlement entity when there are multiple payment settlement entities. There is tension between the language of the preamble under "payment settlement entity" and the language in Treas. Reg. § 1.6050W-1(a)(4)(ii). In particular, the last sentence of the second paragraph of the preamble provides, "[t]he final regulations clarify that the entity that makes a payment in settlement of a reportable payment transaction is the entity that actually submits the instruction to transfer funds to the account of the participating payee to settle the reportable payment transaction" whereas Treas. Reg. § 1.6050W-1(a)(4)(ii) provides "if two or more persons qualify as payment settlement entities . . . with respect to a reportable payment transaction, then only the payment settlement entity that in fact makes payment in settlement of the reportable payment transaction

must file the information return required by paragraph (a)(1) of this section." Stated differently, the preamble emphasizes "submitting the instruction to transfer funds" while the actual regulation emphasizes "in fact makes payment." This has caused confusion in certain arrangements in which the instruction to transfer funds and the actual transfer of the funds are performed by separate entities.

9. Guidance is needed to clarify whether an electronic payment facilitator can also be a payment settlement entity. Clarification is necessary because questions regarding which party is liable for reporting failures are arising when electronic payment facilitators are involved in processing transactions. There is overlap related to the rules regarding multiple payment settlement entities and electronic payment facilitators. Clarification regarding how these roles interact is necessary to address questions of liability related to proper reporting of transactions.

Discussion

IRC § 6050W and the related regulations require the reporting of two significant classes of transactions, payment card transactions and third party network transactions, on the Form 1099-K. Payment card transactions are any transactions in which a payment card (or any account number or other indicia associated with a payment card) is accepted as payment. Payment cards include credit cards and stored value cards, which are cards with a prepaid value including gift cards. Third party network transactions are any transactions settled through a third party payment network. A third party payment network is any agreement or arrangement that (a) involves the establishment of accounts with a central organization by a substantial number of providers of goods or services who are unrelated to the organization and who have agreed to settle transactions for the provision of the goods or services to purchasers according to the terms of the agreement or arrangement; (b) provides standards and mechanisms for settling the transactions; and (c) guarantees payment to the persons providing goods or services in settlement of transactions with purchasers pursuant to the agreement or arrangement.

Final regulations under IRC § 6050W were issued on August 16, 2010, and the reporting rules became effective on January 1, 2011. See T.D. 9246. Backup withholding in connection with transactions under IRC § 6050W became effective on January 1, 2012. In contrast to information reporting returns that have existed for many years (*e.g.*, Form 1099-MISC, Miscellaneous Income), the Form 1099-K requires a monthly breakdown of the amounts required to be reported and the reported amounts seem to be based upon a transactional approach rather than upon actual payments.

The transition to reporting rules under IRC § 6050W has been challenging for both the IRS and reporting organizations. The drafters of the regulations had to address an overwhelming number of challenging implementation issues, including very broad statutory language regarding third party networks. The IRS undoubtedly continues to grapple with these issues, and IRPAC urges the IRS to issue guidance to address these issues as expeditiously as possible. As mentioned in our recommendations, new multi-party transactions are arising with increasing frequency in the marketplace, and the IRS must issue guidance so reporting organizations will understand how to apply the rules. Guidance is especially important because it is not clear under various arrangements whether or not IRC § 6050W applies at all, and in certain instances multiple reporting mechanisms appear to apply to the same transactions (*e.g.*, aggregated payee rules, third party network rules, etc.). Accordingly, IRPAC recommends that the IRS issue guidance that better delineates arrangements subject to IRC § 6050W reporting and provide ordering rules when more than one IRC § 6050W reporting requirement applies to a particular arrangement. This additional guidance will help to provide much needed clarity to reporting organizations as they attempt to navigate this new and complex area of the law.

B. Form 1098-T, Tuition Statement

Recommendations

The table of contents on page 1 of IRS Publication 970, Tax Benefits for Education, should refer to a new section discussing Form 1098-T, Tuition Statement. Information about Form 1098-T should also be added to the instructions to Form 8863, Education Credits. Clarification that payments received from the Department of Veterans Affairs may be reportable in box 5 is needed in the instructions for Form 1098-T. IRPAC recommends the IRS communicate with companies providing Form 1040 preparation software regarding the appropriate use of amounts reported on Form 1098-T when calculating education tax credits.

Discussion

IRPAC believes there is confusion among taxpayers regarding the appropriate use of amounts reported on Form 1098-T when calculating education tax credits. Additional information about amounts reported on Form 1098-T should be added to publications and instructions as described below. Discussions between IRPAC and the IRS indicate the IRS agrees with IRPAC's suggestions and plans to make changes to the 2012 publications and instructions. The IRS recently posted a draft of the 2012 Form 8863 and IRPAC is hopeful that its suggestions will be incorporated in the instructions when they are issued.

1. Publication 970 would benefit from the addition of a new section specifically addressing Form 1098-T that should be referenced in the table of contents on page 1. This section should include the following information:

> **Form 1098-T.** When figuring the credit, use only the amounts you paid or were deemed to have paid during the calendar year for qualified education expenses. You should receive Form 1098-T. Generally, an eligible educational institution (such as a college or university) must send Form 1098-T (or acceptable substitute) to each enrolled student by January 31. An institution may choose to report either payments received (box 1), or amounts billed (box 2), for qualified education expenses. However, the amounts in boxes 1 and 2 of Form 1098-T might be different than what you actually paid. In addition, your Form 1098-T should give you other information for that institution, such as adjustments made for prior years, the amount of scholarships or grants, reimbursements or refunds, and whether you were enrolled at least half-time or were a graduate student.
>
> The eligible educational institution may ask for a completed Form W-9S, Request for Student's or Borrower's Taxpayer Identification Number and Certification, or similar statement to obtain the student's name, address, and taxpayer identification number.

2. Instructions for Form 8863 should address Form 1098-T. IRPAC recommends the addition of the following information:

> **Form 1098-T.** When figuring the credit, use only the amounts you paid or were deemed to have paid during the calendar year for qualified education expenses. You should receive Form 1098-T, Tuition Statement. Generally, an eligible educational institution (such as a college or university) must send Form 1098-T (or acceptable substitute) to each enrolled student by January 31. An institution may choose to report either payments received (box 1), or amounts billed (box 2), for qualified education expenses. However, the amounts in boxes 1 and 2 of Form 1098-T might be different than what you actually paid. In addition, your Form 1098-T should give you other information for that institution, such as adjustments made for prior years, the amount of scholarships or grants, reimbursements or refunds, and whether you were enrolled at least half-time or were a graduate student.

3. Instructions for Form 1098-T should clarify that payments received from the Department of Veterans Affairs may be reportable in box 5. This could be accomplished

by the addition of “Department of Veterans Affairs” to the box 5 instructions. Instructions for 2012 mention the Department of Veterans Affairs as an exception from reporting on page 2; however, the exception only applies if the educational institution does not maintain a separate financial account for the student and qualified tuition and related expenses are covered by a formal billing arrangement between the institution and the student’s employer or governmental entity. Including the Department of Veterans Affairs in the list of payments from third parties that may be reportable in box 5 will help to alleviate confusion.

C. Withholding and Reporting on Payments for Freight, Shipping and Other Transportation Expenses under IRC §§ 1441 and 1442

Recommendations

The following recommendations are intended to reiterate and/or supplement the recommendations included in pages 13-14 and 61-64 related to this issue in the 2011 Report and pages 12 and 61-68 in the 2010 Report. A synopsis of this issue is included in the discussion section below.

1. The new Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities), should be revised to allow foreign corporations engaging in international shipping or air transportation to identify that they are either subject to the excise tax under IRC § 887(a) or qualify for the exclusions described under IRC §§ 883(a)(1) or (2) and Treas. Reg. § 1.883-1. Specifically, IRPAC proposes that Part III of Form W-8BEN-E should be retitled “Certain Chapter 3 Exceptions” and a second line (line 13) that provides as follows should be added under Part III below the line addressing notional principal contracts:

> 13 I certify that the beneficial owner identified in Part I and whose taxpayer identification number appears on line 7 qualifies for one of the two exceptions set forth below related to U.S. source income derived from the international operation of ships or aircraft (check appropriate box to certify):
>
> > 13a ☐ The beneficial owner is subject to the 4% excise tax on U.S. Gross Transportation Income under IRC § 887.
> >
> > 13b ☐ The beneficial owner qualifies for the exclusion of U.S. source income derived from the international operation of ships or aircraft under IRC § 883(a)(1) and (2) because the beneficial owner is resident in a foreign country that grants U.S. ships or aircraft an equivalent exemption from tax.

2. Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, should be revised to add a specific income code for U.S. source income from international shipping or air transportation.

3. The current description of the international shipping and air transportation issue within Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, does not accurately explain the law in this area and should be revised to reflect these changes and discussion of the law herein.

Discussion

The interplay of IRC §§ 871, 881, 882, 883, and 887 are confusing as they relate to the taxation of U.S. source gross transportation income (USGTI) and international transportation provided by ship or aircraft. Accordingly, we provide herein a brief recap of the salient statutory provisions regarding USGTI and a foreign corporation's eligibility for exemption from withholding for transportation by ship or aircraft under IRC §§ 1441 and 1442.

IRC §§ 1441 *et seq.* provides the mechanism for withholding and reporting items of income subject to the gross-basis tax set forth in IRC §§ 871 and 881. In general, a 30% withholding tax is imposed on the U.S. source fixed and determinable annual or periodical (FDAP) income of a nonresident alien individual or foreign corporation. FDAP income is broadly defined and includes income from the performance of services. Income from ship and air transportation and income from transportation over road or rail are services included within the meaning of FDAP income.

IRC § 887(a) imposes a 4% excise tax on USGTI. This 4% excise tax is self assessed by a foreign corporation that engages in shipping or air transportation. USGTI includes income from the international operation of ships and aircraft by foreign corporations. IRC § 887(a)(1); IRC § 883(a)(1) and (2). When the 4% excise tax imposed on USGTI applies, the gross-basis withholding tax imposed under IRC §§ 871 and 881 and carried out through IRC §§ 1441 and 1442 does not apply. Conversely, when the 4% excise tax under IRC § 887(a) does not apply, the ship or air transportation income of a foreign corporation is subject to 30% withholding under IRC §§ 881, 1441 and 1442.

An exclusion from income arising from the international operation of ships or aircraft is also provided under IRC § 883(a)(1) and (2) and Treas. Reg. § 1.883-1. In general, this exclusion applies for qualifying income derived by a qualified foreign corporation from its international operation of ships or aircraft only if the foreign country grants an equivalent exemption from taxation for the international operation of ships or aircraft by corporations organized in the United States. IRC § 883(a)(1) and (2); Treas. Reg. § 1.883-1(h). This exclusion from gross income applies for purposes of both USGTI taxed under the 4% excise tax of IRC § 887(a) and the 30% withholding tax under IRC §§ 882, 1441 and 1442. Thus, the critical issues to be addressed by the IRS are as follows:

1. What documentation does a withholding agent need to obtain from a foreign corporation engaged in international transportation by ship or aircraft in order to establish that withholding under IRC §§ 1441 and 1442 does not apply?

2. What income code should be used to report U.S. source income to a foreign corporation engaged in international transportation by ship or aircraft on Form 1042-S?

IRPAC believes that the first issue is easily resolved by a modest change to the new Form W-8BEN-E and recommends that the IRS act as soon as possible to address this issue before Form W-8BEN-E is issued in final form. IRPAC understands that the draft Form W-8BEN-E is complicated and lengthy, but this proposed correction is important because it would provide clarity to withholding agents and shippers as to the correct application of the law in this area.

With respect to the reporting of payments of transportation income by ship or aircraft, IRPAC recommends that the IRS identify a specific income code on Form 1042-S for such income. Further, the current description of this issue within Publication 515 should be revised to better explain this issue, as the current language is misleading.

D. Electronic Furnishing to Recipients of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding

Recommendations

IRPAC recommends that the IRS issue official guidance to expressly permit U.S. withholding agents to electronically furnish Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to recipients. No statute amendment or change to the regulations is required in order for the IRS to issue this guidance.

Discussion

Treasury Regulation § 1.1461-1(c) provides that any person that withholds or is required to withhold an amount under IRC §§ 1441, 1442, 1443 or Treas. Reg. § 1.1446-4(a) must file a Form 1042-S. The Form 1042-S must be prepared and furnished to each recipient in such manner as the regulations and form instructions prescribe. The regulations promulgated under IRC § 1461 do not specify the method in which the statements must be furnished to the recipients. The instructions to Form 1042-S do not specify the method in which the statements must be furnished to the recipients. However, Treas. Reg. § 1.1461-1(h) indicates that the penalties under IRC § 6722 apply to the Form 1042-S furnishing requirement. Treas. Reg. § 1.6722-1(a)(2) indicates that a failure to timely furnish includes a failure to furnish a written statement to the payee in a statement mailing. Treas. Reg. § 1.6722-1(b)(2) indicates that an error in the manner of furnishing a statement is never an inconsequential error.

Since neither the statute, regulations nor instructions specify how the Forms 1042-S should be furnished to beneficial owners, many withholding agents may have been furnishing these statements electronically in error. With the recently finalized regulations that require the reporting of U.S. bank deposit interest to non-U.S. persons, the Treasury and IRS have specified that Forms 1042-S must be furnished to the recipient either in person or by first class mail to the recipient's last known address. (T.D. 9584, Treas. Reg. § 1.6049-6(e)(4)).

The requirement of paper delivery of Form 1042-S has resulted and continues to result in complaints from payees about missing statements and identity theft, particularly from payees residing in unstable jurisdictions. U.S. withholding agents furnishing Forms 1042-S spend significant resources to sort and mail the paper statements, and then have to allocate resources to help customers with missing statements and identity theft. This poses significant burdens both to the business community and the payees receiving such statements. Administrative guidance from the IRS allowing for electronic furnishing of Form 1042-S to recipients should decrease the expenses and resources currently expended by withholding agents and taxpayers and make delivery more certain and consistent. The administrative costs and burdens associated with furnishing Forms 1042-S are increasing with the new requirement to report U.S. bank deposit interest. This new requirement is one of many new information reporting obligations initiated since 2008 and any administrative relief available to diminish the cost and burdens is needed.

In discussing this recommendation, the IRS expressed concern over the reliability and security of electronic transmission. In practice, however, many U.S.

withholding agents have found that payees in foreign jurisdictions frequently wish to avoid any use of the local postal service in their countries and prefer to use electronic transmission. The current realities of information security, identity theft and fraud compel the expanded use of electronic means of communication whenever possible. Electronic furnishing of information to payees in foreign jurisdictions where mail delivery is not always stable is commonly recognized as superior to paper delivery in terms of information security and would provide further support for payees' privacy considerations.

In addition, the IRS seems to want to avoid additional permitted areas of electronic furnishing because of its concern that U.S. withholding agents were not complying with the consent and notification requirements that apply to the electronic furnishing of other tax forms. IRPAC has expressed its view that the failure to comply with the consent and notification requirements in other areas should not be a reason for a refusal to act to permit electronic furnishing in other situations, such as for Form 1042-S, where it is in demand, makes sense and supports the IRS' own initiatives to become more paperless. The IRS should enforce the consent and notification requirements independently and not use rumored noncompliance with those rules as a reason for refusing to act in another area. IRPAC does not oppose the imposition of consent and notification requirements as a condition for the allowance of electronic furnishing of Form 1042-S to payees.

Yet another concern expressed by the IRS is its need to test whether compliance with the tax return filing requirements is impacted by permitting the electronic furnishing of Form 1042-S to payees. The IRS has indicated that it will only be able to do this by authorizing a trial period for electronic furnishing. IRPAC has explained that testing might not be possible since most non-U.S. persons who receive Form 1042-S have no tax return filing requirement or will not file unless there is over- or under-withholding on payments reported on Form 1042-S.

Finally, the IRS has suggested that the best course of action would be through the private letter ruling process. IRPAC respectfully disagrees with this approach because a much more expedient solution is available to the IRS through the issuance of formal guidance applicable to all taxpayers since there is no statute or regulation that requires the furnishing of paper Forms 1042-S. Further, a private letter ruling applies only to the taxpayer that receives the ruling and would not be able to be relied upon by other issuers of Form 1042-S. The IRS will not achieve efficient tax administration through the private letter ruling process in that hundreds of withholding agents could make this request, which would require the IRS to rule on the very same issue hundreds of times.

E. Central Withholding Agreements: Addressing Needs of Venues and Foreign Artists Through a Mini-CWA Program and Problems Encountered by Foreign Artists when Applying for U.S. Social Security Numbers

Recommendations

IRPAC made the following recommendations in its 2010 and 2011 public reports and it continues to make these recommendations in 2012:

1. A smaller version of the Central Withholding Agreement (CWA) is needed to support single and limited venues. IRPAC recommends that the IRS develop a mini-CWA program that would apply to performers with annualized fees of $50,000 or lower. The program should allow the performer to apply directly for a lower withholding rate or a waiver from withholding based on disclosed fees and known expenses.

2. Allow the CWA Program to issue Individual Taxpayer Identification Numbers (ITINs) to performers who have applied for relief in the CWA Program so that the agreement can be finalized where a U.S. Social Security Number (SSN) has not yet been acquired or a denial letter received.

Discussion

During 2011, IRPAC and the IRS jointly developed the structure of a new simplified CWA for entertainers, that was intended to ultimately become part of a revenue procedure that IRPAC understood was being revised at that time. The mini-CWA changes outlined above would require a change to Revenue Procedure 89-47. IRPAC understood that Revenue Procedure 89-47 was under review and discussion with the Office of Chief Counsel, International during 2011. No designated target date was established for its completion, and no changes have yet been made to Revenue Procedure 89-47 to accommodate the simplified CWA. IRPAC understands that Treasury Inspector General for Tax Administration (TIGTA) audit report concerning CWAs, which was issued on September 30, 2011, delayed the implementation of IRPAC's recommendations. The Office of Chief Counsel is currently re-examining IRPAC's recommendations and has indicated that it will respond to IRPAC by the time of the 2012 Public Meeting, IRPAC will continue to support this endeavor and will renew its efforts in 2013.

The remaining issue is the challenge a foreign artist has in receiving either an SSN or an ITIN due to the artists' dependence on the timely action of the Social Security Administration (SSA), which is needed to allow the CWA to be finalized.

Individual artists frequently encounter problems in applying for SSNs while they are present in the U.S. The challenges performers face were set forth in the IRPAC 2011 Report.

The SSA continues to be inconsistent in its approach to the SSN application process and the IRS has indicated its hands are tied. IRPAC will renew its efforts in 2013 to work toward a solution.

F. Form 8938, Statement of Specified Foreign Financial Assets, and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, Requirements

Recommendations

IRPAC makes a number of recommendations to facilitate compliance with the reporting required on Form 8938, Statement of Specified Foreign Financial Assets, and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). Most of the recommendations relate to the need to reduce the compliance burden generated by the requirement to report the same or similar information through two different reporting regimes.

1. IRPAC recommends that the "Comparison of Form 8938 and FBAR Requirements" chart that appears on the IRS website be added to the Form 8938 instructions.

2. IRPAC recommends that the IRS remove reporting requirements on Form 8938 that are already required on the FBAR.

3. IRPAC recommends conformity in filing/extension dates and methods for Form 8938 and the FBAR.

4. IRPAC recommends that language be added to the instructions to both Form 8938 and the FBAR to inform taxpayers that they might be required to file the other form.

Discussion

There has been confusion and duplication of effort in reporting foreign financial accounts and assets, as required by Form 8938 and the FBAR. This confusion and duplication has been documented in a General Accounting Office (GAO) report, which identified various complexities, including, most notably, the involvement of separate statutory regimes under Titles 26 and 31 of the U.S. Code, and separate government offices responsible for administering each. The GAO report acknowledges duplicative information requested by both forms but the instructions for both forms lack any acknowledgement that duplicative reporting may exist. IRPAC echoes many of the comments documented in the GAO report but also makes a specific recommendation to the IRS that the comparison chart appearing on the IRS website be added to the instructions to Form 8938 in order to facilitate taxpayer compliance. The IRS response to this specific recommendation has been positive. IRPAC expects to see this addition in the near future.

Additionally, IRPAC noted during its discussion with the IRS that Form 8938 and the FBAR require taxpayers to file some information twice, with filings sent to two different areas of the U.S. Treasury Department. Simplification of the filing requirements is likely to increase compliance. The simplification issue is challenging because Form 8938 is within the purview of the IRS while the FBAR belongs to FinCEN. Although both operate within the U.S. Treasury Department, their respective objectives and authority differ. For this reason, the solution is not as simple as combining the forms. For example, information reported on the FBAR is not tax information and, therefore, is not protected from disclosure under IRC § 6103. Consequently, the IRS has indicated that it plans to review filing data and then assess whether or not cost-effective steps might be possible to reduce the filing burden to a single form while still obtaining all the appropriate information. No expected timeframe could be provided for the IRS to complete this review.

IRPAC also recommends that the IRS address the timing and method of filing these forms. The different due dates for the two regimes (June 30 for FBAR and April 15 for Form 8938 and individual income tax returns) is confusing. The ability to extend a due date is available for individual income tax returns (and, consequently, for Form 8938) but is not available for the FBAR. Thus, taxpayers who are diligently accumulating their income tax return information in time to file by the extended due date, may inadvertently miss the non-extendable due date for the FBAR. Although the individual income tax return does contain a question about the FBAR filing, this question might not be addressed until the otherwise fully compliant taxpayer is preparing his/her income tax return after the non-extendable due date for the FBAR has passed. Moreover, the individual tax return due date is determined by a postmark date while, in contrast, the FBAR due date is determined by the date the FBAR is received by the IRS. Additionally, Form 8938 is filed as part of the taxpayer's annual income tax return filing with the IRS, whereas the FBAR requires yet another filing to a different address of the same agency, which is one more contact than most taxpayers probably prefer.

Finally, Form 8938 may be filed electronically, and the FBAR must be filed using paper. IRPAC believes that there are significant areas in which consistency would result in less confusion and would facilitate compliance.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

INTERNATIONAL REPORTING AND WITHHOLDING SUBGROUP REPORT

DUNCAN W. BRENAN
TERRENCE C. COPPINGER
KRISTIN JOHNSON
JEFFREY N. MASON
MARJORIE A. PENROD
DONALD C. MORRIS, SUBGROUP CHAIR

Foreign Account Tax Compliance Act (FATCA)

IRPAC has worked closely with the IRS and Treasury regarding the implementation of the Foreign Account Tax Compliance provisions of Subtitle A of Title V of the HIRE Act (commonly referred to as FATCA). IRPAC has engaged in an ongoing dialogue with the IRS and Treasury regarding the proposed regulations implementing FATCA that were issued on February 8, 2012,0 and the draft Forms W-8, Certificate of Foreign Status. IRPAC intends to continue this dialogue and provide input with regard to the regulations, associated forms, and the Foreign Financial Institution (FFI) registration process.

Following is a summary of the principal issues that have been discussed.

A. Preexisting Account Definition

Recommendation

IRPAC recommends that the definition of "preexisting obligation" in the proposed regulations be revised to mean any account, instrument, or contract maintained or executed by a withholding agent as of January 1, 2014. IRPAC also recommends that the final regulations clarify that the definition of a preexisting obligation includes any new subaccount opened for the same taxpayer.

Discussion

The proposed regulations define the term preexisting obligation to mean "any account, instrument, or contract maintained or executed by the withholding agent as of January 1, 2013." With respect to a participating foreign financial institution (PFFI), however, a preexisting obligation is defined as one maintained or executed by the PFFI prior to the date that the PFFI's agreement with the IRS becomes effective.[1] An FFI agreement will have an effective date of July 1, 2013 or later.[2] Thus, preexisting obligations of a U.S. withholding agent are those in existence on January 1, 2013, but the preexisting obligations of a PFFI are those in existence on June 30, 2013 (or prior to the later effective date of its FFI Agreement).

IRPAC submitted a comment letter on the definition of preexisting obligations, which is attached as Appendix H. In order to implement FATCA in an effective manner, it is critical that all withholding agents, including both U.S. and foreign financial

---

[1] Proposed Reg. § 1.1471-1(b)(48).
[2] Proposed Reg. § 1.1471-1(b)(24.)

institutions, be given sufficient time to make the numerous required changes to their computer systems and business intake procedures. The systems development process involves a series of steps. These steps include defining the scope of the project, development and documentation of technical requirements, finalization of programming changes, and scheduling the release of systems changes. Although preliminary scoping and initial design work can be undertaken based on the proposed regulations, the completion of design, programming and testing can only be accomplished after the regulations and associated forms are finalized. In order to provide withholding agents with the necessary lead time, IRPAC recommends that the definition of preexisting obligations be changed to those maintained or executed by a withholding agent as of January 1, 2014.

IRPAC also recommends that the final regulations clarify that the definition of a preexisting obligation includes any new subaccount opened for the same taxpayer.

Certain customers of financial institutions will open multiple accounts over various times to segregate funds and assets in order to meet investment objectives or compare investment returns. Systems have been built to identify the customer and the entire relationship by linking subaccounts contained within a common system that have been opened by that customer. Historically, no new tax certification has been required, provided existing documentation was current and valid. If a customer has an account that is a preexisting obligation, the establishment of a new subaccount for that customer should not be considered a new account that would change the classification of all of the customer’s accounts. A new subaccount that is linked to a preexisting obligation should be considered a part of that preexisting obligation.

B. Reason to Know Standards

Recommendation

IRPAC recommends that the final regulations clarify that the reason to know standards included in the proposed regulations apply only to accounts found on a common computer system. That approach would be consistent with the current Chapter 3 standards for reliance on a certificate provided for another account and the identification of accounts for purposes of “B notice” and “C notice” withholding under Chapter 24.

Discussion

Financial institutions and other withholding agents often have multiple systems on which accounts are maintained based on each type of business or location. These systems generally are not linked together. If a customer opens a new account or updates an existing account by providing new tax certification documentation that is inconsistent with the information found on a separate computer system, that should not trigger the “reason to know” standard requiring reconciliation of all accounts throughout the entire organization.

The current regulations under Chapter 3 outline the situations where a financial institution can rely on a withholding certificate provided for another account of the same customer. Generally, it is permissible only when a “coordinated account information system” exists. In the absence of such a system, separate tax documentation must be obtained for each account of a customer.

Treasury Regulation § 31.3406(c)-1(c)(3)(ii) related to “C notice” research for accounts of the same customer provides:

> Exercise of reasonable care. If an account identified pursuant to paragraph (c)(3)(i)(A) of this section contains a customer identifier that can be used to retrieve systemically any other accounts that use the same taxpayer identification number for information reporting purposes, the payer must identify all accounts that can be so retrieved. Otherwise, a payer is considered to exercise reasonable care in identifying accounts subject to withholding under § 3406(a)(1)(C) if the payer searches any computer or other recordkeeping system for the region, division, or branch that serves the geographic area in which the payee's mailing address is located and that was established (or is maintained) to reflect reportable interest or dividend payments.

Treasury Regulation § 31.3406(d)-5(c)(3)(ii) related to “B notice” research for accounts provides similar rules for identification of accounts of the same customer.

IRPAC believes that the rationale for the current standards for identification of accounts provided for in the Treasury Regulations under Chapter 3 and Chapter 4 is applicable in the Chapter 4 context.

C. FFI Verification Process

Recommendation

IRPAC recommends that verification of a participating FFI be based primarily on the FATCA identification number (FATCA ID), that the number of data elements be limited and that the name of an FFI be considered a match if it is reasonably similar to the name on the IRS list. In addition, any annual verification process should allow withholding agents with the flexibility to choose the date for performing the verification.

Discussion

Proposed Regulation § 1.1471-3(d)(3) states a withholding agent must verify the FFI-Employee Identification Number (EIN) against a published IRS list of FFI numbers, as described in proposed regulation § 1.1471-3(e)(3).[3] Subsequent announcements by the IRS have revised the references in the proposed regulations to clarify that the verification will be to the FATCA ID rather than the FFI-EIN. The applicable Forms W-8 will require a participating FFI and registered deemed compliant FFI to include its FATCA ID on the Form W-8 (or state that it applied for a number). The withholding agent must verify that the number is valid by its inclusion on the IRS published list within ninety calendar days from the date the claim is made. Thereafter, the withholding agent must verify the FATCA ID has not been removed from the IRS published list on a periodic basis because the withholding agent can no longer treat a claim as a participating FFI or register deemed compliant FFI as valid "on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's name was actually removed from the list."

Historically, matching to names of entities has proven to be difficult. Many entity names are lengthy and may be very similar to names of other entities.

---

[3] (3) FFI-EIN--(i) In general. A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI has reason to know that such payee is not such a financial institution if the payee's name and FFI-EIN do not appear on the most recent published IRS FFI list within 90 calendar days of the date that the claim is made. A payee whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received an FFI-EIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the FFI-EIN. In such case, the FFI will have 90 calendar days from the date of its claim to provide the withholding agent with its FFI-EIN and the withholding agent will have 90 calendar days from the date it receives the FFI-EIN to verify the accuracy of the FFI-EIN against the published IRS FFI list before it has reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the list of participating FFIs and registered deemed-compliant FFIs published on the IRS database, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's name was actually removed from the list.

For example, it is not unusual for investment funds to have related funds with similar names such as:

ABC Growth Fund Class A Shares
ABC Growth Fund Class B Shares

Entities will also frequently abbreviate their names, for example:

XYZ Banking Group, Limited
XYZ Banking Group, Ltd.

There are many other possibilities where the name on a Form W-8 may differ from the name on the IRS published list, but will be the same entity. If the FATCA ID matches and the name on the Form W-8 and the IRS published list are reasonably similar, the regulations should provide that the withholding agent may treat the FATCA ID as verified.

The proposed regulations require withholding agents to verify the FATCA ID after the account has been opened and also confirm that it has not been removed from the IRS list at a later date. It is anticipated that very few FFIs will drop off the FATCA ID list. For this reason, IRPAC believes the annual verification may be an unnecessary burden. Verification on an annual basis determined by the account opening date of each account, which is implied in the regulations, would be expensive and cumbersome. If the final regulations retain the annual verification process, withholding agents should be allowed flexibility in determining the date chosen to perform the verification.

D. Presumption Rules for Certain Exempt Recipients

Recommendation

IRPAC recommends that an entity that may be treated as an exempt recipient without the need for furnishing a Form W-9, Request for Taxpayer Identification Number and Certification, an “eyeball exempt recipient”, should not be presumed foreign unless there are indicia of foreign status associated with the entity’s account.

Discussion

Proposed regulation § 1.1471-3(f)(3)(ii) provides that certain eyeball exempt recipients (e.g. corporations, financial institutions, and brokers) will be presumed foreign if the withholding agent has not received a Form W-9 from the recipient. This represents a change from long standing rules under Chapter 3 and Chapter 61. The rationale for this change is unclear. IRPAC believes that in the absence of foreign indicia associated with an account of an eyeball exempt recipient, there should not be a presumption of foreign status.

For purposes of Chapter 3, Treasury Regulation § 1.1441-1(b)(3)(iii)(A) provides that an eyeball exempt recipient is presumed to be a foreign person only if:

(1) the withholding agent has actual knowledge of the payee's employer identification number and the number begins with the two digits 98; or
(2) the withholding agent's communications with the payee are mailed to an address in a foreign country; or
(3) the name of the payee indicates that it is a type of entity on the per se list of foreign corporations; or
(4) payment is made outside the U.S.

IRPAC believes that the above indicia of foreign status should also apply for purposes of presuming the foreign status of an eyeball exempt recipient for Chapter 4 purposes.

E. Ordinary Course of Business Payments

Recommendations

IRPAC recommends that all payments made in the ordinary course of business for services be excluded from the definition of withholdable payments under Chapter 4.

Discussion

Proposed regulation § 1.1473-1(a)(4)(iii) provides that payments made in the ordinary course of a withholding agent's business for nonfinancial services are excluded from the definition of a withholdable payment. This is an appropriate and welcome exclusion. Payments for services, as opposed to payments of investment income, are the type of payment that represents a very low risk of tax evasion. However, it is unclear how a withholding agent should distinguish between payments for financial services and nonfinancial services. For example, a payment for investment advisory or management services might be considered a payment for financial services. However, such payments would generally be subject to withholding under Chapter 3 if the services are performed in the U.S. It is unlikely that U.S. persons would provide such services through a foreign entity. IRPAC believes that payments for services, whether for financial services or nonfinancial services, made in the ordinary course of business should be excluded from the definition of withholdable payment under Chapter 4.

F. Model Intergovernmental Agreements

Recommendation

IRPAC recommends that branches of U.S. financial institutions and controlled foreign corporations (CFCs) not be subject to reporting requirements applicable to financial institutions subject to an Intergovernmental Agreement (IGA).

Discussion

The model IGAs appear to include in the definition of FATCA Partner Financial Institution (as defined in the model IGA) a branch of a U.S. financial institution (USFI) located in the FATCA Partner, as well as a CFC resident in the FATCA Partner. As a result, it is possible that such branches and CFCs may be subject to reporting obligations to the FATCA Partner. Any such reporting obligation would be duplicative of reporting obligations already imposed on branches of USFIs and CFCs under Chapter 3, Chapter 4 and Chapter 61. IRPAC believes that the final regulations under Chapter 4 and the terms of an IGA entered into with a FATCA Partner should provide that a branch of a USFI and a CFC will only be subject to reporting to the IRS.

G. New Forms W-8BEN

Recommendations

IRPAC reviewed and discussed with the IRS the early release draft versions of the new Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual), and Form W-8BEN-E, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Entities). IRPAC recommends that the IRS make text and formatting changes to the Form W-8BEN-E in order to:

(1) clarify who should use the form,
(2) ensure entities submitting the form make the correct Chapter 4 status selections, and
(3) streamline the overall amount of information collected and submitted.

The objective of such recommendations is to reduce the potential for errors by those completing the forms and, therefore, decrease the number of invalid Forms W-8BEN-E submitted to withholding agents.

IRPAC also recommends that the IRS delay the required effective date for the use of new Forms W-8 until January 1, 2014. This will allow withholding agents to begin using the new forms when their systems and procedures are sufficiently prepared, but no later than January 1, 2014.

Discussion

IRPAC is pleased that the IRS adopted the recommendation included in the 2011 IRPAC Annual Report that there be two separate versions of the Form W-8BEN - one for individuals and one for entities. The early release draft versions of the new Form W-8BEN and Form W-8BEN-E circulated in June 2012, confirmed this approach and provided the global financial services industry with valuable insight into the additional information they will be required to capture for purposes of fulfilling their documentation obligations under Chapter 4. However, due to the complexity of the proposed regulations, the Form W-8BEN-E is long and complicated. IRPAC is concerned that many people will be confused by the terminology used on the form which, combined with the length and complexity of the form, will lead to a high rate of errors on forms being submitted to withholding agents.

IRPAC discussed with the IRS a number of specific changes to the Form W-8BEN-E, including the following:

- In the instructions at the top of the form, clarify which entity types should use the Form W-8BEN-E for claiming treaty benefits (rather than using a Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding;
- Remove references to “Chapter 3” on Line 3 and “Chapter 4” on Line 4, since these may be confusing to those persons completing the form who may have little or no understanding of U.S. tax law nomenclature;
- Remove the “Not applicable” reference in the Line 4 check box for use by entities submitting the form solely for purposes of documenting their foreign status for Merchant Card Reporting under IRC § 6050W, since again this may be confusing to those persons unfamiliar with the Internal Revenue Code and may in fact encourage people to select this status as a default if they do not know their true Chapter 4 status;
- Include a direction at the bottom of the first page that other pages of the form must also be completed and the form must be signed on page 6.

- Remove Part II, Notional Principal Contracts, since in practice this line item is rarely used by those persons submitting the existing version of Form W-8BEN; and,
- Remove the Capacity line in Part XXIV, consistent with the approach taken by the IRS on the draft Forms W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States and W-8EXP.

In addition, IRPAC made a number of suggestions regarding the validation rules for financial institutions when reviewing and validating new Forms W-8, including:

- Allow a tolerance based on a "reasonable person" standard, for the use of country abbreviations on Lines 2, 5 and 6; and,
- Allow the withholding agent to accept and retain on its systems only the specific pages of the Form W-8 that pertain to the particular payee. For example, a PFFI would only need to submit pages 1, 2 and 6 of the Form W-8BEN-E.

IRPAC impressed upon the IRS the importance of publishing final versions of the new Forms W-8 (including the Forms W-8IMY, W-8EXP and W-8ECI) along with instructions as soon as possible in order to allow financial institutions the necessary time to update (or build in the case of FFIs who are not U.S. payers) and integrate their systems. In its 2011 Annual Report, IRPAC noted that typically a withholding agent needs 18 to 24 months in order to update its systems appropriately (including time to develop business requirements and systems logic, and then to code and test those systems). Without final forms, withholding agents cannot finalize this process. Given the January 1, 2013 implementation date in the proposed regulations for new account documentation requirements for USFIs, the delay in publishing final forms will severely impede the ability of USFIs to meet these requirements. IRPAC believes it would be better to allow withholding agents more time by delaying the required effective date for using the new Forms W-8 so that they can "do it right" rather than impose unrealistic timeframes that inevitably will cause widespread and unintended non-compliance. Delaying the required effective date for the use of the new Forms W-8 until January 1, 2014, will provide withholding agents with the flexibility to come "on-line" when they are ready, while still retaining a mandatory deadline for compliance.

H. Coordination of Chapter 3 and Chapter 4

Recommendation

IRPAC has discussed with the IRS the need for the regulations under Chapter 3 and Chapter 4 to be coordinated. Specifically, IRPAC has recommended that the IRS issue regulations or other guidance that address the Chapter 3 issues discussed in the 2011 IRPAC Public Report.

Discussion

The 2011 IRPAC Public Report included a discussion of several Chapter 3 withholding tax issues. These issues will be of equal importance under Chapter 4.

Following is a summary of those issues.

Capacity: The determination of whether the capacity of a person who executes a Form W-8BEN for an entity should be considered valid has been an issue for U.S. withholding agents for many years. IRPAC recommends that the IRS issue guidance to the effect that a U.S. withholding agent may treat a person who has executed a Form W-8BEN for an entity as an authorized representative or officer of the entity regardless of the person's title shown on the Form W-8BEN. IRPAC also recommends that the Instructions to the Form W-8BEN be revised to state that an authorized representative means a person who is authorized to sign on behalf of the beneficial owner based on authority granted to that person in, for example, organizational documents, resolutions (or similar documents) or laws applicable to the beneficial owner.

Permanent Residence Address: The instructions to the current Form W-8BEN state that the Permanent Residence Address (Line 4) of the beneficial owner should not be the address of a financial institution, a post office box, or an address used solely for mailing purposes. The only address of many offshore investment funds is that of a registered agent or investment advisor. IRPAC recommends that the IRS issue guidance on the acceptability of such an address and the type of additional documentation, if any, that is required to validate the form.

Reason for U.S. Address: Current Treasury Regulations require a withholding agent to obtain a reasonable explanation in writing from a payee who provides a Form W-8 with a U.S. address. IRPAC recommends that the IRS issue guidance that the reasonable explanation in writing may be furnished either in a letter from the payee or by a form provided by the withholding agent specifically for this purpose. A form provided by a withholding agent could identify common reasons for a non-U.S. person to have a U.S. address on the Form W-8.

Inconsequential Errors in Documentation: During the course of an IRS withholding tax examination, a variety of errors may be identified on Forms W-8. Some of these errors should clearly invalidate the form because they may impact the reliability of the form itself (*e.g.* missing information required by the regulations or form instructions, or uncured due diligence issues). However, other detected errors may be minor in nature, and generally should not impact the reliability of the data on the form. IRPAC recommends that the IRS issue guidance stating that errors that do not impact the status of the payee and do not impede withholding agents from processing the Form W-8 correctly should be considered inconsequential in nature, and should not cause the form to be invalid.

Use of copies/faxed/e-mailed Forms W-8: IRPAC met with the IRS and discussed the disparity in standards required under current guidance for the receipt of Forms W-8 and Form W-9. Specifically, withholding agents may accept Form W-9, Request for Taxpayer Identification Number and Certification, via fax, e-mail, or other soft-copy format, but may only rely on Forms W-8 in original hard-copy format. IRPAC recommends that the IRS issue guidance allowing withholding agents to rely on copies of Forms W-8 (including those received via fax, e-mail or other similar forms of electronic transmission) if the form is otherwise facially valid.

Use of retroactive Forms W-8 with affidavits: The IRS has stated publicly that forthcoming guidance on the Chapter 3 withholding issue will curtail the current industry practice of obtaining retroactive Forms W-8 to cure undocumented accounts, including documents received when the withholding agent is under examination, by requiring the provision of additional documentation establishing the account holder's status in some circumstances. IRPAC discussed with the IRS the issue of when it is appropriate for withholding agents to rely on retroactive Forms W-8 both with and without an accompanying affidavit of unchanged status. IRPAC recommends limiting any change in current accepted practices to be applied prospectively, to payments made on or after January 1, 2013 (assuming the guidance is released prior to that date). IRPAC also recommends that a requirement to obtain additional documentation be limited to cases where a withholding agent has not obtained a Form W-8 prior to the time a payment is made to a payee.

IRPAC notes that the proposed regulations under Chapter 4 address the use of retroactive Forms W-8 and certain circumstances under which electronic Forms W-8 may be accepted. IRPAC also notes that the drafts of the revised Form W-8ECI and

Form W-8EXP no longer have a line for capacity, although there is a box to check confirming the signer of the form has the capacity to sign on behalf of the entity for which the form is furnished. IRPAC believes this is a major improvement and urges the IRS to also remove the capacity line from the W-8BEN-E when that form is finalized.

I. Short-Term Debt

Recommendation

FATCA generally imposes withholding and reporting obligations with respect to “withholdable payments.” The definition of withholdable payment includes U.S. source interest (including original issue discount), but does not provide an explicit exception for interest or original issue discount on short-term debt. Similarly, FATCA imposed reporting requirements with respect to “financial accounts.” The 2011 IRPAC Public Report recommended that interest (including original issue discount) on debt having a term of 183 days or less be excluded from the definitions of withholdable payment and financial account under FATCA, consistent with Congressional intent and with the long-standing exemption from withholding under Chapter 3.

Discussion

IRPAC is pleased to note that the proposed regulations exclude from the definition of withholdable payment under Chapter 4 interest (including original issue discount) on debt having a term of 183 days or less. IRPAC continues to believe that such interest (including original issue discount) should be excluded from the definition of a financial account under FATCA.

Appendix A:

Notice 2012-25 - Public Comment Invited on Recommendations for 2012-2013 Guidance Priority List

Appendix B:

Notice 2012-32- Request for Comments on Reporting of Health Insurance Coverage

Notice 2012-33- Request for Comments on Reporting by Applicable Large Employers on Health Insurance Coverage Under Employer-Sponsored Plans

Appendix C:

Notice 2012-40- Health Flexible Spending Arrangements not Subject to $2,500 Limit on Salary Reduction Contributions for Plan Years Beginning before 2013 and Comments Requested on Potential Modification of Use-or-Lose Rule

Appendix D:

Health Care Value Chart

Appendix E:

REG-136008-11 – Fees on Health Insurance Policies and Self-Insured Plans for the Patient-centered Outcomes Research Trust fund

Appendix F:

REG 102988-11 Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options Comment Letter

Appendix G:

UIT Corrections Histogram

Appendix H:

Comment Letter on Reg. 121647-10-Proposed Regulations Under Sections 1471 through 1474 of the Internal revenue Code

Appendix

Appendix A

Notice 2012-25 - Public Comment Invited on Recommendations for 2012-2013 Guidance Priority List

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

Internal Revenue Service
Atten: CC:PA:LPD:PR (Notice 2012-25)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

May 1, 2012

Re: <u>IRS Notice 2012-25- 2012-2013 Guidance Priority List</u>

Dear Commissioner Shulman:

The Information Reporting Program Advisory Committee (IRPAC) appreciates the opportunity to recommend items that should be included on the 2012-2013 Guidance Priority List in response to Notice 2012-25. [1]

IRPAC recognizes the challenges the IRS faces in developing and implementing new reporting and withholding policies and procedures in the ever- growing focus on information reporting and its role in reducing the tax gap. Current legislative changes have expanded information reporting levels with the recent enactment of legislation such as credit card reporting under Section 6050W of the Internal Revenue Code of 1986, as amended, ("IRC" or the "Code"), cost basis reporting under Code section 6045, Patient Protection and Affordable Care Act, and the Foreign Account Tax Compliance Act. With these additional reporting programs comes an increased responsibility for IRPAC to fulfill its mission to reduce taxpayer burden and improve the overall administration of information reporting.

Considering the above, we strongly recommend that the Guidance Plan include a new subcategory under "Tax Administration" entitled "Information Reporting" that focuses on the efficient implementation and administration of information reporting, with fair consideration of taxpayers burdens. This would include an understanding of the lead times needed by the reporting community to implement both new programs and changes to existing programs, and consideration of the data requested in light of the availability and cost associated with producing such data, and the usefulness of the data collection.

---

[1] IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities and state taxing agencies.

IRPAC recommends that the priority items set forth below be added to this proposed new subcategory, of the Guidance Priority List,

1. Guidance concerning the merchant reporting rules under IRC §6050W.

IRPAC recommends that the IRS provide additional official guidance to further address open questions regarding IRC § 6050W. Official guidance is necessary to address open questions regarding the meaning and scope of certain terms in the statute and Treasury Regulations, particularly regarding third party networks. Key terms integral to the meaning of "third party payment network" must be defined in official guidance in order for reporting organizations to reasonably apply the rules. These terms include "central organization," "guarantee," and "substantial number of providers of goods or services." IRPAC's detailed recommendations related to the definition of these terms can be found in its March 28, 2011, comment letter in Appendix D of its 2011 Annual Report. In addition, guidance is needed to clarify uncertainty between the scope and application of the rules related to "aggregated payees" and "third party payment networks." This is needed, in part, due to apparent overlap of the rules in these areas and because a "third party settlement organization" is not required to report transactions for a payee whose aggregate transactions do not exceed $20,000 or 200 transactions, whereas the aggregated payee rules do not include a *de minimis* rule. Now that the IRS has received the first iteration of Forms 1099-K from payment settlement entities ("PSEs"), it is now in a better position to understand the challenges facing PSEs and putative PSEs and should issue additional guidance accordingly in advance of the 2013 filing season.

2. FATCA Guidance

The effective implementation of FATCA is dependent on several items of guidance being issued as soon as possible. IRPAC recommends that the following items related to the implementation of FATCA be included in the Guidance Priority List. These include the issuance of Final Regulations under IRC Sections 1471 through 1474, publication of a model FFI agreement, and issuance of revised versions of Forms W-8, 1042-S, and 1099. In addition, IRPAC recommends that any proposed revisions to the Regulations under Chapters 3 and 61 of the IRC to coordinate those Regulations with the Regulations under Chapter 4 be issued as soon as possible so that withholding agents can modify their systems in the most efficient manner possible.

3. De minimis Threshold for Form 1099 Corrections

In instances where information returns and payee statements are in error, there are substantial costs to processing corrections for all parties involved, especially when the correction takes place long after the initial statement was created or is for an inconsequential amount of money. Filers would like to have a De minimis threshold so that corrections are not required for net changes of, for example, $50 or less (up or down). If you consider the cost to the financial institution (printing, mailing, reputation, etc.), the taxpayer (filing a corrected tax return), the IRS (processing and data matching) it is understandable to avoid all this activity that is unlikely to have any material change in tax revenue. Regulatory change should be considered that would give filers of forms 1099 the framework within which potentially immaterial corrections may be suppressed.

As a frame of reference, we provide the attached histogram which illustrates the impact that such a correction threshold would have. For a given brokerage firm, 5150 accounts held a particular a Unit Investment Trust (UIT) in 2009. The Forms 1099-DIV issued to those accounts included income attributable to that UIT. In the first quarter of 2011 (nearly a year after the associated tax returns would have been filed), the trustee's accounting firm discovered an error in the factors that the trustee has supplied to the industry allocating its distributions between dividend and non dividend distributions for information returns. The trustee published amended factors that required corrected Forms 1099-DIV. The chart shows the distribution of those accounts across various dollar correction levels. If corrections were not required for changes of $50.00 or less, nearly 45% of the corrections could be avoided.

4. **Identity theft information reporting.**

IRPAC has two recommendations regarding Identity theft information reporting. First, IRPAC recommends that the IRS provide clear guidance addressing whether or not Forms 1099 should be filed with the IRS and recipient copies furnished to the named payees of fraudulent accounts. Additionally, IRPAC recommends that the IRS reconsider the potential burden to the victims of identity theft when forms are issued to them as well as when forms are not issued to them. IRPAC also recommends that the IRS reconsider the confusion existing in the payer community by the current situation. Assuming that clarifications can be made to the current requirement for the continued issuance of Forms 1099 to identity theft victims, IRPAC requests that the IRS consider the potential burdens on payers by such clarifications, particularly if they would require system modifications.

Second, IRPAC makes the following recommendation regarding the inclusion of electronically filed forms and the use of obscured TINs. IRPAC realizes that identity theft is a very prominent concern and the IRS has made a number of efforts in recent years to make the information reporting process less vulnerable to such security breaches. In IRS Notice 2011-38, the pilot program for truncating TINs on select information returns was extended for two years. During this time, the limitations to that program retain certain vulnerabilities that should be addressed.

a. Eligibility is limited to 3 types of individual identifying numbers: social security number, IRS individual taxpayer identification number and IRS adoption taxpayer identification number.

b. The modified identifying number may only be used on payer payee statements. IRPAC recommends that the IRS expedite inclusion of electronically filed forms and allow all TINs to be partially obscured in situations for which it is appropriate. Taxpayers who opt to receive their returns electronically are no less entitled to protection from identify theft

5. Electronic furnishing of tax information forms to payees.

IRPAC recommends that the IRS provide guidance to expand the authority of those parties responsible for issuing information returns (*e.g.*, payers, withholding agents, business entities, etc.) to electronically furnish payee statements and like documents not permitted under current guidance to be issued electronically to recipients. This would include Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding; Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests; and Schedule K-1 prepared and issued in connection with Form 1120S for S Corporation shareholders; and Schedule K-1 prepared and issued in connection with Form 1041 for beneficiaries of certain Trusts. The ability to electronically furnish these additional forms to recipients would create greater procedural uniformity and consistency because the documents listed could be issued in a similar manner to Forms 1099, W-2, and Schedule K-1 prepared and issued in connection with Form 1065 for partners in partnerships.

Additionally, Section 401 of the Job Creation and Worker Assistance Act of 2002 provides that "[a]ny person required to furnish a statement under any section of subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 for any taxable year ending after the date of the enactment of this Act, may electronically furnish such statement (without regard to any first class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under section 6051 of such Code or in such other manner as provided by the Secretary."

The IRS has exercised such authority to provide for electronic transmission of payee statements in Notice 2004-10 and in Section 4.6 of IRS Publication 1179 (Rev. Proc. 2011-60). Similar to the regulations issued under IRC §6051 (Treas. Reg. § 301.6051-1(j) (2)), affirmative consent of the payee is currently required before such payee statements can be delivered electronically.

Unfortunately, the response rate to any mail or electronic solicitation is generally ranging only from a few percentage points to the teens. Given the expense incurred to launch such solicitation efforts and the anticipated low response rates, many firms providing such payee statements are hesitant to change from mailing paper statements to electronic delivery. As a result, year after year, there are complaints from customers about missing statements and identify thefts resulting from the mailing of paper statements. Firms providing the payee statements spend significant resources to sort and mail the paper statements, and then have to allocate resources to help customers on missing statements and identity thefts. This poses significant burdens both to the business communities providing such statements and the taxpayers receiving such statements.

The above cited legislation clearly allows the IRS a lot of flexibility in permitting electronic delivery of payee statements. The IRS should consider new regulations or administrative guidance to allow electronic delivery of payee statements to any person who has established online account access to receive account statements and other communications unless such person affirmatively elects to opt-out of electronic delivery of any or all payee statements (or opt-in to continue to receive paper statements). The IRS may provide for a transition period, such as a period of two years, during which the paper statements must still be provided with a notice informing the recipients of the transition to electronic delivery. This will give the recipients sufficient time and opportunity to opt-out from receiving statements electronically (or opt-in to continue receiving paper statements) should they choose to do so. Further IRPAC believes that permitting issuers to provide information returns electronically creates greater efficiency and security for all parties concerned.

6. Production of Form 2439 not currently filed electronically

Each year, firms that produce Forms 1099-DIV are frequently required to also produce Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains. Unlike all the forms in the 1099 series, there is no provision to file the Form 2439 with the IRS electronically. This prompts financial services firms to literally pack boxes of paper Forms 2439 for delivery to the IRS. In an era in which success is measured by the number taxpayers moving to efiling of their returns and the push by the IRS to get the filing of forms and returns to 80%, this is clearly undesirable. IRPAC recommends that the Service make a priority of creating electronic filing provisions for the Form 2439 and any other forms that are still filed on paper. Such an initiative is friendly to the Service and the firms filing these forms.

7. IRS Forms and Publications

IRPAC recommends that the IRS be required to post final information returns, instructions and publications on the IRS web site one year prior to the end of the applicable reporting period. The increasing number and complexity of information returns (for example, Form 1099-B) necessitates payers and software vendors be able to have final revisions of any forms, instructions and publications available to them at least one year prior to the end of the applicable reporting period. If a final information return cannot be posted by that date, any revisions made thereafter should be optional until the following tax year. Generally, that deadline will be January 1, however, it should be noted that the IRS is creating information returns (such as IRS Form 1097-BTC) that must be mailed to recipients on a quarterly basis, instead of the standard annual basis following the end of a calendar year.

Most financial institutions and other payers do not report to their customers on the official IRS forms because the use of substitute forms and composite statements reduces printing and mailing costs. In addition, payers often include additional information that assists customers in completing their tax returns.

Payers and software vendors must begin their analysis of any changes to forms, instructions and other IRS guidance included in various publications in the first quarter of the applicable tax year to provide sufficient time to make programming changes, test output and communicate changes to taxpayers. Generally, all programming and print formatting changes must be tested and finalized before the final months of the year when information systems are "locked down" and no more changes can be made because of the fact any change to one system can impact many other linked systems.

Revisions to forms, instructions and publications made after January 1 result in significant additional costs and staffing burdens to payers and software vendors. It also prevents being able to communicate changes to taxpayers who will receive the information for inclusion on their tax returns. Creating a deadline for revisions to or the creation of information returns ensures greater accuracy and efficiency with the tax reporting process.

8. Distributions made to payees with address outside the United States

IRPAC recommends that the IRS clarify the requirements in IRC 3405(e) (13) (A) and Notice 87-7 regarding distributions made to payees with an address outside the United States. Internal Revenue Code §3405(e) (13) (A) states that an election out of Federal tax withholding (except as permitted under IRC §3405(e) (13) (B)) is not permissible if the payment "is to be delivered outside of the United States and any possession of the United States." IRS Notice 87-7 refers to the payee having provided the payer "with a residence address outside of the United States."

This has created confusion for those situations where the payee takes a distribution from a retirement plan and requests that it be deposited through ACH or other electronic means in a bank deposit or other financial account located within the United States. Most payees claim that the statute permits them to elect out of withholding without regard to the IRC 3405(e) (13) (B) requirements because the payment is not being delivered outside the United States.

Therefore, it is requested that the IRS clarify the application of the statutory language in IRC §3405(e) (13) (A) where no check is delivered, but there is a deposit by electronic means of a retirement plan distribution in a financial account where it is known the account includes a mailing or residency address outside of the United States or its possessions, an account is located at a foreign financial institution, or if the address is unknown.

This guidance would resolve significant issues relevant to the increasing number of U.S. taxpayers who have elected to retire or live temporarily outside the United States.

9. Increased Medicare tax .9% commencing January 1, 2013

IRPAC recommends that the IRS issue guidance granting appropriate transitional relief period from penalties relating to withholding payments made by reporting agents and employers if information necessary to comply with the regulations is not available by June 1, 2012. Commencing January 1, 2013 the Medicare tax for individuals earning in excess of $200K annually will increase by .9%. The issue that now exists regarding this increased tax is that to date the IRS has not provided the necessary regulations, form changes to the 94xx series, EFTPS payment format changes for employers and software providers to commence making the necessary program changes within their systems. It should also be understood that not only will tax programs need to be modified but that accounting programs will likewise need to be changed so that the Medicare tax may be properly recorded with the accounting system. To make these changes to the various systems this information should be available by June 1, 2012.

Respectfully Submitted

Leonard Jacobs

Leonard Jacobs
2012 IRPAC Chair

Attachment:
Histogram chart
Regarding issue 3
(See Appendix G)

Appendix B

Notice 2012-32- Request for Comments on Reporting of Health Insurance Coverage

Notice 2012-33- Request for Comments on Reporting by Applicable Large Employers on Health Insurance Coverage Under Employer-Sponsored Plans

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

June 11, 2012

Honorable Douglas Shulman
Commissioner of Internal Revenue
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2012-32), Room 5203,
P.O. Box 7604, Ben Franklin Station, Washington, DC 20044

RE: Notice 2012-32

Dear Commissioner Shulman:

The Information Reporting Program Advisory Committee (IRPAC)[1] thanks the Service for requesting comments on new reporting requirements under the Patient Protection and Affordable Care Act, Pub. L. 111-148. Below we raise a number of questions and issues that we believe are unclear and will cause confusion for filers of information returns.

These questions and issues are provided in addition to the comments provided in the IRPAC Public Report of 2011.

1. We need a clear definition of the types of health plans that must report. Will the same definitions developed for reporting the health value on the Form W-2 apply? Are health flexible spending accounts and health reimbursement arrangements required to report?

2. Many plan sponsors offer more than one plan. Clarification is needed to explain if a report is required for each plan. What is the definition of a plan? What about plans with wrap documents, where a number of different health benefits are gathered into one plan for disclosure purposes and 5500 Form filings?

3. For purposes of IRC Section 6056, how is the "lowest cost option" defined? Is the "lowest cost option" strictly defined as premiums paid by the employee or

[1] IRPAC was established in 1991 as a result of an administrative recommendation contained in the final conference report for the Omnibus Budget Reconciliation Act of 1989. The recommendation suggested that the IRS consider "the creation of an advisory group of representatives from the payer community and practitioners interested in the Information Reporting Program (IRP) to discuss improvements to the system."

can additional out-of-pocket expenses be included in the definition of "cost"? What about incentives and surcharges such as wellness credits or spousal surcharges? Must these be included in the cost? These can lower or increase the employee portion of the premium.

4. If the plan sponsor provides a fully-insured HDHP and a self-funded plan underneath the HDHP, it is our understanding that the insurance carrier would report on the HDHP for purposes of §6055(b) and the employer would report on the self-funded plan for purposes of §6056. A system will be needed to match these two reports. We offer these two options for consideration.

   Option 1: IRS Form 6056FI for completely fully insured plans; Form 6056SF for completely self-funded plans; Form 6056CF/6056CF for combined fully-insured and self-funded plans. When a CF (combined form) is submitted, IRS would know that they need to collect a form from both the insurer as well as the employer. Or, the insurer (or employer) could be required to provide their form to the employer (or the insurer) who would then submit both at the same time.

   Option 2: The insurer and the employer would be required to enter into a numeric identification process that provides identification numbers to tie the insurer report to the employer report.

5. Enrollment categories differ by plan. Some plans have more enrollment categories than others. We assume enrollment categories will relate to the categories of coverage as specified in the plan. Is this assumption correct?

6. From what point is the waiting period measured? Is it measured from date of hire or date of eligibility?

7. Is the cost of benefits based on the COBRA value?

8. Data element – The months during which coverage was available. What is being requested here? What is meant by the word "available"? For example, coverage may be available but an individual may not have satisfied the waiting period.

9. What if plans offer coverage on a weekly basis? For example, coverage may only be in force for two weeks of the month.

10. Not all plans run on a calendar year. For example, many school district plans run on the school year cycle.

    Options for fiscal year plans - One option would be to incorporate the fiscal year information that ended in the specific calendar year. For example, a plan with a fiscal year ending on 7/31/2013 would report by 1/31/2014. Another option would be to require plans to report 90 days after the plan year ends.

11. What will be the definition for full-time employees?

12. With respect to incorrect information supplied to the employee, what will be the correction process and the time requirements to provide corrected data?

IRPAC appreciates the opportunity to comment on this Notice. We look forward to further discussions with you.

Sincerely,

Leonard Jacobs

Leonard Jacobs
IRPAC Chairman

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

June 11, 2012

Honorable Douglas Shulman
Commissioner of Internal Revenue
Internal Revenue Service
Attn: CC:PA:LPD:RU (Notice 2012-33), Room 5203
PO Box 7604
Ben Franklin Station, Washington, DC 20224

RE: Notice 2012-33

Dear Commissioner Shulman:

The Information Reporting Program Advisory Committee (IRPAC)[1] thanks the Service for requesting comments on new reporting requirements under the Patient Protection and Affordable Care Act, Pub. L. 111-148. Below we raise a number of questions and issues that we believe are unclear and will cause confusion for filers of information returns.

These questions and issues are provided in addition to the comments provided in the IRPAC Public Report of 2011.

1. We need a clear definition of the types of health plans that must report. Will the same definitions developed for reporting the health value on the Form W-2 apply? Are health flexible spending accounts and health reimbursement arrangements required to report?

2. Many plan sponsors offer more than one plan. Clarification is needed to explain if a report is required for each plan. What is the definition of a plan? What about plans with wrap documents, where a number of different health benefits are gathered into one plan for disclosure purposes and 5500 Form filings?

---

[1] IRPAC was established in 1991 as a result of an administrative recommendation contained in the final conference report for the Omnibus Budget Reconciliation Act of 1989. The recommendation suggested that the IRS consider "the creation of an advisory group of representatives from the payer community and practitioners interested in the Information Reporting Program (IRP) to discuss improvements to the system."

3. For purposes of IRC Section 6056, how is the "lowest cost option" defined? Is the "lowest cost option" strictly defined as premiums paid by the employee or can additional out-of-pocket expenses be included in the definition of "cost"? What about incentives and surcharges such as wellness credits or spousal surcharges? Must these be included in the cost? These can lower or increase the employee portion of the premium.

4. If the plan sponsor provides a fully-insured HDHP and a self-funded plan underneath the HDHP, it is our understanding that the insurance carrier would report on the HDHP for purposes of §6055(b) and the employer would report on the self-funded plan for purposes of §6056. A system will be needed to match these two reports. We offer these two options for consideration.

   Option 1: IRS Form 6056FI for completely fully insured plans; Form 6056SF for completely self-funded plans; Form 6056CF/6056CF for combined fully-insured and self-funded plans. When a CF (combined form) is submitted, IRS would know that they need to collect a form from both the insurer as well as the employer. Or, the insurer (or employer) could be required to provide their form to the employer (or the insurer) who would then submit both at the same time.

   Option 2: The insurer and the employer would be required to enter into a numeric identification process that provides identification numbers to tie the insurer report to the employer report.

5. Enrollment categories differ by plan. Some plans have more enrollment categories than others. We assume enrollment categories will relate to the categories of coverage as specified in the plan. Is this assumption correct?

6. From what point is the waiting period measured? Is it measured from date of hire or date of eligibility?

7. Is the cost of benefits based on the COBRA value?

8. Data element – The months during which coverage was available. What is being requested here? What is meant by the word "available"? For example, coverage may be available but an individual may not have satisfied the waiting period.

9. What if plans offer coverage on a weekly basis? For example, coverage may only be in force for two weeks of the month.

10. Not all plans run on a calendar year. For example, many school district plans run on the school year cycle.

    Options for fiscal year plans - One option would be to incorporate the fiscal year information that ended in the specific calendar year. For example, a plan with a fiscal year ending on 7/31/2013 would report by 1/31/2014. Another option would be to require plans to report 90 days after the plan year ends.

11. What will be the definition for full-time employees?

12. With respect to incorrect information supplied to the employee, what will be the correction process and the time requirements to provide corrected data?

IRPAC appreciates the opportunity to comment on this Notice. We look forward to further discussions with you.

Sincerely,

Leonard Jacobs

Leonard Jacobs
IRPAC Chairman

Appendix C

Notice 2012-40- Health Flexible Spending Arrangements not Subject to $2,500 Limit on Salary Reduction Contributions for Plan Years Beginning before 2013 and Comments Requested on Potential Modification of Use-or-Lose Rule

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

July 13, 2012

Honorable Douglas Shulman
Commissioner of Internal Revenue
CC:PA:LPD:PR (Notice 2012-40)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044.

RE: IRS Notice 2012-40

Dear Commissioner Shulman:

The Information Reporting Program Advisory Committee ("IRPAC")[1] thanks the Service for releasing Notice 2012-40 that provides guidance on the $2,500 limit on health flexible spending arrangements that was added by §9005 of the Patient Protection and Affordable Care Act (the "ACA").

Although Notice 2012-40 is helpful for health flexible spending arrangements ("Health FSAs") with plan years beginning on or after January 1, 2013, the Notice failed to provide relief for plans that made good faith efforts to comply with the new statutory requirement before the guidance was released. The failure to specifically extend relief to those plans that acted promptly and proactively to comply with the new rules has the perverse effect of denying the relief to the most diligent of plans while rewarding plans that did not take any action. IRPAC does not believe that the IRS intended for this dynamic to occur.

Accordingly, we recommend that the relief set forth in Notice 2012-40 be made available immediately to Health FSAs that took proactive steps to comply with §9005

[1] IRPAC was established in 1991 as a result of an administrative recommendation contained in the final conference report for the Omnibus Budget Reconciliation Act of 1989. The recommendation suggested that the Internal Revenue Service (IRS) consider "the creation of an advisory group of representatives from the payer community and practitioners interested in the Information Reporting Program (IRP) to discuss improvements to the system."

of the ACA prior to the release of Notice 2012-40. IRPAC believes that this relief is especially appropriate given that the IRS did not release guidance with sufficient lead time for plan years beginning in the early part of 2012.

Section 125(i) as added by §9005 of the ACA provides that a Health FSA is not treated as a qualified benefit unless the cafeteria plan "provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of $2,500 made to such arrangement."

Prior to the issuance of Notice 2012-40, plan sponsors were uncertain about how to apply the $2,500 limit to Health FSA plan years that did not run on a calendar year basis. Plan sponsors with plan years beginning in the first four months of 2012 struggled to interpret the application of a "taxable year" to a Health FSA plan year. Many plan sponsors with non-calendar year plans interpreted the term "taxable year" to mean the employee's taxable year and consequently implemented plan language that adopted the $2,500 limit for Health FSA plan years beginning in 2012 and continuing into 2013. These plans developed election materials for their employees and accepted salary reduction elections that capped the Health FSA at $2,500.

In May 2012, Notice 2012-40 was released clearly stating that the $2,500 limit on Health FSA salary reduction contributions applies on a plan year basis and is effective for plan years beginning after December 31, 2012. Once the guidance was released interpreting the term "taxable year" to refer to the plan year of the cafeteria plan, plan sponsors that unknowingly complied early began asking if they may amend their plans and permit their plan participants to change their elections since the $2,500 limit will not apply until the next plan year beginning in 2013.

On behalf of the conscientious plan sponsors that complied early, IRPAC requests transitional relief for all Health FSAs that adopted the $2,500 limit before Notice 2012-40 was issued. The transitional relief would permit an exception to the cafeteria plan election change rules for these Health FSA plans, allowing plan participants to increase their elections for the 2012 plan year and allowing the increase to apply for the entire plan year. Any transitional relief should permit the increased maximum to apply for the entire plan year.

The example set forth below demonstrates how the transitional relief could be crafted. This example limits election changes to those individuals who elected the maximum of $2,500 for the plan year beginning in 2012. Election changes would not be permitted for individuals who did not elect the maximum of $2,500. The example also limits the increase in the maximum to the prior plan year maximum. The increased maximum would apply for the entire plan year and not be limited to the remainder of the plan year.

Example: A Health FSA permitted a maximum election of $4,000 for the plan year of March 1, 2011 to February 29, 2012. A plan participant elected the $2,500 maximum for this plan year. The transitional relief would permit the plan to raise the maximum to $4,000 and allow only those individuals who had elected $2,500 to increase their elections to $4,000. The $4,000 maximum would become available for the entire 12-month plan year that began in 2012.

IRPAC stands ready to assist the Service in any way to facilitate transitional relief for Health FSAs.

Sincerely,

Leonard Jacobs
IRPAC Chairman

Appendix D

Health Care Value Chart

This chart is based on IRS Notice 2012-9, which, until further guidance, contains the requirements for tax-year 2012 and beyond. Items listed as "optional" are designated as such based on transition relief provided by Notice 2012-9, and their “optional” status may be changed by future guidance. However, any such change will not be applicable until the tax year beginning at least six months after the date of issuance of such guidance.

This chart was created at the suggestion of and in collaboration with the IRS’ Information Reporting Program Advisory Committee (IRPAC). IRPAC’s members are representatives of industries responsible for providing information returns, such as Form W-2, to the IRS. IRPAC works with IRS to improve the information reporting process.

COVERAGE TYPE	REPORT ON FORM W-2	DO NOT REPORT ON FORM W-2	OPTIONAL REPORTING
Major medical	X		
Dental or vision plan not integrated into another medical or health plan			X
Dental or vision plan which gives the choice of declining or electing and paying an additional premium			X
Health Flexible Spending Arrangement (FSA) funded solely by salary-reduction amounts		X	
Health FSA value for the plan year in excess of employee’s cafeteria plan salary reductions for all qualified benefits	X		
Health Reimbursement Arrangement (HRA) contributions			X
Health Savings Arrangement (HSA) contributions (employer or employee)		X	
Archer Medical Savings Account (Archer MSA) contributions (employer or employee)		X	
Hospital indemnity or specified illness (insured or self-funded), paid on after-tax basis		X	
Hospital indemnity or specified illness (insured or self-funded), paid through salary reduction (pre-tax) or by employer	X		
Employee Assistance Plan (EAP) providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium

Form W-2 Informational Reporting of the Cost of Employer-Sponsored Group Health Plan Coverage

On-site medical clinics providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
Wellness programs providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
Multi-employer plans			X
Domestic partner coverage included in gross income	X		
Military plan provided by a governmental entity		X	
Federally recognized Indian tribal government plans and plans of tribally charted corporations wholly owned by a federally recognized Indian tribal government		X	
Self-funded plans not subject to Federal COBRA			X
Accident or disability income		X	
Long-term care		X	
Liability insurance		X	
Supplemental liability insurance		X	
Workers' compensation		X	
Automobile medical payment insurance		X	
Credit-only insurance		X	
Excess reimbursement to highly compensated individual, included in gross income		X	
Payment/reimbursement of health insurance premiums for 2% shareholder-employee, included in gross income		X	
OTHER SITUATIONS	**REPORT**	**DO NOT REPORT**	**OPTIONAL**
Employers required to file fewer than 250 Forms W-2 for the preceding calendar year			X
Forms W-2 furnished to employees who terminate before the end of a calendar year and request, in writing, a Form W-2 before the end of that year			X
Forms W-2 provided by third-party sick-pay provider to employees of other employers			X

Appendix E

REG-136008-11 – Fees on Health Insurance Policies and Self-Insured Plans for the Patient-centered Outcomes Research Trust fund

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

Honorable Douglas Shulman
Commissioner of Internal Revenue
PO Box 7604
Ben Franklin Station
Washington DC 20044

Attn: CC:PA:LPD:PR (REG-136008-11)

Comments: REG-136008-11 – Fees on Health Insurance Policies and Self-Insured Plans for the Patient-Centered Outcomes Research Trust Fund

Dear Commissioner Shulman:

The Information Reporting Program Advisory Committee (IRPAC[1]) commends the Service for proposing practical rules for determining the fee imposed by the "Patient Protection and Affordable Care Act" on issuers of certain health insurance policies and plan sponsors of certain self-insured plans to fund the Patient-Centered Outcomes Research Trust Fund.

The IRPAC appreciates the offering of numerous methods for issuers and plan sponsors to calculate the average number of lives covered under an insured policy or self-insured plan. We believe that most issuers and plan sponsors will find one of the methods to suit their needs. The IRPAC thanks the Service for anticipating the diverse preferences of issuers and plan sponsors and crafting a workable regulatory approach.

1

[1] IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. The recommendation suggested that the Internal Revenue Service consider "the creation of an advisory group of representatives from the payer community and practitioners interested in the Information Reporting Program (IRP) to discuss improvements to the system." Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities, and state taxing agencies.

Clarification Requested

A clarification on the applicability date for self-insured plans would be appreciated. The proposed rule states that a plan sponsor of an applicable self-insured health plan is liable for a fee imposed by section 4376 for plans with plan years ending on or after October 1, 2012, and before October 1, 2019. Some members of the IRPAC have received numerous questions about this applicability date because the employee benefit community thinks in terms of applying the fee to the beginning of a plan year and not the ending of a plan year. We request two examples. In one example please explain that the fee applies to plan years beginning November 1, 2011. In the second example, please explain that the fee does not apply to plan years beginning October 1, 2011.

The IRPAC looks forward to assisting the Service to facilitate implementation of the "Patient Protection and Affordable Care."

Sincerely,

Leonard Jacobs
IRPAC Chairperson

Appendix F

REG 102988-11 Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options Comment Letter

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

February 23, 2012

Ms. Pamela Lew
CC:PA:LPD:PR (REG-102988-11)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Ms. Lew:

Re: <u>REG 102988-11 Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options</u>

Dear Ms. Lew:

The Information Reporting Program Advisory Committee (IRPAC)[1] is pleased to comment on the proposed regulations regarding Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options. As the industry completes its first year of information reporting under the newly established regime for cost basis reporting on stocks, there will be many lessons to heed as we consider the implications of expanding these requirements to options and debt instruments. We are grateful for the opportunity to assist the IRS in formulating the best possible approaches to serve taxpayers and the financial industry.

Cost basis reporting for debt and options presents many systemic and procedural issues involving data acquisition, computation and transmission for which IRPAC will provide observations and recommendations. However, due to the extensive nature of those issues, our primary recommendation is for the Secretary to exercise his authority under 6045(g)(3)(C)(iii) to make the effective date for reporting January 1 of the second calendar year following the year in which the regulations become final, provided such date is a minimum of 18 months after the final regulations are published.

---

[1] The Information Reporting Program Advisory Committee (IRPAC) was established in 1991 as a result of an administrative recommendation contained in the final conference report for the Omnibus Budge Reconciliation Act of 1989. The recommendation suggested that the Internal Revenue Service (IRS) consider "The creation of an advisory group of representative from the payer community and practitioners interested in the Information Reporting Program (RIP) to discuss improvements to the system."

Requests for additional time in these situations are commonplace, but we believe that the issues enumerated in this correspondence are deserving of such consideration and note that the legislation, recognizing this possibility, gave the Secretary the discretion cited above for determining the effective date for debt and other instruments. Additionally, we recommend considering a series of effective dates for different classes of securities, each with effective dates relative to the date of any final regulations as described. We make these recommendations for the following reasons:

- As the industry is engaged in the first information reporting season that has required cost basis reporting, we are only beginning to absorb the lessons that have been learned. Simultaneously, we must contend with cost basis reporting for stock eligible for average basis. Reporting for debt and options will be considerably more complex and firms will not be able to dedicate the resources required to evaluate adequately the issues involved in implementation of reporting for debt and options.
- For fixed income obligations in particular, there is a strong relationship between income reporting and basis adjustments that is not sufficiently addressed in the proposed regulations and which will require immense effort to implement. There are many debt instruments (e.g., municipal bonds, Treasury STRIPs) where the information needed to report original issue discount (OID) at all, or accurately, is not available. These limitations have long been recognized by the IRS in its regulations and other guidance. Nonetheless, the proposed cost basis regulations assume that all information and the programming required to determine taxable and non-taxable income accurately and adjust the cost basis information accordingly for various debt instruments is now available or achievable in a very short period of time. Requiring brokers to build systems to adjust basis for these securities when it has long been acknowledged the information required to report the income element is not available needs to be addressed.
- Much of the existing capability and infrastructure within the industry is oriented toward computations of OID, market discount, acquisition premium and bond premium on an *annual* basis. The proposed regulations require that these computations be implemented daily while retaining the annual reporting capabilities. Change of frequency is a complication that was not part of the effort required for basis reporting for equity issues. Yet, implementation of what was considered the easiest cost basis requirement stretched firms to the breaking point and left insufficient time for a level of testing that would otherwise be

customary.[2] This is seen in the number of firms electing to delay their Forms 1099 to February 15th or beyond[3]. The analyses required for this transformation will undoubtedly yield insights that must be considered by the IRS, but cannot be discerned without considerable time to study the requirements for actual implementation.

- Implicit in the scope of the proposed regulations is a supposition that any data item that has been part of a firm's process (or derivative thereof) is, at any time, instantly available and retrievable for reporting. The reality is that there is no monolithic "firm database" that may be mined for data at will. Cost basis reporting requirements have demanded an enormous coordination of effort among the various business units, vendors and partners; each of whom has had to implement substantial changes to its systems. Different participants in the process store and share different subsets of data, with varying frequency, to meet the diverse requirements of information reporting, customer service, business execution, regulatory and compliance reporting and others. For example, it is quite common for a firm to employ the services of different vendors (or distinct systems) for primary back office functionality, cost basis tracking and tax information reporting. Very limited coordination and data sharing between cost basis and information reporting systems/vendors existed prior to the advent of cost basis reporting legislation. Beyond the fundamental coordination that has been developed between these parties, events related to cost basis such as wash sales, corporate events and returns of capital create ripples throughout the multi-tiered process that necessitate additional rounds of data processing and exchange among the parties. Consider, for example, the sale of a stock in the last week of December. The broker relays this transaction from the books and records to the cost basis system for allocation among open lots and determination of term. The resulting closed lot records are provided to the tax reporting vendor. In mid January, the account repurchases the same stock. The transactions, when conveyed to the cost basis system invoke wash sale logic which restates the closed lots. These revisions, in turn, are fed to the tax reporting system. The following week, the tax reporting system gets a notice from the stock's issuer stating

[2] This problem was compounded by the fact final regulations were not issued until October 2010, only a few months before brokers needed to start capturing data. Similarly, it is already too late to issue final regulations in 2012 and expect brokers to have everything implemented and tested by 1 January 2013. Systems programmers are still working on Tax Year 2011 reporting issues and average cost basis programming. Most firms have limited release dates, and lock down systems the last few months of the year.

[3] In prior years, when possible, brokers attempted to deliver portions of the 1099 statement population closer to the traditional January 31st deadline. Far fewer of those deliveries have been made for 2011 reporting.

that distributions from the preceding year were returns of capital which reduce the cost basis. These adjustments are provided to the cost basis system, where basis and disallowed wash sale losses must be restated and subsequently returned to the tax reporting system. For fixed income instruments that require more updates to support daily transfer statements, the level of coordination required among these parties to support 1099 processing and transfer statements will be several times more difficult to map, build, test, schedule and implement.

In the following pages we have attempted to expound upon some of the basic concepts cited above and provide useful feedback for refinements and simplifying assumptions that will make implementation of the final regulations easier. We thank you for your time and consideration and look forward to assisting in any way possible toward the development of a robust and efficient reporting regime.

Sincerely,

C. Leonard Jacobs

C. Leonard Jacobs

IRPAC Chairman

TABLE OF CONTENTS

1. Treatment, computation and reporting of market discount

1.1. When reporting is required

Accrued market discount is required to compute adjusted cost basis on fixed income obligations either currently or at the time of sale or maturity. Since the proposed regulations direct brokers to assume that an investor would not include market discount in income currently, it becomes necessary to report separately the amount (accrued to date) at any point in time that basis must be determined. The preamble, however, conspicuously excludes call or maturity as instances in which the amount of market discount will be required. In one instance saying "…market discount that has accrued as of the date of sale or transfer…" and in another "…if a debt instrument is sold prior to maturity…"

1.1.1. Recommendation:

- This appears to be an oversight that should be rectified in the final regulations to ensure consistent treatment when the tax lot is closed by call or maturity.

1.2. Potential overlap in regulations

Section 1.6045-1(d)(3), as modified in the proposed regulations, implies reporting market discount on covered tax lots sold between interest payment dates as interest income, "in the manner and at the time required by Form 1099 and section 6049," in the year that a position was disposed. Meanwhile, 1.6045-1(n)(3) requires reporting of market discount accrued to the date of sale (since purchase). The existence of these two requirements presents several problems.

- The two reporting requirements are for overlapping periods. The former is for the year in which the lot is sold and the latter is from the date of acquisition to the date of sale, but includes the current year. This can prompt reporting the same portion attributable to the current year to the taxpayer more than once.
- Assuming the income reporting requirement exists to allow the taxpayer to account for market discount income and to adjust basis, it should be noted that the reported amounts aren't necessarily all income. In fact, depending on the sale price, it is quite possible none must be recognized as income. The investor needs only the amount in the latter requirement as this is the amount that must be evaluated to determine how much ordinary income must be recognized. Reporting an accrued amount between interest payment dates for the year of the sale has no practical utility.
- The 1099-INT is an aggregate form; separate income totals are not provided for each security reported. An investor would have no chance of isolating the amount needed to make an assessment of one's tax liability. The only granularity provided on the form is the division between totals for Treasury and all others. Also, although market discount is taxable, for a tax exempt obligation,

it is likely that the investor would not even look to the 1099-INT to capture this information.

- It is unclear how the reported amount under 1.6045-1(n)(3) must be reported relative to the sale or redemption of the debt instrument.

1.2.1. Recommendation:

· If reporting the accrued market discount remains a requirement, it should be part of the 1099-B, where it would be associated with a specific sale of a single security. Any requirement to report on 1099-INT should be abandoned. If the revision to 1.6045-1(d)(3) was intended simply to facilitate the larger requirement of 1.6045-1(n)(3), wording should be modified to make this clear. The need to associate the accrued market discount with a specific sale transaction is illustrated in the following example.

Example: The following example uses a hypothetical zero coupon discount note with a term of 5 years and an issue price of 76.073% for a yield of 5.545%. The issue date is April 5, 2007 and maturity date is April 5, 2012[4]. The bond is purchased two years into its term at a discount to the adjusted issue price. Assume the following circumstances.

• Date purchased:	4/5/09
• Face Amount:	$10,000.00
• Cost:	$7,500.00
• Date sold:	4/5/10
• Adjusted issue price at purchase:	$8,486.70
• Market Discount at purchase: (the difference between cost and adjusted issue price).	$986.70

On the date of purchase, the adjusted issue price of the bond is 84.867%, or $8,486.70 for the $10,000 face amount. At a purchase cost of $7,500.00 total market discount is $986.70 (8,486.70 – 7,500.00). Consistent with the assumptions of the proposed regulations, no current income inclusion for the market discount will be recognized. If the asset is disposed of before maturity, depending on the sale price, a portion of the $986.70 may be recognized as ordinary income and an addition to the cost basis of the asset sold.

On the purchase date, there are 3 years remaining to maturity, or 1080 days. For simplicity of presentation, daily amounts of market discount are computed using a straight line method. The daily accretion of market discount is $986.70/1,080 or $0.9136111, $164.45 per six months, or $328.90 per year.

---

[4] A complete schedule of the accrual or original issue discount is found in the Appendix. Although this debt instrument would not fall under the definition of a "covered security," the dates and amounts presented here are for informational purposes only.

When market discount has not been recognized currently, a comparison of sale price (or redemption amount for call or maturity) to the adjusted basis dictates how much of the previously accrued Market Discount (if any) must be recognized as income at the time of sale or other disposition. Assuming the investor sells on 4/5/10, after holding for one year, there would be a total of $477.10 of OID income accrual and $328.90 of market discount accrual.

Adjusted cost basis (excluding market discount) at the time of sale equals the initial basis of $7,500.00 augmented by the OID accrual of $477.10, or $7,977.10. The table below shows the portion of the sale proceeds that would be considered ordinary income at various sale prices: $7,977.10 (none), $8,150.00 (partial) and $8,500.00 (all).

Data Element	**Market Discount Income at Various Sale Prices**		
	None	**Partial**	**All**
Sale proceeds	7,977.10	8,150.00	8,500.00
Adjusted basis (exclusive of market discount)	7,977.10	7,977.10	7,977.10
Proceeds less basis	0.00	172.90	522.90
Accrued market discount	328.90	328.90	328.90
Ordinary income	0.00	172.90	328.90
Adjusted basis (inclusive of market discount)	7,977.10	8,150.00	8,306.00
Gain or (loss)	0.00	0.00	194.00

The sale transaction itself contributes to the determination of basis by establishing how much, if any, of the accrued market discount is recognized as ordinary income. In the second and third scenarios (partial and all) there is an addition of market discount income to the basis following the transaction.

How would the transaction be represented on 1099-B? Consider the final case, where the entire amount of market discount is recognized as ordinary income. Should the reported basis be inclusive or exclusive of market discount? Should the reported proceeds be the entire cash amount received, or the portion that is in excess of recognized market discount income?

1.2.2. Recommendation

- Considering the preceding example and the current arrangement of Form 8949, IRPAC recommends that for reporting on Form 1099-B the adjusted basis be *inclusive* of market discount income and that proceeds are the gross cash received at the time of sale. Alternatively, recipients would have to be instructed to add the amount of market discount to the reported cost basis to determine gain or loss.

Proceeds:	8,500.00
Cost basis:	8,306.00
Market discount income:	328.90

1.3. Method for computing market discount

Section 1276 offers investors the choice of computing market discount using either a ratable method or a constant interest rate method. For purposes of cost basis reporting, brokers are to assume the constant yield method. For several reasons, the use of the ratable method would be preferable.

- Existing routines at brokerage firms (or their outsourcing partners) for computation of market discount are likely to make use of the ratable method due to its simplicity and the fact that annual amounts of market discount tend to be small since they are amortized over long periods of time. Substantial income attributable to discount is most often a result of obligations issued with *original* issue discount which is captured in existing income accrual and reporting routines.
- Where there is market discount in addition to OID separate yield calculations would need to be made to account for income and market discount. Computationally, this is far more intense and will require more system resources. This is particularly true because rates of OID accrual are precomputed and applied to a particular holding period via a lookup table rather than through unique, dedicated yield calculations.
- As was demonstrated in an earlier example the assumption of a ratable method helps to simplify computation of the market discount attributable to a specific period of time. This will be most useful for transferred positions.
- The stated motivation for mandating the constant yield method is to minimize current inclusions of income. This assumption, however, makes the leap of assuming that the investor has not elected under 1278(b) to include market discount in income currently. This assumption is far more consequential to income recognition than any differences that would be attributable to variances between the ratable and constant yield methods.

1.3.1. Recommendation

- Where market discount remains a required element of information returns, allow brokers by default to use the ratable method and remind taxpayers of their alternatives in relevant forms and instructions.

2. Transfer statement requirements for fixed income obligations

The newly added 1.6054A-1(b)(3) provides requirements for a wide array of data elements to be included on transfer statements for fixed income obligations, supplying the receiving broker with all the information that would be required to facilitate the ongoing computation of any original issue discount, market discount, acquisition premium, bond premium and, ultimately, the adjusted basis at the time of next transfer, sale, call or maturity.

In some instances these additional items are too generic and in some cases the required data element may not be required to accomplish the desired computation. Also of concern is the fact that some data elements are either acquired by firms as part of contractual arrangements with data vendors which prohibit retransmission or are not known directly by the delivering firm because they are contained in upstream calculations that are part of outsourced work from which the firm only uses the end result.

Specifically of concern,

- It is unclear what is covered by the phrase "payment terms." Does this include a complete call schedule? The maturity date of the bond? Whether payments are in kind? The comparable yield and projected payments for a contingent payment debt instrument?[5] The day count routine that is used to compute interest? Whether periodic payments are qualified stated interest? All of this information and perhaps more might be required to complete the anticipated computations.
- Market discount and bond premium accrued to the date of transfer are required [1.6045A-1(b)(3)(vii-viii)], but acquisition premium is not mentioned. This appears to be a drafting oversight, but IRPAC recommendations will illustrate alternatives that make all three items unnecessary.
- It appears that there is an expectation that a receiving broker would re-compute all the elements that go into cost basis rather than relying on the adjusted basis reported on a transfer statement. Since the basis is likely to reflect items of income already reported to and recognized by the account holder in prior years, this can be a perilous and resource intensive endeavor. Further, there doesn't seem to be reason to re-perform calculations done by the delivering broker, particularly if a lot is identified as covered. This would be the equivalent of having a transfer statement for a stock contain a complete history of corporate actions and past returns of capital so that the receiving broker can establish the basis. The point of the transfer statement seems to be to deliver the result of all prior computations.

2.1.1. Recommendations

- When notifying investors of their responsibility for the content of their tax returns and their freedom to do their own

[5] Separately IRPAC makes a case for the exclusion of contingent payment debt instruments from the definition of a covered security.

computations, inform them that market discount is computed on a straight line basis by default and that they may consult 1276(b)(2) for their own yield based computations.

- Provide in the final regulations examples of the expected use of the various data elements by the receiving broker.
- To make clear the date through which accretion or amortization has been computed, make basis effective date a required data element of the transfer statement. This is particularly important for fixed income instruments because all the influences to basis are accruing daily. Consider whether an existing required date under 1.6045-1(b) can be used for this function.
- Make clear that the receiving broker should work on a go-forward basis with the cost basis that is provided by the delivering broker. The reported basis should be compared to the adjusted issue price on the date of transfer to determine the amounts of premium, acquisition premium and market discount to be computed from that point forward. To do otherwise would potentially put the basis out of sync with previously recognized income. As a result, the taxpayer would have varying information that can not be reconciled.
- Provide examples in the final regulations of each purchase condition (premium, acquisition premium, discount) and how each is determined going forward.
- In the case of a bond issued at a discount but purchased with bond premium, if regulations require inclusion of explicit amounts of acquisition premium, it should be stated that acquisition premium is assumed to be equal to any amount of OID accrued while the position was held in the delivering account.
- Capturing, storing and transmitting unnecessary data is resource intensive. Minimize the number of data elements that must be conveyed on the transfer statement. For example, market discount, acquisition premium and bond premium are not required on transfer statement because all are implicit in the combination of the adjusted issue price of the bond and the adjusted cost basis of the tax lot when transferred. The example shown below and the principals detailed in section 1.2.2 of this document illustrate this point.

Example: Using the same hypothetical bond from the earlier example, this time assume a purchase on April 5, 2009 of 10,000 face amount at a cost of $9,000.00. The adjusted issue price on that date is 84.867%, so the purchase is at an acquisition premium of $513.30 (9,000.00 - 8,486.70). If this position is transferred to another broker on February 15, 2010 the adjusted basis and the amount premium of premium are required. OID accrued for the period held is

$409.94 and the acquisition premium[6] is $139.05, leading to a net increase to basis of $270.89. The basis on the date of transfer, therefore, was $9,270.89 (purchase cost of $9,000 plus $270.89).

In the prior paragraph it was established that $139.05 of the initial $513.30 of acquisition premium was amortized as of the date of transfer, leaving a remainder of $374.25. This value can be established, however, without the delivering broker reporting the value of previously amortized acquisition premium. If the receiving broker takes the supplied adjusted basis of $9,270.89 and compares it to the adjusted issue price on the date of transfer (88.967% also a required item). For a position of 10,000 this would be $8,896.60. Taking the difference between the reported basis and the reported adjusted issue price ($9,270.89 – $8,896.60), the result would be $374.29. In this rudimentary example, there is only a 4 cent difference (due to rounding); indicating that with the adjusted issue price and the adjusted basis there is no need for the accrued acquisition premium in the transfer statement. Similar determinations may be made for bond premium and market discount for a transferred tax lot.

[6] Computed in accordance with 1272(a)(7) the ratio of the excess of cost over adjusted issue price divided by the OID remaining or 513.30/1513.30 = .339192. OID for the period of $409.94 when multiplied by the ratio yields. $139.05

3. Addressing non-synchronous income and basis reporting requirements

3.1. Requiring basis adjustments where income reporting is not required

The proposed regulations make an exception to the cost basis reporting requirements by excluding in section 1.6045-1(n)(2)(ii) any debt instrument that is subject to section 1272(a)(6). The exclusion recognizes "the difficulties in implementing a broker's reporting obligations under section 6045(g)…" While we welcome this important distinction, we also note that there are many existing similar exclusions with regard to reporting amounts of income that are adjustments to cost basis. Essentially, there is recognition of the difficulties with regard to computing income that are now ignored in the proposed regulations for basis reporting. Notably:

- Current regulation provides a safe harbor for brokers with regard to reporting OID as income. Section 1.6049-5(f) offers, "…In determining whether an obligation is one which was issued at a discount and the amount of discount which is includible in income of the holder, a payor (other than the issuer of the obligation) may rely on the Internal Revenue Service's publication of publicly traded original issue discount obligations."
- Similarly, IRS Notice 2006-93 addresses tax-exempt OID by stating, "…no information reporting under section 6049 or backup withholding under section 3406 will be required for calendar year 2006 or thereafter until such time as the Service and the Treasury Department provide future guidance."

  Additionally, this exclusion for tax exempt issues may be related to the size of the population of tax exempt issues illustrated in the table below. Twenty-eight percent of municipal obligations are issued with some amount of original issue discount. If a traditional deminimis discount threshold is applied, this shrinks to 2.8%.

Total MUNI outstanding as of 1/1/2012	1,529,937
Total MUNI with issue price < 100	430,653
Total MUNI with more than deminimis OID*	43,787
Total MUNI with deminimis OID	386,866

** This much smaller portion is what is traditionally covered by commercial sources that exist in addition to the IRS's Publication 1212.*

3.1.1. Recommendations

- Carry the existing limits on income reporting to basis reporting or extend the effective date for fixed income by several years to allow for phased in reporting in which parity between income and basis reporting is maintained.
- Consider for purposes of basis reporting extending the deminimis rule of 1273(a)(3) to tax exempt obligations.

3.2. Accuracy of original issue discount on STRIPs and TIPS

For Treasury STRIPS, Publication 1212 (Section II) provides a table of OID rates for middlemen, which produces a rough approximation of the OID income reported on the 1099-OID. Similarly, rates of "accrual" for Treasury Inflation Protection Securities (TIPS) are provided (Section I-C). For STRIPs, Investors are expected to compute their own yields and, in turn, their actual taxable income. For TIPS, accurate OID is only achieved by the specific point-to-point changes in the CPI.

Proposed regulations refer to OID as computed under the requirements of 6049, which provides the Publication 1212 safe harbor. For STRIPs and TIPS the reported adjusted basis (based on the approximated OID from the Publication 1212 table) will not be accurate. Moreover, these approximations are only available retrospectively. Values for "current year" are not published. Therefore, adjusted basis would reflect approximate prior year accruals of OID but not any accrual from January 1st through the date of transfer.

3.2.1. Recommendation

- Consider excluding these instruments from the definition of covered securities. If exclusion is not viable and any revisions to the information reporting requirements for income are contemplated, such consideration should figure prominently in any determining the ultimate effective date of the regulations because it requires substantial programming efforts.
- On all relevant forms and instructions, advise taxpayers that the basis reported to them for these instruments, like OID income, might require an independent calculation or reconciliation.

4. Cost basis reporting for options

4.1. Create distinct guidance for non-equity and equity options

Bringing options into the realm of reporting proceeds and cost basis has raised numerous questions within the industry. It appears that there would be a single approach to all options even though at least two distinct groups— non-equity IRC section 1256 and equity options— with distinct taxpayer treatments exist. We believe there is confusion about both the IRS's intent and procedural issues perceived relative to any existing industry practice.

- If it is intended that there be only a single approach to option reporting, it would seem that the broad-based equity options would be reported to investors in a way that is entirely inconsistent with determining tax liability. These issues are subject to mark to market under Section 1256 and are considered 60% long term, 40% short term regardless of the actual time that the contracts were held.
- It is unclear whether IRPAC comments from prior years that were based only on anticipated requirements and general capabilities may have influenced the approach included in the proposed regulations. At this point in time, it would be beneficial to survey the industry with regard to the abilities to identify various types of options and the variations in the how option transactions are recorded and stored.
- The ability to track whether stock was acquired in connection with the exercise of compensatory options is generally not available in the industry.

4.1.1. Recommendations

- As part of overall regulatory view of options, establish distinct reporting regimes for broad based non-equity options and narrow based equity options that are attuned to the actual tax liability of the taxpayer. For example, provisions covering wash sales and short sales are not useful in determining taxability of positions in §1256 options that require mark to market.
- Recognize that many existing cost basis systems do not currently have the ability to capture options transactions or, where they do, may not be granular enough to support the envisioned requirements. This will require substantial programming efforts.
- Consider developing a simpler definition of narrow-based equity index than Section 3(a)(55) of the Securities Exchange Act of 1934 and develop regulations under Section 1256 that provide more clarity about which options are regulated futures contracts that are subject to mark to market reporting.

4.2. 1099-B reporting for listed equity options not physically settled

Assuming that there would be distinct treatment of listed equity options, we are addressing the proposed reporting in that context as these types of options are most prevalent in the retail investing community.

The preamble to the proposed regulations explains that an option closing transaction that is not a physical settlement requires reporting gross proceeds and whether the gain or loss is short-term or long-term. For regulations devoted to reporting cost basis, there is, interestingly, no mention of cost basis. Current Reg. 1.6045-1(d)(5) states, "In the case of a closing transaction that results in a loss, gross proceeds are the amount debited from the customer's account." There is additional guidance, however, in Proposed Reg. 1.6045-1(m)(3-5) where the 1099-B filer is directed to report for sales or other closing transactions what is effectively the net gain or loss[7] as the gross proceeds, and again, with no value specified for the adjusted basis.

The lack of direction to report basis is understandable considering the special approach that is required for the proceeds value. Such a presentation on the 1099-B would presumably lead the recipient, when completing Form 8949 and Schedule D, to subtract zero from the proceeds amount and, thereby compute a gain or loss equal to the amount that was reported as gross proceeds.

This approach is contrary to the way brokerage systems generally operate for trading listed equity options. Most often these transactions are captured in the same way as trades in securities, both short and long. Moreover, current practice in reporting these results to investors (supplemental to Forms 1099) is consistent with that approach.

Example #1: On January 16, 2012 an investor sold a covered call on Ford for $1350 and later closed the position on April 2, 2012 by buying the same number of contracts for $1000, two separate transactions would be captured: one with proceeds (the sale) and one with basis (the buy).

Example #2: Additionally, if the position was not closed with a purchase and was allowed to expire on September 21, 2012, there would be a closing transaction booked (but with a cost of zero). Representation on the Form 1099-B for these two scenarios might look as follows:

Closing Scenario	1a Date of sale or exchange	1b Date of acquisition	1c Type of gain or loss	2a Stocks, bonds, etc.	3 Cost or other basis	Description
Purchase	04/05/2012	04/02/2012	short	1350.00	800.00	Call Ford Motor Sept 2012 $6.00
Expiration	09/21/2012	09/21/2012	short	1000.00	0.00	Call Ford Motor Sept 2012 $6.00

Consideration would have to be given to which dates are reported. Current practice for closing a short position in a stock is to report the date shares are delivered to close the short as the date of sale or exchange and the date those

[7] 1.6045-1(m)(3)(i) Gross proceeds. A broker must increase gross proceeds for all payment receive on the option and decrease gross proceeds for all payments paid on the option.

shares were purchased as the date of acquisition. In the first example above, trade date and settlement date for the buy-to-close are used. In the second example, the date of expiration is shown as both the date of acquisition and the date of sale or exchange.

Commentary from IRPAC in June of 2009 acknowledged both possible approaches and outlined the use of reporting values of zero as either proceeds or basis in the case of expiration of short or long positions respectively. Having consulted with several industry participants about preference, it appears that reporting both proceeds and basis will make implementation of basis reporting easier for the broker and clearer to the taxpayer.

Additionally, Notice 2003-8 suspended the requirement to report under section 6045 for securities futures contracts. This is significant since this represents the only other asset that would be reported on Form 1099-B in the same manner as is described in the proposed regulations. Since no reporting has been done, this style of reporting when implemented for options would be entirely new and when presented with other investment activity in equities and debt may be puzzling to investors.

4.2.1. Recommendations

- Establish a reporting regime for exchange traded equity options that is comparable to trading stocks, but with a term determined in accordance with Sections 1234 and 1234A. This will mirror current practice and allow for implementation of cost basis reporting for options with the least disruption to the industry. Additionally, it provides for a consistent presentation on Form 1099-B for transfer of data to Form 8949 without the appearance of potentially confusing negative values.
- It may be that, depending on the type of firm, options transaction are captured in a variety of ways. Under such circumstances, it would be favorable to permit reporting of either proceeds and basis or the net amount as proceeds. Either approach will get the investor to the needed tax liability, but giving this flexibility to the industry will be favorable to earlier adoption.
- Request input from various industry participants specifically outlining the anticipated 1099-B presentation with regard to each type of option.

4.3. Organizational actions

The proposed regulations appear to place an information reporting burden on individual investors who maintain positions in options contracts for which the underlying asset has undergone an organizational action. The option writer is required in this case to prepare an issuer return.

For options that are cleared via the Options Clearing Corporation (OCC), any ties between writer and holder are severed and assumed by the OCC once there are matching orders. OCC becomes writer to the holder and holder to the writer. In this role, OCC routinely publishes the necessary information regarding any contract modification that is required do to organizational actions on the underlying asset.[8]

4.3.1. Recommendations

- Although, the language of the example of 1.6045B-1(h)(2) seems to acknowledge this mechanism, IRPAC recommends the language of the requirement in 1.6045B-1 (h)(1) be amended to incorporated reference to the clearinghouse as writer of exchange traded options.
- Additionally, modify the language to indicate that for options that are not exchange traded and settled through the OCC, the individual writer of the contract is the responsible party.

4.4. Sale of compensation-related stock

The preamble of the proposed regulations indicate the IRS's desire to explore the addition of an indicator to the 1099-B to denote the sale of compensation-related stock. The ability to uniquely identify such tax lots generally is not native to brokerage systems, although some of this functionality might exist with firms that administer such programs or employee stock purchase plans.

4.4.1. Recommendations

- Since brokers may still optionally decline to adjust basis of stock acquired through the exercise of compensatory options, limitations in this realm are clearly recognized. IRPAC recommends that consideration of the unique indicator for 1099-B be dropped or made optional if implemented.

[8] A sample of such a notice is contained in the appendix.

5. Settlement date and the receiving broker in a transfer

Section 1.6045-1(d)(6) is devoted to establishing responsibility for determining the adjusted basis of a security position. For a purchase, this responsibility begins "as of the date the security is acquired in an account." Where the same paragraph addresses organizational actions effecting positions established in an account via transfer, however, we are told that the responsibility does not include "the settlement date that the broker receive a transferred security."

Functionally, these two scenarios are the same in that the position will exist on the books of the broker executing the purchase or receiving the transfer; the broker is the owner of record and the customer is the beneficial owner. As the owner of record the receiving broker in a transfer would be the recipient of any entitlements related to the organizational action and would process adjustments to reflect any other changes such as stock splits. Therefore, this distinction creates a discrepancy that is contrary to standard practice.

5.1.1. Recommendation

- Define the responsibility for adjusting basis beginning on the first date for which a position is on the books of a broker at the close of business. In the parlance of the brokerage industry: on the daily stock record. Alternately, responsibility may be established as residing with the custodian that would receive any entitlements on behalf of the beneficial owner with regard to any organizational action on the date of transfer.

6. Special considerations for various financial products

6.1. Reverse convertible[9] and other structured products

There are a large number of synthetic instruments traded on the exchanges that pair a debt instrument (or cash deposit) and a put option (or forward contract). In most instances, the investor is considered to have simultaneously purchased the debt and sold the put. The aggregated investment unit's purchase price is the net of the bond purchase price and the proceeds of the option sale. These instruments trade under a single identifier (CUSIP number), making separate tracking of basis of the underlying components beyond the capabilities of any brokerage firm (or contracted cost basis vendor) in the normal course of business. The constituent pieces of this investment do not trade separately. Rather, when the debt portion matures, those proceeds are either returned to the investor or retained by the issuer as compensation for the shares being put to the investor. This structured investment product is often characterized in the offering document as an "investment unit," although this phrase is likely to carry a variety of meanings throughout investment and tax practices.

Since each of the components on its own would be considered a covered security after 2012, there are questions in the industry regarding the covered status of the bundled investment unit; it is not clear in the proposed regulations if this would be a covered instrument.

The example above details only a single type of packaging of financial instruments. There are many others. It can be extremely difficult to evaluate the components of each and determine whether they are covered instruments.

6.1.1. Recommendation:

- IRPAC recommends that such arrangements be defined as noncovered securities. In the alternative, it is essential that the unit be considered as a single integrated instrument with a single basis, as existing technology has no provisions for tracking multiple bases associated with a single security identifier.
- Similarly, if multiple option contracts are bundled into a single investment vehicle, adhere to a single basis for the aggregated investment so long as the components can not be separately exercised.

6.2. Contingent payment debt instruments

Contingent payment debt instruments (CPDI) are a special type of debt instrument that is exceptional in many aspects of how it is treated. These unique features make compliance with the general approach for basis computation beyond to capabilities of most firms and out of step with the guidance of the proposed regulations.

[9] These securities are often issued under the trade names Trigger Yield Optimization Notes, Reverse Convertible Non Principal Protected notes, Airbag Yield Optimization Notes, Equity Linked Securities (ELKS) and Reverse Exchangeable Notes.

For example, 1.6045-1(n)(3) notes that reporting accrued market discount is required if the instrument is subject to market discount rules in sections 1276 through 1278. Section 1.1275-4(b)(6-9), which provides guidance for handling CPDI for which the noncontingent bond method applies (the majority of CPDI obligations) explicitly states, "The rules for accruing premium and discount in sections 171, 1272(a)(7), 1276 and 1281 do not apply." Generally for CPDI:

- Any gain is considered interest income
- Losses are ordinary, not capital and, therefore, long-term or short-term designations are not relevant
- Adjustments to basis are not calculated in the same manner as other debt instruments

6.2.1. Recommendations

- Exclude CPDI or any bundled investment product containing CPDI from the definition of a covered security.
- Update the adjustment codes for Form 8949 to guide taxpayers toward correct treatment of closed lots of CPDIs. Only in limited circumstances will CPDI spawn capital losses that would be transferred to Schedule D. Consider creating the appropriate worksheet to determine what amounts, if any, belong on Form 8949.
- Encourage broker dealers to identify CPDIs on Form 1099-B.

7. Establishing basis in rights

7.1. Basis allocation according to Section 307

For a non-taxable distribution of rights, the proposed regulations require brokers to allocate basis to the rights in accordance with Section 307 whereby an allocation is done if the fair market value of the rights is 15 percent or greater than the value of the stock on which it was distributed. There are several questions that remain with regard to this requirement.

- An individual is permitted to perform the same allocation regardless of the value of the rights relative to the value of the stock. Since this too is a provision of Section 307, a broker's obligation and choices are unclear. Is the allocation required in this circumstance? Is it permitted if not required? Does the IRS desire consistency rather than flexibility if the FMV does not meet the threshold requiring the allocation of basis?
- The requirement to make the allocation presumes the availability of information. In practice, however, such fundamental information as whether the distribution was taxable, the precise characterization of the transaction or even the value of the rights distributed may be undetermined or in dispute. If this information is not available in a reasonable timeframe, brokers might not be prepared prior to the required date to create an information return.

7.1.1. Recommendations

- The final regulations should state that brokers may, but are not required to do a basis allocation if the fair market value of a rights distribution is below 15 percent. The final regulations should state that if an issuer has not posted or mailed a Form 8937 by January 15 of the following year, the broker may assume the basis of the right or warrant is zero ($0) because no cost basis of the underlying shares could be accurately allocated.
- Create a time period within which characterization of a distribution must be finalized by the issuer in order for a broker to be responsible for basis allocation, including retrospective changes. In such instances allow brokers to create an advisory for 1099 recipients informing them of the uncertain nature of the transaction. There are many prominent transactions from 2011 that illustrate this dilemma. In fact, some of the determinations might, at times, be dependent on private letter rulings from the IRS. In other words, if you can't be certain of the nature of the transaction, you want to be certain of a default method for reporting it.

7.2. Issue specific to ADRs

On rights offerings, it is often difficult (particularly for ADRs) to obtain FMV for the rights. Often in these cases, the rights are immediately sold and the cash proceeds are delivered to the shareholder.[10] Will final regulations acknowledge the need to assume a basis of zero or a basis equal to the proceeds? Will they allow for assumption of basis equal to proceeds when the sale of the rights is nearly simultaneous with the issuance?

7.2.1. Recommendation

- If the rights are sold by the agent within a specified short period of time relative to the effective date of the rights distribution, allow brokers to assume a fair market value for the rights equal to the sale proceeds and allocate basis accordingly. This would be consistent with minimizing the taxpayer's current income inclusions and would give brokers the opportunity to bring certainty to a difficult process.

[10] A sample announcement is found in the appendix.

8. Appendix

8.1. Lifetime OID schedule for the sample bond

Issue date: April 5, 2007

Maturity date: April 5, 2012

Issue price: 76.073%

Yield to maturity: 5.545%

Begin Date	Days	Adjusted Issue Price	OID
04/05/07	180	760.73	21.09
10/05/07	180	781.82	21.68
04/05/08	180	803.50	22.28
10/05/08	180	825.77	22.89
04/05/09	180	848.67	23.53
10/05/09	180	872.20	24.18
04/05/10	180	896.38	24.85
10/05/10	180	921.23	25.54
04/05/11	180	946.77	26.25
10/05/11	180	973.02	26.98
04/05/12	0	1,000.00	-

8.2. OCC notice

This reflects Fortune Brands splitting into Beam and Fortune Brands Home and security.

OCC

#29547

Back to Infomemo Search

DATE:	**OCTOBER 3, 2011**
SUBJECT:	**FORTUNE BRANDS, INC – DISTRIBUTION** **OPTION SYMBOLS: FO/2FO** **NEW SYMBOLS: BEAM1/2BEAM1** **FUTURE SYMBOLS: FO1C/FO1D** **NEW SYMBOLS: BEAM2C/BEAM2D** **DATE: 10/4/11** ********UPDATE********

CONTRACT ADJUSTMENT - OPTIONS

EFFECTIVE DATE:	October 4, 2011
OPTION SYMBOL:	FO changes to BEAM1 2FO changes to 2BEAM1
STRIKE PRICES:	No Change
NUMBER OF CONTRACTS:	No Change
MULTIPLIER:	100 (e.g., a premium of 1.50 yields $150; a strike of 55 yields $5,500)
NEW DELIVERABLE PER CONTRACT	1) 100 (New) Beam Inc. (BEAM) Common Shares 2) 100 (New) Fortune Brands Home & Security (FBHS) Common Shares
SETTLEMENT ALLOCATION:	**BEAM: 80%** **FBHS: 20%**
CUSIPS:	BEAM: 073730103 FBHS: 34964C106

PRICING

The underlying price for BEAM1/2BEAM1 will be determined as follows:

BEAM1 = BEAM + FBHS

CONTRACT ADJUSTMENT - FUTURES

EFFECTIVE DATE:	October 4, 2011
FUTURES SYMBOLS:	FO1C changes to BEAM2C FO1D changes to BEAM2D
SETTLEMENT PRICES:	No Change
NUMBER OF CONTRACTS:	No Change
MULTIPLIER:	100 (e.g., a premium of 1.50 yields $150)
NEW DELIVERABLE PER CONTRACT	1) 100 (New) Beam Inc. (BEAM) Common Shares 2) 100 (New) Fortune Brands Home & Security (FBHS) Common Shares
SETTLEMENT ALLOCATION:	**BEAM: 80%** **FBHS: 20%**
CUSIPS:	BEAM: 073730103 FBHS: 34964C106

PRICING

The underlying price for the BEAM2C/BEAM2D Futures contract deliverable, expressed in term of current market value, would be calculated as follows:

BEAM2C = BEAM + FBHS

Please note that the valuation would apply only to the BEAM2C/BEAM2D deliverable in terms of current market value of the deliverable securities. The resulting price would not be equivalent to the daily settlement price of a futures contract month, whose determination would include cost of money carrying charges, adjustment for dividends, and other factors.

BACKGROUND

Fortune Brands, Inc. (FO) has announced that it will change its name and trading symbol to Beam Inc. (BEAM) effective on October 4, 2011. Additionally, Fortune Brands, Inc. has also announces a distribution of Fortune Brands Home & Security, Inc. (FBHS) Common Shares. The distribution ratio is 1 FBHS Common Share for each existing FO Common Share. The record date was September 20, 2011; the mail date is October 3, 2011. The New York Stock Exchange (NYSE) has set October 4, 2011 as the ex-distribution date for this distribution.

Fortune Brands Home & Security, Inc. (FBHS) began trading on a when issued basis on September 16, 2011 on the NYSE under symbol FBHS WI.

DISCLAIMER

This Information Memo provides an unofficial summary of the terms of corporate events affecting listed options or futures prepared for the convenience of market participants. OCC accepts no responsibility for the accuracy or completeness of the summary, particularly for information which may be relevant to investment decisions. Option or futures investors should independently ascertain and evaluate all information concerning this corporate event(s).

The determination to adjust options and the nature of any adjustment is made by a panel of The OCC Securities Committee pursuant to OCC By-Laws, Article VI, Sections 11 and 11A. The adjustment panel is comprised of representatives from OCC and each exchange which trades the affected option. The determination to adjust futures and the nature of any adjustment is made by OCC pursuant to OCC By-Laws, Article XII, Sections 3, 4, or 4A, as applicable. For both options and futures, each adjustment decision is made on a case by case basis. Adjustment decisions are based on information available at the time and are subject to change as additional information becomes available or if there are material changes to the terms of the corporate event(s) occasioning the adjustment.

CATEGORY: **CONTRACT ADJUSTMENT**

For questions regarding this memo, call 1-888-OPTIONS or email options@theocc.com.

8.3. ADR rights notices

Two examples of sales right offerings on shares underlying depositary receipts.

8.3.1. Anglo Platinum LTD, Citibank, N.A. depositary bank

citi

Corporate Action Announcement

Citibank, N.A., acting as depositary bank, announces the following:

Date:	April 14, 2010	**Status:**	Final
Announcement For:	Sale of Rights		
Company Name:	Anglo Platinum LTD		

Security Information

Company:	Anglo Platinum LTD
Ticker Symbol:	AGPPY
CUSIP:	035078104
Country:	South Africa
Exchange:	OTC
Ratio (ADR:ORD):	1:1
Underlying ISIN::	ZAE000013181
DR ISIN:	US0350781045
Custodians:	Computershare, Societe Generale, Standard Bank

Announcement

Anglo Platinum Ltd – Sale of Rights

Anglo Platinum Limited announced an increase in share capital by way of a distribution of rights to its ordinary shareholders. The rights were allocated as follows:

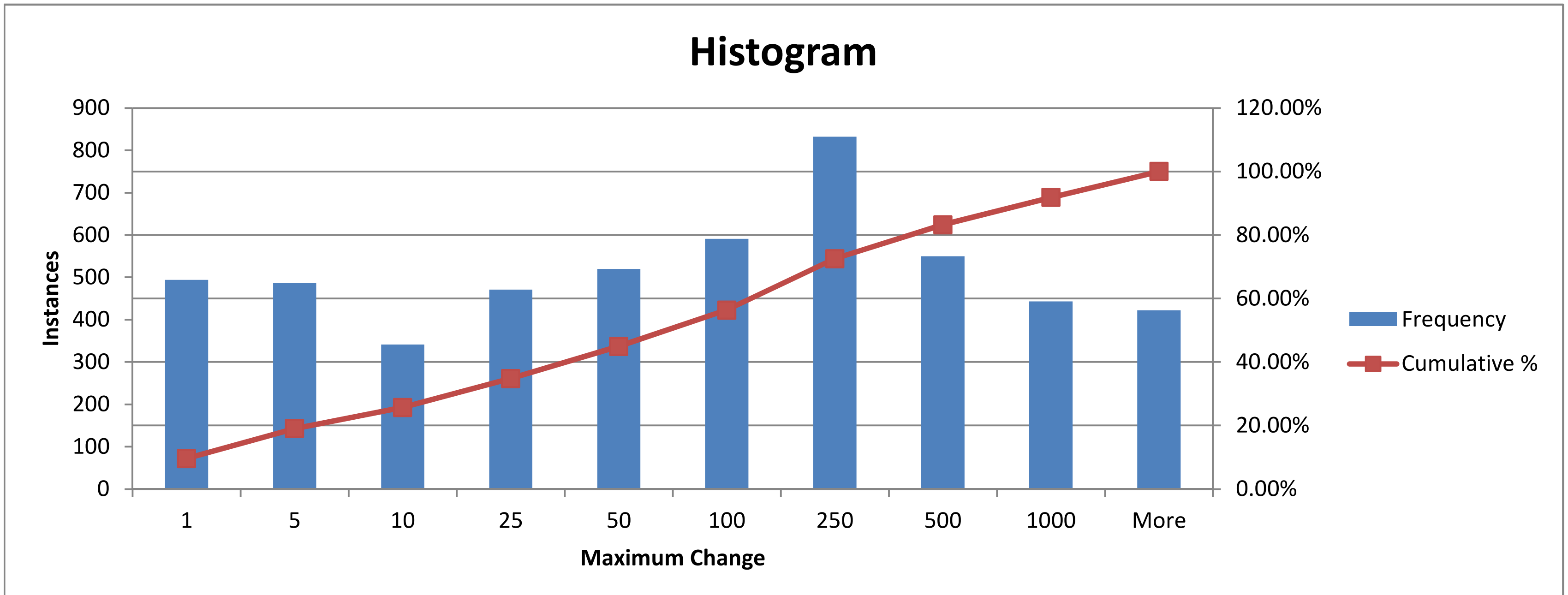
Shareholders received 10.3823 rights for every one hundred (100) ordinary shares held as of the foreign record date of March 5, 2010. Being that the Anglo Platinum Ltd. rights were not registered under the United States Securities Act of 1933, Citi was not permitted to pass the rights on to the holders of American Depositary Receipts. Therefore, Citi has sold these rights in the local market and the proceeds received from the sale will be

continued

Appendix G

UIT Corrections Histogram

Maximum Change	*Instances*	*Cumulative %*
1	494	9.59%
5	487	19.04%
10	341	25.66%
25	471	34.81%
50	520	44.90%
100	591	56.38%
250	832	72.53%
500	550	83.21%
1000	443	91.81%
More	422	100.00%



Appendix H

Comment Letter on Reg. 121647-10-Proposed Regulations Under Sections 1471 through 1474 of the Internal revenue Code

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

June 21, 2012

Honorable Douglas Shulman
Commissioner of Internal Revenue Service
CC:PA:LPD:PR (REG-121647-10)
Room 525
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

Re: REG-121647-10 - Proposed Regulations Under Sections 1471 through 1474 of the Internal Revenue Code

Dear Commissioner Shulman:

The Information Reporting Program Advisory Committee ("IRPAC")[1] has been asked to provide a written summary of certain discussions regarding the Proposed Regulations issued on February 8, 2012 under Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (the "Code"). Sections 1471 through 1474 are part of Chapter 4 of the Code, originally introduced as part of the Foreign Account Tax Compliance Act of 2009, commonly referred to as FATCA.

The Proposed Regulations are complex and will have a profound impact on withholding agents and the financial services industry, both in the United States and abroad. In order to implement FATCA in an effective manner, it is critical that the playing field is level and that withholding agents be given sufficient time to make the numerous required changes to their computer systems and business intake procedures. Although there are many portions of the Proposed Regulations that merit comment, IRPAC believes that the following comments are of overriding importance.

The Information Reporting Program Advisory Committee (IRPAC) was established in 1991 as a result of an administrative recommendation contained in the final conference report for the Omnibus Budget Reconciliation Act of 1989. The recommendation suggested that the Internal Revenue Service (IRS) consider "The creation of an advisory group of representative from the payer community and practitioners interested in the Information Reporting Program (IRP) to discuss improvements to the system."

Definition of Preexisting Obligations

The Proposed Regulations define the term preexisting obligation to mean "any account, instrument, or contract maintained or executed by the withholding agent as of January 1, 2013." With respect to a participating foreign financial institution ("PFFI"), however, a preexisting obligation is defined as one maintained or executed by the PFFI prior to the date that the PFFI's agreement with the IRS becomes effective.[2] An FFI agreement will have an effective date of July 1, 2013 or later.[3] Thus, preexisting obligations of a U.S. withholding agent are those in existence on January 1, 2013, but the preexisting obligations of a PFFI are those in existence on June 30, 2013 (or prior to the later effective date of its FFI agreement).

All withholding agents will need to design and implement substantial changes to computer systems to record the new Chapter 4 status of accounts. As a result of the difference in the definition of a preexisting obligation, U.S. withholding agents will have six months less time than PFFIs to complete the necessary changes than PFFIs. We believe that U.S. withholding agents and PFFIs face the same challenges in the development of systems to record the Chapter 4 status of accounts (over thirty new categories) and, therefore, should be allowed the same amount of lead time.

IRPAC recommends that the definition of a preexisting obligation be the same for all withholding agents.

Effective Dates

As discussed above, all withholding agents will need to design and implement substantial changes to systems and business intake procedures to comply with the due diligence requirements imposed by the Proposed Regulations. Assuming the Proposed Regulations and associated Forms are finalized by September 30, 2012, U.S. withholding agents would have only three months and PFFIs would have only nine months to complete the necessary work. For the reasons outlined below, we believe these timeframes are unrealistic and unachievable.

Many withholding agents have been working on the development and preliminary design of systems based on the Proposed Regulations. Included in this work is the identification of the multiple interrelated computer systems that will need to be developed or modified to comply with Chapter 4. It is important to note that the systems development process involves a series of steps. These steps include defining the scope of the project, development and documentation of technical requirements, design and coding of program changes, testing to ensure compliance with technical requirements, finalization of programming changes, and scheduling the release of systems changes. Each of these steps requires a substantial commitment of time and resources and must be undertaken sequentially. Although preliminary scoping and initial design work can be undertaken based on Proposed Regulations, the completion

2 Proposed Reg. §1.1471-1(b)(48).

3 Proposed Reg. §1.1471-1(b)(24).

of design, programming and testing can only be accomplished after the Regulations and associated Forms are finalized.

It should also be noted that large financial institutions have limited windows for the release of systems changes. For example, releases may be permitted only in March, July and November of each year.[4] Thus, necessary systems changes would need to be implemented by November, 2012 in order to accommodate storing Chapter 4 status information as of January 1, 2013. Clearly, this will not be achievable.

Shown below is a representative example of implementation timeframes associated with the requisite changes needed to comply with the initial, and most immediate, effective dates of FATCA following the release of Final Regulations.

- September 30, 2012 - Final Regulations and Forms issued
- October/November 2012 - Analyze and interpret Final Regulations. Identify differences from Proposed Regulations. Preliminary discussions with Systems Staff
- December 2012 – March 2013 - Systems lockdown
- April 30, 2013 – Deadline for re-evaluating scope of project
- June 8, 2013 – Final date for written technical requirements
- August 17, 2013 – Deadline for design and development of programming changes
- November 9, 2013 – Completion of testing phases
- November 12, 2013 – Finalization of programming changes
- December 1, 2013 - Systems lockdown (no more changes)
- January 1, 2014 – Implementation

The above example does not take into consideration additional work related to writing new processes and procedures, implementing new forms, revising customer communications and account opening documentation and the training of operations personnel.

IRPAC recommends that the definition of preexisting obligations be changed to those maintained or executed by a withholding agent as of January 1, 2014. This modification is necessary to provide withholding agents with the time needed to implement required changes to systems.

Respectfully Submitted,

Leonard Jacobs
2012 IRPAC Chairman

Generally, releases cannot be permitted between November and March due, in part, to the potential impact on information reporting for the prior calendar year.

cc: Emily McMahon
William Wilkins
Michael Danilack
Patricia McClanahan
John Sweeney
Danielle Nishida
Quyen Huynh
Tara Ferris
Jorge Castro
Mark Erwin
William Holmes
David Horton
Kate Hwa
Mae Lew
Jesse Eggert
Michael Plowgian
Steve Musher
Michael Caballero
Manal Corwin

Susan R. Boltacz

Ms. Boltacz, a CPA and attorney, is Group Vice President, Tax Counsel and Director of Tax Information Reporting at Sun Trust Bank in Atlanta, Georgia. She has been advising on tax information reporting issues and implementing tax information reporting requirements for financial services and telecommunications industries for over 21 years. Ms. Boltacz is a member of the Tax Section of the American Bar Association and an IRS VITA Program Volunteer. She became the first woman member of the Advisory Board, Georgia State College of Law Tax Clinic in 2008. She received an Honors BS in Accounting/Operations Management from Marquette University and an MBA and JD from the University of Georgia. **(Chair, Emerging Compliance Issues Subgroup)**

Duncan W. Brenan

Mr. Brenan is Manager of Legal Support Group at Burt, Staples & Maner, LLP in Washington, D.C. He is experienced working with domestic and nonresident withholding and information reporting. He has managed teams that bring large financial institutions and AP departments in compliance with withholding and information reporting regulations. He received a BS in Economics and Politics from the University of Warwick, Coventry, England, and a Masters Degree from Duke University in Public Policy. **(International Reporting and Withholding Subgroup)**

Boyd J. Brown

Mr. Brown, JD, is a Benefits Tax Counsel in the Global Tax & Trade group at Intel Corporation in Santa Clara, California. He has worked for over 19 years in the compensation and benefits area. Mr. Brown serves as tax counsel supporting Human Resources, Compensation & Benefits, Payroll, Legal, HR Legal, and Compensation & Benefits Accounting. He also works with various business units regarding tax aspects of fringe benefits, equity compensation, nonqualified deferred compensation, board of director compensation, and health and welfare plans including compliance with tax withholding and information reporting requirements. Mr. Brown is an adjunct faculty member with Georgetown University Law Center, teaching courses in taxation of fringe benefits and nonqualified deferred compensation. He was a member of the Board of Directors (2009 – 2010) of the Virginia Conference Wellness Ministries, Ltd., and (2000 – 2008) the Virginia United Methodist Pensions Inc. Mr. Brown has a BA in Economics from Swarthmore College, a Master of Theological Studies from the Duke University Divinity School, a J.D. from University of Virginia School of Law and a LL.M. in Taxation from Georgetown University Law Center. **(Employee Benefits and Payroll Subgroup)**

Julia K. Chang

Ms. Chang is a CPA at Julia Chang, CPA in Pacific Palisades, California. She has worked in the accounting field for over 30 years, specializing in taxation. She has worked for both a small CPA firm servicing small entrepreneurs and an international CPA firm servicing large companies. Ms. Chang is a member of AICPA and the California Society of CPAs.

She received a BS in Business Administration from California State University and an MS in Business Taxation from Golden Gate University. (**Burden Reduction Subgroup)**

Terence C. Coppinger

Mr. Coppinger is a CPA and Director with Deloitte Tax LLP in their New York City office. He has been advising clients in the areas of tax information reporting and IRS practice and procedure for more than 15 years. He provides consulting services and audit representation related to domestic reporting and withholding obligations, qualified intermediaries, withholding foreign partnerships and nonresident alien withholding and reporting. Mr. Coppinger is a member of the Tax Section and the Personal Financial Specialist Section of the AICPA, and the IRS Relations Committee of the New York State Society of CPAs. He has co-authored articles in publications such as The Journal of Bank Taxation, Practical Tax Strategies and The AICPA Tax Adviser. He is an adjunct associate professor at St. John's University's Tobin College of Business where he teaches graduate courses in IRS Practice and Procedure, Federal Tax Research and Tax Research and Writing. Mr. Coppinger received his BS in Finance and MBA in Public Accounting from St. John's University and MS in Taxation from Pace University. **(International Reporting and Withholding Subgroup)**

Candace B. Ewell

Ms. Ewell is a Director at PricewaterhouseCoopers' Washington, DC National Tax Services Practice, where she leads a group of information reporting and withholding specialists. She has been a frequent speaker on information reporting matters and is the primary author of thought leadership pieces that cover a range of information reporting topics which include Foreign Account Tax Compliance Act (FATCA), as well as other current issues. Prior to this position, she worked for the U.S. Small Business Administration Office of Advocacy for two years, as Assistant Chief Counsel for Tax and Pension Policy. Ms. Ewell worked in the Office of Associate Chief Counsel (Corporate) at IRS for four years as an Attorney Advisor. She received her J.D. from North Carolina central University School of Law and Her LL.M. in taxation from Georgetown University Law Center. **(Emerging Compliance Issues Subgroup)**

Rebecca Harshberger

Ms. Harshberger is VP, Finance and Tax, GEP Administrative Services, Inc. in Burbank, California. She is responsible for employment and tax information reporting and processing. She works directly with state, federal and foreign revenue agencies, state unemployment insurance agencies and motion picture studio tax departments to ensure payroll and information reporting compliance for film credits and incentives. Ms. Harshberger is on the Board of directors of the Los Angeles Chapter of the American Payroll Association. She is a member of APA, a Certified Payroll Professional and teaches the LA CPP prep course. She has a BS in Business Administration from San Diego State University. **(Chair,**

Employee Benefits & Payroll Subgroup)

C. Leonard Jacobs

Mr. Jacobs is Manager, Tax Agency Relations at Intuit Inc. in Reno, Nevada. He has worked with corporate accounting, employment tax compliance and reporting, and payroll and tax systems. Mr. Jacobs is a member of the National Payroll Reporting Consortium, American Payroll Association, and serves on the board of advisors to the Bureau of National Affairs Payroll Administration Guide. He received a BS in accounting from Southern Illinois University. **(Chair IRPAC)**

Anne W. Jetmundsen

Ms. Jetmundsen, CPA is a Tax Advisor to the University of South Florida in Tampa, Florida. She advises the University on payroll, purchasing and accounts payable and information reporting obligations. She has taken a leadership role in the state university system and served as Chair of the Taxation Subcommittee of the Inter-institutional Committee on Finance and Accounting (ICOFA). She is a member of the Tax Council of the National Association of College and University Business Officers (NACUBO). Ms. Jetmundsen has a BS in Accounting and a Master of Tax Accounting from the University of Alabama. **(Emerging Compliance Issues Subgroup)**

Kristin Johnson

Ms. Johnson, CPA and Chartered Retirement Plan Specialist, is a Principal with Edward Jones in St. Louis, Mo. Edward Jones is one of the largest retail brokerage and investment advisory firms in the United States with more than 7 million individual investors as clients. She has the responsibility for all information reporting to clients and the IRS. Ms. Johnson is responsible for Form 1042 reporting, Qualified Intermediary status compliance, Form 1099-Q reporting for firm-name 529 accounts, as well as tax reporting for their Canadian division and clients. In addition she has been involved with groups such as DALBAR (financial services market research firm) and SIFMA (Securities Industry and Financial Markets Association) in formulating information reporting best practices for broker-dealers. Ms. Johnson received a BS in Accountancy from the University of Illinois, an MA in Computer Resources and Information Management from Webster University and an MBA from Washington University. **(International Reporting and Withholding Subgroup)**

Tony Y. Lam

Mr. Lam, a CPA and attorney, is Vice President and Associate Tax Counsel at T. Rowe Price Associates, Inc. in Owings Mills, Maryland. His current position covers tax matters for the company's investment products. He addresses the legal requirements of tax information reporting and withholding for millions of investor accounts and retirement plan participant accounts both domestic and foreign. He is a member of the firm's steering committee, advising on cost basis reporting. Mr. Lam is a member of the Investment Company Institute's

Tax Committee. He received a BA from the University of Hong Kong, an LLB from the University of London, a JD from Seton Hall University and an LLM in taxation from New York University. **(Burden Reduction Subgroup)**

Anne C. Lennan

Ms. Lennan is President of the Society of Professional Benefit Administrators in Chevy Chase, MD, which represents 300 Third Party Administration employee benefit firms across the US. She has over 20 years experience as an advisor to employee benefit plans and a liaison between TPA firms and federal government agencies. She has worked on benefit issues impacting large corporations, small businesses, union plans, state and local government plans, and association-sponsored plans. Ms. Lennan is a member of Women in Government Relations and the International Society of Certified Employee Benefit Specialists. She co-founded an educational software company. She has a BA from Vanderbilt University, and is a Certified Employee Benefit Specialist. **(Employee Benefits & Payroll Subgroup)**

Michael M. Lloyd

Mr. Lloyd is Member in the law firm of Miller & Chevalier Chartered in Washington, DC. He advises large businesses and tax-exempt organizations on a range of tax issues, including cross-border withholding and reporting, domestic information reporting and backup withholding, employment taxation, the treatment of fringe benefits, executive compensation, and penalty abatement. Mr. Lloyd is a member of the American Bar Association, Section of Taxation, and was honored as a John S. Nolan Fellow in 2005. He regularly speaks before organizations such as the Tax Executives Institute and the American Payroll Association. He received a B.S. in accounting from Mount St. Mary's College, and a J.D. (Order of the Coif, Order of Barristers) from the University of Maryland School of Law. **(Emerging Compliance Issues Subgroup)**

Jeffrey N. Mason

Mr. Mason is Tax Counsel in the Wells Fargo & Company, Corporate Tax Department in Winston-Salem, North Carolina. He has over 10 years experience ensuring compliance with information reporting requirements in the banking and brokerage industries. Prior to his current job he worked as the Tax Operations Manager at Wachovia Securities, LLC and First Clearing, LLC. Mr. Mason is a member of the SIFMA Tax Compliance Committee. He received his B.A. and J.D. degrees at the University of North Carolina at Chapel Hill. **(IRPAC Vice-Chair and International Reporting and Withholding Subgroup)**

Donald C. Morris

Mr. Morris is Counsel at Mayer Brown LLP in Chicago, Illinois. He has been engaged in the analysis and application of information reporting and withholding rules for over 25 years. His practice includes providing advice to financial institutions and to domestic and foreign investors. He was a member of the original IRPAC from 1991-1993. Mr. Morris is a member of the American Bar Association, Section of Taxation and the Chicago Bar Association. He received his B.A. in Political Science from the University of Illinois and received his JD from DePaul University College of Law. **(Chair, International Reporting and Withholding Subgroup)**

Marjorie A. Penrod

Ms. Penrod is a Managing Director in the Corporate Tax Department at JP Morgan Chase in New York, New York. She manages the IRS Information Reporting and Withholding Tax Advisory Function for the firm and its worldwide affiliates. In this role, Ms. Penrod establishes and coordinates tax policy across all business lines to ensure consistent tax treatment of all products and transactions. She is also responsible for monitoring withholding tax legislative and regulatory developments. This is Ms. Penrod's second IRPAC appointment; she previously served from 1994-1996. Ms. Penrod is a member and past chair of the Clearing House Association Tax Withholding and Reporting Committee, and the Securities Industry & Financial Markets Association Tax Administration Committee. She has a BS from the Pennsylvania State University. **(International Reporting and Withholding)**

Patricia L. Schmick

Ms. Schmick, EA, is the Sole Proprietor of P&L Enterprise, a tax accounting practice in Federal Way, Washington. She has been an accountant and tax professional for over 40 years working with small businesses and individual taxpayers. She served on a Small Business Focus committee in Seattle that was formed to reduce the burden placed upon small business owners by governmental regulating agencies. Ms. Schmick is a founding member of the Washington Small Business Fair (Biz Fair) Planning Committee and has been actively involved since 1997. The Biz Fair is a free educational event for new and existing businesses drawing 500 – 900 participants each year. She is a member of the Washington State Society of Enrolled Agents and National Association of Enrolled Agents (NAEA). She was on NAEA’s board of directors (1990-1999) and President (1997-1998). She was NAEA Education Foundation Trustee (2000 – 2002) and Chair (2001 – 2002). She is a Fellow of the National Tax Practice Institute, NAEA. **(Emerging Compliance Issues Subgroup)**

Paul P. Scholz

Mr. Scholz, CPA, is a Managing Partner of Onisko & Scholz, LLP CPAs in Long Beach, California. He has been a practitioner for almost 20 years working with small businesses and individual taxpayers, assisting them with tax compliance and reporting. He works with a staff specializing in income, estate and other taxes including payroll, property and sales and use taxes. He serves as partner in charge of tax planning and compliance for individuals, corporations, estates, trusts, partnerships and LLCs. Prior to returning to public accounting he was manager of tax compliance for

CalFed Bank. Mr. Scholz is a member of the California Society of CPAs, AICPA and the Estate Planning and Trust Council, Long Beach. He has a BS in Accounting from the California State University and a MS in Business Taxation from the Golden Gate University. **(Emerging Compliance Issues Subgroup)**

Holly L. Sutton

Mrs. Sutton, CPA, is the Sr. Director-Corporate Tax at Golden Living in Fort Smith, Arkansas. Golden Living is a large privately held healthcare provider doing business in 38 states and the District of Columbia. The business is diversified within the healthcare industry, operating 300 plus skilled nursing facilities, assisted living centers, an administrative services company, a real estate investment partnership, hospice and home health agencies, a large rehabilitation therapy company and other service businesses. She has worked in the healthcare industry for 18 years, 15 of those years in the field of corporate taxation. In addition to working Form 1099 issues, she provides high-level legislative support to the payroll tax group of the company. She supplies information on compliance concerns and solutions to the management team regarding all tax-related legislative changes, including those related to information reporting. Ms. Sutton received a BBA in Accounting from the University of Central Arkansas and is a member of the American Institute of Certified Public Accountants. **(Employee Benefits and Payroll Subgroup)**

Kathryn S. Tracy

Ms. Tracy is a partner at Kat & Bud Enterprises, LLC in Buckeye, Arizona. She is an Enrolled Agent with thirty years of experience in accounting and taxes. She is a member of the National Association of Enrolled Agents. She was an IRS Revenue Agent and has worked with the IRS Volunteer Income Tax Assistance program for over twenty years. She is currently the treasurer for the Buckeye Chamber of Commerce and Friends of the Buckeye Public Library. Ms. Tracy has a BS in Accounting from Grand Canyon University. **(Chair, Burden Reduction Subgroup)**

Arthur B. Wolk

Mr. Wolk is a Senior Vice President at SunGard Wall Street Concepts in New York, New York. He has over twenty years of experience in tax information reporting, specializing in securities operations. He is a member of the Dividend Division of the Securities Industry and Financial Markets Association. Mr. Wolk received his BA in Economics from the State University of New York at Binghamton. **(Burden Reduction Subgroup)**

Lonnie Young

Mr. Young is a CPA and has been the owner of Young & Company, LLC since 1982 in Lake Mary, Florida. He received an award from IRS for his firm's exemplary performance as an Electronic Return Originator in 2004. His firm prepares corporate, partnership, trust and individual returns as well as payroll information returns. Mr. Young also holds the designation of CGMA (Chartered Global Management Accountant) from the AICPA (American Institute of Certified Public Accountants). He was an Adjunct Professor of Accounting at University of Central Florida for 5 years. He is a member of the AICPA and the National Society of Accountants. Mr. Young received a BSBA from the University of Arkansas and his MBA from the University of Utah. **(Burden Reduction Subgroup)**