INTERNAL REVENUE SERVICE

ADVISORY COMMITTEE

2018 IRSAC PUBLIC MEETING

Thursday, November 15, 2018

9:10 a.m.

The Melrose Georgetown Hotel

Potomac III

2430 Pennsylvania Avenue, N.W.

Washington, D.C. 20037

PARTICIPANTS

IRSAC MEMBERS IN ATTENDANCE:

DENNIS VENTRY, IRSAC Chair and OPR Subgroup

KATHY HETTICK, IRSAC Vice Chair and OPR Subgroup

SHAWN O’BRIEN, Subgroup Chair, LB&I Subgroup

STEPHANIE SALAVEJUS, Subgroup Chair, Digital Services Subgroup

SHELDON KAY, Subgroup Chair, OPR Subgroup

PHYLLIS JO KUBEY, Subgroup Chair, SB/SE and W&I Subgroup

DIANA ERBSEN, LB&I Subgroup

STUART HURWITZ, LB&I Subgroup

DAVE THOMPSON, JR., LB&I Subgroup

MARTIN RULE, Digital Services Subgroup

ANTONIO GONZALEZ, Digital Services Subgroup

BEN DENEKA, Digital Services Subgroup

JEFFREY SCHNEIDER, OPR Subgroup

SHARYN FISK, SB/SE and W&I Subgroup

CHARLES READ, SB/SE and W&I Subgroup

PATRICIA THOMPSON, SB/SE and W&I Subgroup

IRS ATTENDEES:

CHARLES RETTIG, Commissioner of Internal Revenue

TERRY LEMONS, Chief, Communications & Liaison

DOUG O'DONNELL, Commissioner, LB&I

DAVID ALITO, Deputy Commissioner, W&I

LISA BEARD NIEMANN, Deputy Commissioner, SB/SE

MICHELE CAUSEY, Acting Director, Office of Online Services

MEL HARDY, Director, National Public Liaison

JOHN LIPOLD, IRSAC Designated Federal Official and Branch Chief, National Public Liaison

ANNA MILLIKAN, National Public Liaison

MARIA JARAMILLO, National Public Liaison

BRIAN WARD, National Public Liaison

TINA BRISCOE, National Public Liaison

ROSE SMITH, National Public Liaison

JOHNNIE BEALE, W&I

SHAWN HOOKS, LB&I

BEN SWARTZ, SB/SE

HOWARD ZACH, Office of Online Services

PUBLIC ATTENDEES:

WILLIAM HOFFMAN, Tax Notes Today

ALICE JACOBSOHN, American Payroll Association

PAUL MERRION, MLex U.S. Tax Watch

ALAN OTA, MLex LexisNexis

KATHY PICKERING, H&R Block

JOHN RICE, National Society of Accountants

CURTIS TATUM, American Payroll Association

TABLE OF CONTENTS

P R O C E E D I N G S

[9:10 a.m.]

WELCOME

MR. HARDY: Good morning, everyone. Welcome to the annual IRSAC meeting. My name is Melvin Hardy. I’m the Director of National Public Liaison, and we are extremely happy to welcome all of you, all the distinguished guests.

So with all of that informality, Dennis, I will turn it over to you, and then Commissioner Rettig will grace us.

MR. VENTRY: Thank you, Mel.

Welcome, everybody, to IRSAC. We are delighted to present to the Commissioner and to the public our 2018 annual report. Much work went into this. We’re looking forward to getting feedback thereafter and having discussion after the Commissioner, who is on a tight schedule, has to leave.

We’re delighted to be joined by the Commissioner. He surprised us twice yesterday. It’s almost like the uncle who just shows up for Thanksgiving.

COMMISSIONER RETTIG: Or the bad penny.

[Laughter.]

COMMISSIONER RETTIG: I appreciate the uncle designation compared to where you could have gone with that.

[Laughter.]

MR. VENTRY: I am respectful of my place.

So the way that it’s going to work while the Commissioner is here is that we will describe or highlight some of our developments this year.

There are basically five reports. One is the general report. Kathy and I will do that. And then we have the four subgroup reports. Everybody has eight minutes, and so now I have to start talking more quickly.

For jumping right into the general report, the two issues that I’ll just briefly highlight, the first one is the IRS budget and the critical need to provide the IRS with appropriate and reliable funding.

In writing the general report, which falls to the Chair and the Vice Chair, and doing a little bit of digging, it was quite nice to see that in 2011 then-Chair of the IRSAC, Chuck Rettig, had a single issue that year as Chair in the general report, and that was, in fact, the way you phrased it was “consistent, adequate, and appropriate funding.” That issue remains of utmost importance and, in fact, has become more critical in the intervening eight years.

The one thing that the IRSAC wanted me to emphasize in the report is that we’re well aware that the IRS is not a tax policy or a tax legislation shop. At the same time, the IRSAC believes that it’s critical that senior executives at the IRS consistently remind Congress of the currently inadequate funding and tie that, then, into some challenges with respect to delivering on the mission of the IRS. In fact, we can’t really remind Congress often enough.

The second issue that I wanted to highlight is that this body is going to look a lot different next year. It’s going to look a lot bigger. We have over the last year, through NPL and through current IRSAC leadership, past IRSAC leadership, and IRPAC leadership, we’ve consolidated the IRSAC, IRPAC, and the ACT. It’s going to be a large body going forward, 36 members, next year with three co-chairs. We on

IRSAC are excited about it. We think it's a beneficial change. It's going to take some time to work out some kinks over the first year or two years, and the current composition as we envision it might change over the period. But it is an exciting time. It provides more of a direct channel, we think, to the operating divisions, and speaking with one voice rather than with three different voices.

With that, I'll turn it over.

COMMISSIONER RETTIG: When he was talking about this body is getting bigger, I'm just glad he didn't look in my direction, because I'm trying to address those issues, and I'm thinking, geez, I just met the guy.

[Laughter.]

COMMISSIONER RETTIG: No, just kidding.

OPENING REMARKS

COMMISSIONER RETTIG: But I was Chair of IRSAC in 2011, and it was a tremendous experience for me. In significant part, that led to one of my interests of coming inside the IRS for the things that I learned as Chair of IRSAC. I was a subgroup chair for SB/SE before becoming chair of IRSAC, and things that I learned, but most importantly the people that I met, the people that worked for IRS and appreciation for a lot of their struggles. I thought I knew a lot from the outside because in private practice I had interacted with IRS for 36 years on the other side, and I probably know several thousand people that work for the IRS. So when you’re on the other side of the fence but you’re on that side of the fence the whole time, you really think you have an appreciation for what’s going on.

As you come into an advisory board like IRSAC, you get a new appreciation because it gives you a new look and more contact with the IRS folks specifically, and you get an appreciation that they’re really a hard-working, dedicated workforce, well-intentioned, and they endure a lot of situations that the private side wouldn’t ordinarily endure. I was treated especially nicely during my tenure on IRSAC. So when the call came up from IRSAC with respect to becoming IRS Commissioner, obviously anybody would be honored, but I was especially honored because I’d had a look into the

IRS from IRSAC, and I couldn't be more honored or privileged to be sitting here today.

I'd been on IRSAC and now have the opportunity to come back as Commissioner. So, Dennis and Kathy, thank you. Obviously, it's not easy to pull people together, pull groups together, even with all the assistance, so a personal thank-you to each of you for your efforts as Chair and Vice Chair coming in, and then to the subgroup chairs.

It's phenomenal. I've seen the information that you're going to present today -- good job. You sometimes wonder when you're on committees if anybody is going to look at it after today, and let me assure you that people, a lot of people will look at it after today on the inside, and obviously on the outside.

I'd like to express appreciation to the people from the public who are here, as well. It's meaningful interactions with the press and others to get the message out of what we're trying to accomplish, and also the efforts that all of you put forward. It means a lot to us.

On consolidating the committees, I think it's a great idea. Having served on one of numerous committees when I was there, a single voice helps. Being able to not have too much overlap, I think that's a significant issue. At IRS we need to hear from people on the outside, and sort of in the single-voice mode I think is phenomenal, so I look forward to that.

Those of you who are going on, thank you. Those who will stay here, thank you. Those of you who are rolling off today, a special thank you. I might not see you in this capacity again, but I think as I said yesterday in one of the two surprise visits, thank you for putting up with me when I just open the door and walk in and say hello to you. But that's sort of the informal nature of how we're operating currently.

But for those of you who are rolling off, our doors are open, and you don't need to go through a formal process to provide comments on things that you may see in your practice or your daily life or you may hear about. We want to hear from people through the organized committees or however you want to get us the information.

So with that, I will turn it over to Kathy.

REPORT OVERVIEW

MS. HETTICK: Thank you. Certainly, thank you, Commissioner, for being here, and the surprise visits yesterday were great.

The issue that I want to bring forward in my short talking minutes that is in the general report that really hits a button for everyone is the Free File issue. I would just like to thank the entire IRSAC team. We spent an enormous amount of energy and time on this particular issue as a group. We heard from the IRS subject matter experts. We heard from the Free File Alliance. We had an extra conference call. We really spent a lot of time on this issue.

We were asked at the beginning of the year by the IRS to look at the program, the existing program, the value that it had, and then also to comment and to provide feedback for going forward, improvements and certainly recommendations surrounding the MOU, and we did just that. We did, again, work hard, a lot of discussion, and we were able to present in our report two areas of recommendations. One is for the IRS, and the other is for particularly the MOU.

Those recommendations encompass certainly the integrity of the taxpayer and the tax system and the goal of Free File, which is to have that electronic filing Free File available to an underserved population most certainly, and also the increase in electronic filing.

So we did have a bit of a surprise two weeks ago with a press release that came out on November 2nd of which we were not aware, we as an IRSAC team, after much energy all year was put into the recommendations that we are bringing forward. A new MOU had been signed already, and that was -- let’s see, I think we used a couple of different terms in the discussion yesterday, but I think the most that the members on IRSAC felt was “Really?” We didn’t know that was coming down the pike. We certainly anticipated that there would be a re-negotiation of the MOU that was going to currently expire in 2020, but we certainly thought that the report would be looked at.

However, despite being surprised and feeling a bit blindsided, there certainly is the positive piece of that, which is a lot of the changes that were included in the new MOU that was signed in October did include our recommendations, some of the recommendations we made, and we believe that to be very positive. Certainly, it was our pieces that were added that further protect the taxpayer using the Free File system. So we feel that to be very positive.

Also, last year in this report there was mention of do we need to do more real-time advising, and I think that was an example of that, even though we didn’t particularly -- there wasn’t the formality of it and we weren’t particularly aware of it. We certainly believe that because of our discussions, because of the presentations that we had, because of the importance of this issue, that we were doing real-time advising, that some of our recommendations were taken into consideration even though the report had not yet been published or released.

And so with that, we just would really encourage the IRS to further look at the recommendations, the pieces that can be implemented from just the IRS side, but also going forward with the MOU, the other things that we had. We believe in the program. We believe it to be viable after looking at it very critically. But we also believe there needs to be improvement, and certainly in the area of oversight and accountability.

So, thank you very much.

MR. VENTRY: So we have our four subgroup reports. The one thing I wanted to say before we got into it, because the first subgroup is Digital Services, which next year Digital Services is not going to be a freestanding subgroup, we'll just have the four business operating division subgroups. However, in our general report we emphasize that we very much would like to see an individual member with expertise on each subgroup, expertise that is in digital services, only because if there really is any kind of outside input with respect to moving the agency forward in terms of technology, digital services is of the utmost importance. So it's not falling off the radar. If anything, in fact, by having one person, one person with expertise in each of the subgroups, it actually might elevate that issue every single year or every couple of years to the general report. That's our hope.

So without further ado, we have Stephanie Salavejus, who is going to talk about Digital Services. She is the subgroup chair.

DIGITAL SERVICES SUBGROUP REPORT OVERVIEW

MS. SALAVEJUS: Thank you, Dennis.

I'm pleased to introduce the members of the Digital Services Subgroup. I want you to know all those members who worked so hard to put together this report.

Brenda Bianculli, who unfortunately isn't able to join us today. But to my right we have Martin Rule, Ben Deneka, and Antonio Gonzalez. Without their insight and hard work, this report would have definitely been impossible. And I'm Stephanie Salavejus.

We are privileged to have the opportunity to work so closely with the IRS, and we want to express our appreciation for their cooperation and partnership. It's been a pleasure.

We are excited for and applaud the IRS' progress towards enterprise-wide modernization and digital services implementation, even in the face of a long list of competing priorities relating to the Tax Cuts and Jobs Act.

As we recommended in IRSAC’s 2017 report, again we recommend the IRS launch a service -- online account for tax professionals -- to provide a digital method for the tax professional community to assist taxpayers efficiently and quickly with tax compliance and resolution.

While we understand that the Service has many priorities, especially regarding tax reform implementation, in our opinion a digital tax pro account should be highly prioritized due to the substantial benefits it would provide to taxpayers and the IRS.

Providing a method to quickly, efficiently, and securely process authorizations through a digital method will not only provide peace of mind to taxpayers and allow timely assistance by representatives, but will provide cost savings to the IRS and will permit better use of IRS resources.

In terms of functionality that should be considered for inclusion in the initial version of the tax pro account, we believe the tax professional community would find most useful the ability to obtain digital notices and correspondences, a secure messaging portal to communicate with the IRS and resolve discrepancies, and the ability to upload documents.

To summarize, the implementation of a tax pro account will not only benefit taxpayers and improve a taxpayer’s overall experience with the IRS but will benefit the IRS by reducing traditional methods of corresponding with taxpayers and tax professionals, which should reduce cost and allow for better use of IRS’ resources.

I would be remiss if I did not mention the paramount importance of a robust framework for electronic authentication, authorization, and access, or, as the IRS refers to it, eA3. These frameworks are critical to appropriately safeguard taxpayer information while also enabling the success of the tax pro account and the digital services strategy overall.

eA3 is a linchpin capability to address the challenge of identity theft-related tax refund fraud and to enable secure digital interactions across the ecosystem, including individuals, businesses, third parties, tax professionals, and the IRS. In particular, I’d like to stress the importance of the authorization framework. As a practitioner yourself, I know I don’t have to explain to you the role that tax professionals and other third parties in the tax ecosystem play in filtering clients’ questions, resolving tax issues, and intervening on behalf of taxpayers, many times without requiring IRS contact.

As IRS transitions from granular forms-based authorization to a digital authorization system, an adequate authorization framework is a critical prerequisite to building and deploying digital services that extend beyond taxpayer-only tools and enables third parties to assist taxpayers in meeting their tax obligations while safeguarding their information.

In conclusion, we recommend that IRS prioritize development and implementation of an online tax professional account to allow tax professionals who have been vetted and approved by the IRS the ability to assist in meeting their compliance obligations efficiently, securely, and effectively. As eA3 is a critical component to enabling the success of the tax pro account, we accordingly recommend that the IRS build upon their successes and momentum in this area to roll out a robust framework for electronic authentication, authorization, and access.

We thank you for your time and attention and wish you all the best of luck during your tenure as Commissioner.

Thank you.

MR. VENTRY: Thank you, Stephanie.

Shawn O'Brien will deliver the LB&I Subgroup report.

LARGE BUSINESS AND INTERNATIONAL SUBGROUP REPORT

OVERVIEW

MR. O'BRIEN: Thank you. I'm Shawn O'Brien. I'm the subgroup chair, and I'm joined by my subgroup members. Starting to my right is Diana Erbsen, and to her right Stuart Hurwitz, and to his right Professor Dave Thompson. We have another subgroup member, Sandy Macfarlane, who is unfortunately not able to make it today, but everyone's contributions were greatly appreciated.

I'd like to say thank you to Commissioner Rettig for your support of IRSAC and the work that we do. LB&I Commissioner O'Donnell and his team have been great to us throughout my three years here. I think Doug has pretty much made most, if not all, of the meetings we've had, so thank you for your support. And then Director of NPL, Mel Hardy, thank you so much for your support of IRSAC.

We were asked to address two important international tax issues this year, the first being how LB&I could encourage taxpayers to increase the quality of their transfer pricing documentation; and second, how LB&I could use the new country-by-country reports in its risk assessment. These were two important issues, but today at this time we're going to address the first one, the transfer pricing documentation issue, and Diana Erbsen has done significant work on this, along with the other subgroup members, so I'll ask Diana to present the issue of transfer pricing documentation.

MS. ERBSEN: Thanks, Shawn.

This is my first year on IRSAC, and it is really a pleasure to be here with Commissioner Rettig and a pleasure to have him as Commissioner, and a pleasure to be here with LB&I Commissioner Doug O’Donnell and other representatives of the IRS and the other public members of IRSAC.

As Shawn said, at the beginning of this year we were asked to look at how to improve transfer pricing documentation for taxpayers, specifically with an eye towards improving efficiency of transfer pricing audits. This is an important issue for the IRS because transfer pricing issues make up a substantial portion of the LB&I inventory, and LB&I has recognized that it needs to manage its resources in the most efficient and effective way possible. That includes ensuring that transfer pricing examinations are no longer than required.

It’s an important issue for taxpayers because transfer pricing exams can be very lengthy, can be very burdensome, and can be very expensive. Publication 5300 relating to the transfer pricing examination process provides as exhibits examples of timelines for two hypothetical examinations, one of 24 months and one of 36 months. From the perspective of a taxpayer representative, those are really long exams. We believe that the potential for de-selection of issues earlier in the examination process would be a powerful incentive for many taxpayers to improve their transfer pricing documentation, and that published guidance discussing how taxpayers can achieve robust documentation that may result in early de-selection and more efficient examinations would be welcomed by both taxpayers and tax practitioners.

Already, in order to avoid penalties in the event of transfer pricing adjustments, taxpayers are generally required to maintain fairly substantial documentation supporting their tax return positions. The principal documents that must be maintained in order to satisfy those requirements are set forth in Treasury Regulations 1.6662-6, and include a business overview, a description of the taxpayer's organizational structure, and a description of the transfer pricing method selected, as well as alternatives that were considered. Further information that can be utilized by the IRS in analyzing transfer pricing risk is required to be provided by certain taxpayers on a variety of different forms, including the previously mentioned country-by-country report, which was adopted in connection with the OECD Base Erosion and Profit Shifting project.

In an effort to increase efficiency in the transfer pricing process, in January of 2018 Commissioner O'Donnell issued three directives to IRS employees of direct relevance to the issue of improving transfer pricing examinations through improved documentation. Those three directives eliminated the requirement that a transfer pricing IDR be issued in every case involving cross-worker transactions, implemented a formal approval process before an IRS examiner can depart from a taxpayer determination as to best method, and provides that Section 6662(e) penalties should be applied, if appropriate. I particularly like the "if appropriate" part. Amazing how one's perspective changes.

These directives provide more transparency in the form of when a transfer pricing IDR is issued -- it's generally because risk has been determined to exist; a carrot for improved documentation in the form of better documentation, making it harder to obtain formal approval for a change in method; and a stick for insufficient documentation in the form of more likely imposition of penalties if there's an adjustment.

We believe that the primary additional incentives that can be offered to further encourage improved documentation are the potential for de-selection earlier in the audit process and for more efficient audits where documentation is more robust and reliable.

We recommend increased direct guidance to the taxpayers from the IRS as to best practices. Specifically, following a format that the IRS has used to great effect before, we are recommending that the IRS issue non-binding FAQs and then hold periodic public meetings with taxpayers and tax practitioners to further expand upon the FAQs. We would expect these discussions to include explanations of when and how de-selections would generally occur, the benefits to taxpayers of improved documentation, and current observations of what the IRS believes are best practices.

As noted in our report, the best defense is often a good offense. Typically, the IRS did analytics process flags of potential transfer pricing issues from tax return information and from exam issues, unless the review of a transfer pricing report with robust, high-quality documentation shows mitigation of the initial perceived compliance risk. In our report, based on communications with representatives of LB&I, who were beyond cooperative, which we really appreciate, we provide draft FAQs that attempt to capture what we understood to be the IRS’s views of best documentation practices in areas in which many taxpayers can improve their documentation in a manner that could result in more efficient exams, including de-selections of audit issues.

One theme we heard repeatedly was that each taxpayer should provide documentation to educate the IRS about the taxpayer’s industry and the way in which different related parties operate, that taxpayers should provide a narrative of the context in which intra-company transactions take place, and that that narrative and the accompanying analysis should provide a sense of the total value which multinational enterprise has created, essentially answering questions before the IRS poses questions.

In essence and in conclusion, our recommendation is that the IRS clarify to taxpayers and to tax practitioners how documentation can be improved to permit earlier de-selections and more efficiency for the benefit of the IRS, taxpayers, and tax practitioners.

MR. VENTRY: Thank you, Diana. Thank you, Shawn.

Next up is Shelly Kay, Office of Professional Responsibility Subgroup.

OFFICE OF PROFESSIONAL RESPONSIBILITY SUBGROUP REPORT

OVERVIEW

MR. KAY: Thanks, Dennis.

I’d like to thank my team. I’m the chairman of the subgroup for OPR, and I’m a practicing CPA and licensed attorney. The members of our esteemed team are Jeff Schneider, who is an enrolled agent down in Florida; Kathy Hettick, who is not only in our subgroup but she’s also the Vice Chair for IRSAC and an enrolled agent out in Washington; and Professor Dennis Ventry from California, who is the Chair of IRSAC.

And I really want to thank Steve Whitlock, who always provides his time, has done a great job. Unfortunately he can’t be here today for several reasons, but he and Brian Ward have provided just tremendous assistance to our group, as they have done in every year.

The issue I want to deal with now, though, is a vital issue, and it deals with updating Circular 230, because, as I indicated, we’re all professionals from different backgrounds, and we all have different standards that we need to meet for our professional associations, but pretty much all practitioners look at Circular 230 as the set of principles that we all really need to follow, and it’s the preeminent standard of care.

However, we feel that that preeminence is in jeopardy because of several inaccuracies. Certain aspects haven’t been updated, and it’s really not user friendly. But rather than try to tell the IRS to deal with this all at one point, like building a house, we think that we need to lay the foundation first and then take additional steps. So we have a three-step process for this.

The foundational process is just to make many ministerial corrections. For example, Circular 230 refers in several places to the “Registered Tax Return Preparer Program.” There is no such thing. So for someone who is trying to research it, the first time looking at it, who is not familiar with the litigation giving rise to the fact that there is no such thing, will spend a lot of time and a lot of effort, maybe they even think there is one, when there is no such thing anymore. There should be references instead to the “Annual Filing Season Program” and what it takes to be part of that program.

We listed -- and it’s not exclusive because there’s only four of us, but we listed a whole lot of errors and suggested changes and typos that need to be corrected, because we really think that if someone is looking through the standards and they see misspelled words or references, and then you go to that reference and that reference isn’t there anymore because there’s been a change to that section but this section hasn’t been changed that cites to that, we think that needs to be done first, and that is relatively quick. Like I said, we gave a list of maybe 20 corrections, clearly not all-inclusive, but it's probably a pretty good start.

The second thing is we think that Treasury and the Service should look at completing the transition from what is currently pretty much a standards-based set of rules to a principles-based set of rules. They started doing that a couple of years ago, in 2014, with the prior head of OPR. They changed 10.37 dealing with written advice, and 10.35 dealing with the competence standards, and those are more principles-based, which is really -- when you look at the ABA model rules, the statement of standards of tax service for CPAs and enrolled agents, they're all more principles-based because it's really hard to list rules and make sure you cover all rules, as opposed to listing principles that you can guide.

I think it's a good idea to look at those other rules, the ABA model rules, the AICPA and enrolled agent rules, look at how their wording is, because a lot of the wording within Circular 230 uses “must/shall/will,” and I’m not sure we actually know the difference between those sometimes, but there must be a difference because they’re used differently, versus “may.” Sometimes they’re using “may” when you really might want to use “must,” “will,” or “shall.” Not all of them, just pick one.

[Laughter.]

MR. KAY: We also think Circular 230 should have a definitional section. It does have a definitional section, but it’s probably one of the shortest definitional sections I’ve ever seen because it only defines things like attorneys and CPAs. I mean, it doesn’t define all the other terms and ideas that are set forth within Circular 230, so there must be a much more robust definitional section.

Circular 230 has been around for a long time. I mean, circulars are numbered sequentially from when they came out, so this one was, like, really old. It’s been around for a long time, so things just get globbed together that don’t necessarily make sense. So there are Subparts A and D that are just there that really aren’t part of -- I mean, D tells you what to do in disciplinary actions, which is all well and good, but it’s really not a standard that people should follow. So if you’re talking about professional standards for what professionals should do to comply, telling them what the disciplinary action is for how to proceed and logistical things, really, it’s important, but it should be elsewhere and not in these type of rules.

And then finally, we think that the third element, which really won’t be all that hard, would be having proper cross-references to code provisions dealing with preparer penalties and other injunction-type items so that there is a very clear cross-referencing between your regulatory Circular 230 duties and your statutory penalties and injunction type of activities.

I think if you put all three of those together, you’ll have a much clearer, easier to research, user friendly set of guidelines for practitioners to follow.

MR. VENTRY: Thank you, Shelly.

Phyllis? Phyllis Kubey will provide the Subgroup General Report on W&I and SB/SE.

SMALL BUSINESS/SELF-EMPLOYED and WAGE & INVESTMENT

SUBGROUP REPORT OVERVIEW

MS. KUBEY: Thank you and good morning, everyone. I'm very pleased to introduce my colleagues, Sharyn Fisk, attorney and professor from California; Charles Read, CPA and USTCP from Texas; and Pat Thompson, CPA from Rhode Island. I'm Phyllis Jo Kubey, enrolled agent from New York City.

So, we covered a wide range of topics this year, and it was really exciting to work through these issues. We actually started out with Free File in our subgroup, and then as we developed it we realized that that was really an issue that needed the attention of the entire group, so we moved it into the general report. But I'd like to thank Diane Fox, who briefed us on the issue. She did a terrific job, and we really enjoyed getting into the weeds on that.

We also looked at the issue of lockboxes and why people aren't using the lockbox addresses and what a tremendous burden it puts on the IRS when people are sending these paper payments to the wrong centers. One of the things that came out of that, which ties into our Digital Services colleagues, is we really think a big solution to that is to drive taxpayers and the tax professionals who help them to use electronic payment methods.

We looked at third-party authentication of representatives, third-party agents who are calling the IRS. This is a big issue because of security and fraud. Interestingly enough, IRPAC led their report with this issue, and we had a lot of cross-pollination with our colleagues at IRPAC, which was very satisfying. We have in our report and will present in more detail after the break some solutions and possible modifications of the current procedures.

We also looked at the pilot program for digital correspondence audits, looking at how that's going and maybe some ways that we can increase usage of that program.

And finally, virtual currency, which, of course, is a rapidly developing area. Every day we read more about it in the news and, of course, it's an area that impacts many, many areas of tax administration.

Sharyn Fisk, who has been our lead on virtual currency, has graciously agreed to present this issue this morning.

Thank you, Sharyn.

MS. FISK: It’s a pleasure presenting to Chuck again.

The increased taxpayer use of virtual currencies has generated quite a number of novel and new tax issues, and correspondingly potential compliance matters, and these compliance matters can arise both from non-willful taxpayer conduct, just due to lack of knowledge or education, as well as willful taxpayer conduct with an intent to evade taxes.

IRSAC was asked for suggestions on how to focus guidance to these taxpayers that use or invest in virtual currencies, as well as the practitioners that serve these taxpayers, as well as for input on compliance and enforcement relating to collection action on virtual currencies.

In our report we have made eight recommendations.

The IRS issued guidance on virtual currencies four years ago in IRS Notice 2014-21. Considering the increased prevalence of virtual currencies use and transactions, the guidance in Notice 2014-21 does not adequately address the number of tax issues that are arising from these transactions. IRSAC recommends that the IRS consider the guidance received from both the AICPA and the ABA Tax Section on virtual currencies, as well as the public comments they received in response to Notice 2014-21 in issuing further guidance to taxpayers. It's also recommended that the IRS add this issue to its upcoming Priority Guidance Plan.

IRSAC recommends that the IRS implement a coordinated strategy regarding virtual currencies and designate a champion or a group that would head this coordinated strategy. This would provide a point of contact for taxpayers, for practitioners, and personnel within the IRS as a focal point for all things known of virtual currency.

The guidance provided in Notice 2014-21 is directed to sophisticated taxpayers and practitioners, and we believe the lay taxperson may not understand how to actually apply this guidance when reporting a virtual currency transaction. Taxpayers typically look at forms and instructions in publications when seeking guidance, and therefore IRSAC recommends that the guidance from Notice 2014-21 be incorporated into the 1040 instructions, reporting instructions, and other tax forms and publications taxpayers use. We did provide in the report, in Appendix C, a list of forms that we thought would need that guidance.

IRSAC recommends that the IRS expand and develop its VC webpage, a virtual currency webpage. It is a bit difficult to locate, and it’s a little sparse at the moment, but we do know that there have been news releases and announcements regarding virtual currencies. These could be added to that website, along with educational videos, brochures, things that will help taxpayers, any other tools based on the guidance at least set forth in Notice 2014-21.

We also recommended that the Frequently Asked Questions that are in Notice 2014-21 be put on the website so they’re easily located by taxpayers, and as additional guidance is issued those Frequently Asked Questions can be updated for the taxpayers.

With respect to the information that the IRS may have received from its Coinbase summons, it’s recommended that the IRS issue soft letters to taxpayers discovered through the summons and allow them the opportunity to file amended returns and explain any substantial reporting failures. Also, it’s recommended that the IRS create IDR requests, information document requests and other forms requiring these taxpayers to disclose information regarding their virtual currency transactions. This is similar to what the IRS has done in its voluntary disclosure offshore and listed transaction programs. It collects quite a lot of information.

If the information from this Coinbase summons does show that there is significant taxpayer noncompliance, it’s suggested that the IRS consider a voluntary disclosure program. I do recall reading within the last couple of weeks that the IRS specifically stated that there was not going to be a voluntary disclosure program, but I’m just putting it out there.

[Laughter.]

MS. FISK: Maybe not now, maybe a little later, that would allow those taxpayers who have failed to report their virtual currency transactions. The program could generate a lot of valuable information to the IRS and bring a lot of taxpayers back into compliance.

IRSAC recommends that the IRS revise third-party forms for reporting taxable transactions to indicate when a transaction is conducted through virtual currencies. That will assist the taxpayers not only in properly reporting their transactions but also provide the IRS with data that will help it analyze the risk of taxpayer non-compliance regarding virtual currencies.

We also recommend that the IRS issue regulations for reporting virtual currency transactions akin to what’s required for brokerage reporting, a 1099-B type of form.

IRSAC was informed that the IRS has been in contact with software providers regarding virtual currencies, but it does not seem to have resulted in anything, at least on the software provider side. So it’s suggested that the IRS re-engage with software providers to incorporate questions regarding virtual currencies into their questionnaires and diagnostics and software programs.

And last, a bit novel, but we’ve suggested the IRS consider the feasibility of accepting virtual currency as a form of payment for taxes. I know some of the states are currently doing that. It would require amending the 6311 regulations, but if that were an option, the IRS could learn considerable information on how payments are used to strengthen its enforcement collection side.

And those are all of our recommendations.

MR. VENTRY: Thank you, Sharyn.

Thank you, team.

I think we should note that the W&I and SB/SE Subgroup picked up this issue, the virtual currency issue, kind of late in the year and developed it just incredibly impressively. So thanks for picking it up

MR. HARDY: So at this point, unfortunately, the Commissioner has a tight schedule, so we are going to take a 10-minute break.

All right. We are at break.

[Recess.]

MR. VENTRY: All right. So before we get back into the reports where the subgroups address the IRS personnel directly, Terry Lemons had a few things to say.

REMARKS FROM IRS CHIEF, COMMUNICATIONS & LIAISON

MR. LEMONS: Thanks, Dennis. I appreciate it.

I had a few remarks. I did just want to note a couple of things from my standpoint and on behalf of our team, National Public Liaison. We really appreciate all of the time and hard work you guys put into it. This has certainly been an interesting year for IRSAC, and I appreciate the way that you guys have professionally handled all this. I think we're in a much better spot on a number of issues.

I do in particular also want to thank you for the work consolidating the three advisory committees into one. Last year's report from IRSAC was I thought insightful in terms of looking at the composition of IRSAC, and there are some really good details in the report today on the backstory about the consolidation.

When this came up, we really wanted to make sure that IRSAC came out of this as a stronger advisory group that can help the agency, and thanks to the work of Dennis and Kathy, as well as last year's chair, Tim McCormally, as well as the leadership of IRPAC, Dana

Flynn and Joel Levenson, and the ACT leadership, I think we’re going to be in a really good position in 2019 to make this an even more important group.

I’m really happy that we’re going to be splitting up the Wage & Investment and Small Business/Self-Employed divisions into separate groups. I think that’s going to be very helpful to us.

And finally, just listening to the initial report-outs from Phyllis and Stephanie, there’s a lot of synergy between these advisory groups. The IRPAC issue came up a couple of times. I know you guys have been working very closely with the ETAAC membership.

So anyway, I think it’s a new opportunity, and I think the leadership of IRSAC, as well as the other advisory committees, has really made this happen. So anyway, on behalf of Mel and me, just really want to share my appreciation for your work on that.

MR. VENTRY: Thank you, Terry.

So we now will get into the actual subgroup reports.

The first subgroup to report is Digital Services. The IRS representative here is Michele Causey, Acting

Director of Office of Online Services. Take it away, Digital Services.

DIGITAL SERVICES SUBGROUP REPORT

MS. CAUSEY: Good morning, everyone. Thank you for allowing me to be here with you today, all the various IRSAC members.

While I’m new to my position as the Acting Director of Office of Online Services, I’ve actually been a member of Online Services in numerous capacities for the past seven years. So I bring to the organization a varied perspective, from user experience and design, product management, and all the various digital products and services that we are looking to deliver together.

First I would like to specifically thank Stephanie Salavejus. Stephanie, thank you for your leadership and leading the Digital Services Subgroup. As I mentioned to you on the side here, the team has thoroughly enjoyed working with you and your team members. We appreciate the recommendations, and we’re sorry to see you go as this is your last year on the committee. But thank you for your service, and thank you for your leadership.

We’ve really enjoyed working and partnering with all of you on developing and enhancing these recommendations moving forward to actually see many of them come to fruition. I know you heard from our predecessor earlier in the year, Rene Schwartzman. She shared with you a little background about our organization. I’m just going to give a little refresher for those of you who may be hearing this for the first time.

We’re a relatively small organization within the IRS, only 100 federal employees, and we cannot do the services that we do without the partnership of our leadership in Wage & Investment, SB/SE, Large Business & International, our Tax-Exempt Government Entities organization, and IT, among others.

We do have some highlights that I’d like to share with you on our progress moving forward. While our primary focus is the digital services channel online tools, any development or new capability that we provide has an impact on the other channels, and our optimal goal is to ensure that we have a unified experience for the taxpayer, be it through the phones, whether they go to a walk-in center or self-service through IRS.gov. So that's why that partnership is really important.

I do want to share some of our highlights from this past year from the previous recommendations that were set forth through the IRSAC report. As you may or may not know, we moved to a new platform for IRS.gov in August 2017. We've now moved to an open-source platform to be able to publish content and tools and services on IRS.gov. That open platform is Drupal. That has allowed us the flexibility to create a mobile responsive website and provide more mobile capability for taxpayers since the majority of our interactions are coming from mobile devices on IRS.gov.

To give you some context, in Fiscal Year 2018 we had over 609 million visits to IRS.gov, with about half of them coming from a mobile device, either through a tablet or a cell phone. So it's really imperative that we continue to work on improving our content, as well as improving the digital tools that we have on the site so that they're mobile responsive.

Additionally, we have enhanced our online accounts application for individual taxpayers. For Fiscal Year 2018, we had 6.4 million visits from 2 million unique taxpayers to the online account tool, and we’ve also merged the capability for taxpayers to not only see their balance in their online account but that they can also make payments through the Direct Pay application via the online account tool. And I’m proud to say that last year, last fiscal year, we had 581,000 payments through the online account tool, generating $1.8 billion in revenue.

We’ve also seen a significant increase in our Online Payment Agreement application, and the team has a little inside joke because for Fiscal Year 2018, actually two days after Fiscal Year 2018 concluded, we surpassed 1 million contributions or completions through the online payment agreement. And our internal joke is, well, we had a couple of unintended vacation days during Fiscal Year 2018, so we’re going to say the 1 million completions occurred completely in 2018 and not give credit to those two days.

The Office of Online Services is very grateful for the recommendations that were included in the IRSAC report. I know you mentioned a lot of interest in the authentication, authorization, and access, which is our eA3 capability. Office of Online Services will continue to partner with the business operating divisions, as well as IT, and also the Identity Assurance Office in PGLD, to ensure that we're meeting our legal obligations to protect taxpayer data, as well as taxpayer identity, as we develop new online digital solutions.

I am also pleased to announce that the Digital Services IRS Authorization Strategy was approved by the Services and Enforcement ESC on August 28th, 2018. So that will allow us to move forward with our capability for providing those services to individual taxpayers, as well as practitioners.

We also recognize that with the new complexities with the new NIST guidelines, with Publication 863-3, that there are some challenges as we look at unique taxpayers coming in, remote identity, whether you're in-person or online. So we're working to navigate those challenges so that we can make an informed solution moving forward in the digital space.

And then also I would like to talk about taxpayer digital communications and the need for a tax pro account. I'm also pleased to let you know that the ability to move forward with the tax pro account in terms of requirements, definitions, and gathering was approved by the Strategic Development ESC on August 2nd, 2018. So through our partnerships in the working group, and through using iterative development methodologies, we are elaborating on requirements for what those capabilities will be moving forward to a minimum viable product for tax pro account. So we look forward to the continued partnership to define those requirements so that we can move forward in that direction.

We've also received lots of feedback on the need to correspond with the Service digitally, and through taxpayer digital communications we have a number of pilot installations to really learn findings and see what we really need to address internally in order to make that a full-blown capability through the Service. We have a number of pilots with SB/SE, and they have done some service exams, correspondence exams, and we’ve had over 2,000 correspondence exams during that particular venue, and we’re also looking at additional pilot installations with TEGE and LB&I, and we’re looking to expand that capability moving forward as we iterate on our findings.

We also are taking advantage of Tax Chat, and with SB/SE we do right now unauthenticated live chat with taxpayers, and we have a pilot working right now in concert with SB/SE, and we’ve serviced over 29,000 chats in that pilot, and that particular pilot is related to online payment agreements. So we are making advancements in that area, and we do anticipate the learnings and the findings from these pilot installations will help to inform the requirements for tax professional account as we evolve our thinking there.

So with that, I just want to say thank you to IRSAC. Again, thank you to Stephanie and the team for your partnership and collaboration. Thank you for allowing me to be here today.

MR. VENTRY: Thank you, Michele.

Stephanie’s team is going to report on at least one more issue.

MR. RULE: Yes. Thank you, Dennis.

And, Michele, thank you for that update.

I first want to just express my gratitude for all the help that the IRS personnel has provided to us. The information that we obtained allowed us to put together the report for the Digital Services Subgroup. Specifically, I would like to thank Howard Zach, who coordinated all of the meetings for us.

You know, through this process, it appears to us that the digital services are going to be extremely important to the IRS to meet its goals of providing top-quality customer service, and also for fair, efficient tax administration. The challenge that the IRS has is the security of data. We’ve all heard the acronym eA3. The authentication, the authorization, and the access is all very important to make sure that the taxpayer data is not compromised, probably the biggest challenge in moving forward with the digital services.

What we discussed is the importance for the eA3 to be compliant with the National Institute of Standards and Technology, also known as NIST. The guidelines, just like any set of rules, are going to have to be followed very closely to make sure that the most up-to-date protocols are followed to implement the services.

The application of eA3 should be risk-based. So, for example, there might be access to data by a taxpayer that would require different levels of access controls. For example, if a taxpayer is going to check on the status of a refund, that might be a different level of access control than if they were actually to require transcripts or other very sensitive data.

In summary, as we've gathered the information and had our discussion with regard to the eA3, our recommendations are to implement these control access procedures on a risk basis; to implement eA3 on an enterprise-wide basis; and also to implement a digital process to facilitate the taxpayer's ability to authorize third-party access to their data.

And with that, I'll turn it over to Antonio.

MR. GONZALEZ: Thank you, Martin.

My name is Antonio Gonzalez, and together with

Ben, we’ll be discussing Issue 2 of the report, on Application Program Interface (API) integration strategies.

I, too, wanted to thank everyone both in the Office of Online Services and Customer Account Services for all the assistance we’ve received, and in particular Howard, who was excellent not only in getting us the meetings, but he also was able to get us into the Innovation Lab at New Carrollton, which for us was a great, great day. So, thank you all very much.

I also wanted to thank Stephanie. Stephanie has been our leader, she’s been our mentor. The first day she took us to the meeting, showed us where to get the I.D. badges, everything. So it’s not just on the Digital Services side but also in general.

Last year, the Digital Services Subgroup made a recommendation in the public report that the IRS should develop a realistic API integration strategy that allows for safe and secure communication with other internal or external parties. Building on last year’s important recommendation, the OLS experts and our subgroup came up with a couple of potential success stories that can become a standard for both internal and external communications.

I’m first going to discuss the ACH payments API, followed by Ben, who will discuss the tax information sharing API.

As you know, the IRS has many different electronic payment options. Some of them are credit and debit cards, electronic funds transfers, the OPA, or online payment agreements, and Direct Pay, which is essentially an ACH payment that comes out from the taxpayer’s bank account.

The benefits of the electronic payments to the IRS, besides a much lower cost, as is detailed in the report, are substantial improvements in efficiency, timing, and the accuracy of the way payments are applied.

Given how much we all use our electronic devices today, you would imagine taxpayers are keen to use the electronic options, yet the majority of the payments still today are being sent by mail, including an incredible 87 percent of estimated tax payments which are still done via paper.

The November 2013 introduction of Direct Pay was considered a big success and continues to be a big success when measured by both year-over-year increases in adoption and the 66 percent success rate in completed payments. For payments that are not completed, user dropout usually occurs in the re-authentication steps of entering tax information or I.D. proof. For those that aren't as tech savvy, this is the equivalent of making that call to a credit card company when you receive some bill and you need to speak to somebody. We give them our name, Social Security, mother's maiden name, first vehicle, all that information. The person on the other side confirms that everything is great but that we need to speak to a billing specialist or a customer support representative or someone else, and after a brief hold you go through the exact same process once or twice.

So this unnecessary re-authentication created an excellent opportunity for the development of the ACH payments API, technology that is going to allow your credentials to travel with a repayment request all the way through. In an effort to make an impact without any modification to the eA3 framework, the first planned use we identified was to enhance a current online account platform with seamless integration to schedule payments, change scheduled payments, check on payment history or on the status of your current payment. The benefits are clear for all stakeholders involved.

Some of the benefits are a centralized and improved user taxpayer experience, of course; greater accuracy in the application of payments, which is an issue; and the API also provides the IRS with a reusable platform that can be used for other applications, like IRS To Go Mobile, other IRS applications, as well as the option to share with trusted third parties.

In 2014, OLS worked with the Bureau of Fiscal Services to define requirements for a payments API. We’re happy to report that earlier this summer, I believe around August, they did re-engage and they were able to finalize the requirements for the ACH payments API. We’re looking forward to seeing progress in the near future, both as members of IRSAC and as taxpayers, obviously.

Thank you.

MR. DENEKA: Thank you. As Tony mentioned, I'll be discussing our recommendations around tax information sharing API.

So by way of background, the current process to obtain tax information is to request a transcript, which can be done through a number of channels. One is the Income Verification Express Service, or IVES. Another is the transcript delivery system, often used by tax professionals. Individuals can use the Get Transcript system to request it online or by mail, and third parties can also request it by mail, and I think for a few more weeks by fax.

The channel that most closely parallels the API we're recommending is the IVES, so I'll go into a little bit more detail there.

IVES enables third parties, usually lenders or those performing background checks, to electronically receive, with taxpayer consent, tax information in the form of tax transcripts at $2.00 per transcript user fee.

To participate in the IVES program, you must first apply for enrollment and pass suitability checks before being granted acceptance to participate. Once you’re enrolled you would submit a Form 4506-T or 4506T-EZ, which is a request for transcript tax return. The IRS personnel would then manually process the return and upload the transcripts into the user’s secure object repository on the e-service platform.

While this does contain some user-friendly aspects, like providing the transcript in electronic format and use of electronic signatures on the 4506-T, there is still room for improvement. It’s still very manually intensive, requiring the IRS to process and upload the transcripts. That turns into a turn-around time of around two to three business days, and then there are some security concerns, as we’ve seen by the updates to the transcript content and delivery channels this fall.

So our recommendation for the tax information API would essentially allow the Service to receive third-party authorization requests for tax information, process those requests and provide the data back, all in an automated and electronic manner.

The benefits here, first of all, it would help improve compliance. It would allow taxpayers to more efficiently gain access to their tax information. So, for instance, they'd go to work with a tax professional in a single session of sitting down with that tax pro to be able to obtain the information and know the next steps they need to do to come back into compliance. It would also produce cost savings for the Service in the form of decreased calls for request transcripts, decreased correspondence in and out of the Service. And much like the IVES program, a user fee could be used to help offset the cost of development and ongoing maintenance of the program, as well as cost of audits.

And lastly, there would be improved security. As my colleagues mentioned, the eA3 framework is critical here. But also, like the IVES program, an up-front vetting process of these third parties would also be necessary. And then in turn, while using the API, the identity proofing and authentication process must be secure, and that's in turn going to make sure that we have authorized access to the information.

And lastly, as Tony mentioned, this will really help us develop standards for the external-facing APIs, which aligns nicely with the IRS’s strategy of collaborating with third-party external stakeholders to improve service and outreach to taxpayers.

So in conclusion, my colleagues and I feel that the APIs are essential tools to enable the digital services that people have come to expect when dealing with financial institutions and other service providers. We believe that leveraging APIs, both internally within the IRS, as well as with other government agencies and external third-party stakeholders, will improve user experience, save IRS resources, and facilitate taxpayer compliance.

So with that, we thank you for your time, and I’ll pass it back to Dennis.

MR. VENTRY: Thank you, Ben.

Michele, this is a time usually where -- there’s no obligation to do so, but to the extent you want to engage the subgroup or other members of IRSAC with respect to the specific recommendations, you’re more than welcome to.

MS. CAUSEY: Thank you. So, like I said in my brief, we do recognize and acknowledge the importance of eA3. That’s critical for us to deliver additional capabilities for taxpayers. We share a mutual goal in that we want taxpayers and tax professionals to be able to self-service, where applicable, and ultimately result in compliance. So these matters we will take under advisement with the recommendations. We do have some internal complexities, but we do have a shared objective.

MR. VENTRY: Great. Thanks, Michele.

Next up we have, for the last time, the combined subgroup W&I and SB/SE. With us we have Dave Alito, Deputy Commissioner of W&I, and Lisa Beard Niemann, Deputy Commissioner of Small Business/Self-Employed. Welcome and thank you for your time.

SMALL BUSINESS/SELF-EMPLOYED and WAGE & INVESTMENT SUBGROUP REPORT

MS. KUBEY: First of all I wanted to thank, as well as my colleagues here, our wonderful liaison, Maria Jaramillo, and Johnnie Beale and Cindy Jones, who have been just our stalwart supporters and coordinators from W&I. All of our subject-matter experts, particularly LaJeana Shoffner on our Issue 1 Lockbox; Vivian Dunn and retired Carol Walker on the Third-Party Authentication; Scott Irick and his staff on the Taxpayer Digital Correspondence; and Richard Goldstein on the Virtual Currency. We really enjoyed our collaboration with all of them.

So, we're going to present each of our issues separately, but what we found when we were going through all of these is that we did have some common themes that all of these issues kind of touched upon. One is improving the taxpayer and tax professional experience with more efficient use of IRS resources.

Also, moving taxpayers and tax professionals and the IRS away from paper and toward less expensive and more efficient electronic methods. Obviously, balancing the robust security with taxpayer and tax professional access to sensitive information is paramount.

And finally, improving communication in both directions to enhance delivery of IRS services.

So for Issue 1, Lockbox, I would like to introduce

Pat Thompson, and she will lead on that issue.

MS. THOMPSON: Good morning, everyone. I would like to echo everyone's comments about how helpful the IRS has been in providing information to us to be able to have us analyze it and make recommendations, and also have a great report. And then with my topic, just as well as everyone else's on my group, we did collaborate quite a bit within our own subgroup, so thank you all for that too.

As Phyllis mentioned, mine is the Lockbox program. As we know, that is designed to collect taxes. So the Lockbox Network mission is collecting, accurately processing, and accelerating payments to the U.S. Treasury while maintaining security and confidentiality of the taxpayer information. So when we first met, the IRS had identified an issue where payments were being misdirected to taxpayer assistance centers rather than using the Lockbox Network. And when the analysis was done, it was determined that most of those misdirected payments were coming from private delivery services. So our recommendations are going to be based on trying to help increase the use of the Lockbox Network, and also maybe to even eliminate its use many years down the road, I would suppose.

So the first recommendation is to encourage electronic payment of your taxes or of the tax payments because, as you know, if you’re going to be paying something electronically, you don’t need the Lockbox system. The majority of the taxpayers are already using the electronic system, so we can only improve from there.

But there are ways to improve or increase its use, and that is to get the tax practitioner community on board with making electronic payments, because as soon as they’re on board with it, then they can convince their clients fairly easily -- there will be some resisters -- to also continue with that. I think when we’re talking with our clients, most of them don’t want to give the IRS their bank account information because they’re thinking that it’s going to be used for some other purpose than what it’s supposed to. I think that’s just an education process that could take place to reassure them that the only bank information that they’re providing at that particular point in time is for that tax payment, and that on Direct Pay that immediately is eliminated. So it’s not stored anywhere. I think that might help go a long way with increasing the electronic payments.

The other recommendation under electronic payments is to allow tax practitioners to be able to pay the taxes electronically for clients. Now, we would also assume that the tax practitioner would need the taxpayer’s authorization to do that. We’re not saying that we’re just going to do it for them. But it would help because taxpayers may not have access to online abilities or the network, or they could also just not be familiar with paying their things electronically. So it’s a comfort level that the taxpayer would have by allowing the tax practitioner to be able to do that.

The other part of electronic payments could be to educate and make taxpayers more aware of it, and we can look at the 1040 instructions to have that. Right now there are two places within the instructions that mention electronic payments, but they’re not at the very front of the package. One is in the middle maybe, one is maybe at the end, but the other part is one of the mentions is just to send the taxpayer to the website. So we’re thinking as soon as you try to send somebody to a website, that’s one more step that they’re not likely to do. So if you make it very easy for them within the tax package itself, that would be very helpful.

Also, there was a previous mention of the Form 1040 estimated tax payments that are still being made by paper, so the recommendation was to change the 1040-ES instructions to include information about being able to pay electronically, and we do understand that that particular recommendation has already been done. So in the instructions for the 1040-ES, and also the voucher itself, that has been implemented. We were talking about real-time implementations, and that’s an example.

The second recommendation is to increase the awareness of the tax practitioner community about the issue of misdirected payments because they may not really be considering it as an issue. We know how expensive it is to paper file a paper check anyway, but now to have it go to a Taxpayer Assistance Center that’s not set up to receive those payments, as you know, that’s quite problematic.

There are many stakeholder liaison meetings that the IRS has throughout the country. That would be a great opportunity for them to be able to reinforce the use of electronic payment, and also the Lockbox Network system. And another possibility could be for either the IRS or a trusted practitioner or liaison person to actually write an article to describe what the issue is and try to raise awareness and probably fix it that way.

Some of the Taxpayer Assistance Centers know who the tax practitioners are that are sending them the information or the tax payments, so maybe it would be worthwhile that somebody, the IRS, just contact them directly and inform them of the proper addresses for sending their tax payments. That would go a long way.

Another recommendation is to work with the software developers. The majority of the tax returns is done using software, and we talked earlier about maybe having prompts in there, because as soon as the software asks you a question, you’re more likely to answer it. So the question could very easily be, “Are you using a private delivery service?” Yes, you are. Then they know that when the instruction letter is done, they’re going to be putting in a street address rather than the P.O. Box, which is causing a problem to start with. And the software developer could also have diagnostics that are very helpful. Maybe you don’t need them to prepare the return, but it just puts the tax practitioner on notice: “Oh, I never thought about that. If I’m using the private delivery service, I can’t use a P.O. Box. I need a street address.”

Another recommendation is to change the form instructions. The form instructions could use the street address for the private delivery service. All the other addresses are included; that one is not. And what the instructions do again is it refers you to the website. Again, one more step that’s likely to be missed in that case.

Another recommendation is to contact the private delivery service providers themselves. Our recommendation is for the IRS to give a brochure to the private delivery services that these are the proper street addresses. So if you do get something in that’s going to a post office box, don’t go online on Google and find out the closest IRS location and send it there. Then they will have the ability to very quickly know that, “Oh, yes, this is a P.O. Box, can’t do that. Let’s do a street address.”

You could also think about the software company changing their software. Maybe that’s a little bit more involved than they want to do, but again, providing that brochure or a list of the proper addresses would be very helpful.

The Taxpayer Assistance Centers who are receiving these private delivery service payments -- and they know who they are -- maybe they know the locations of those delivery services, and maybe visit them again to try to make them aware that they can’t just use any address of the IRS. It really is a specific address that they need to use.

Communication for the individual taxpayers. Again, it would be the IRS to use all the communication tools they have available to them, including social media, to make taxpayers aware of the private delivery service street addresses. Again, they’re not aware that there is an issue, so they’re going to continue doing what they’ve always done.

The final recommendation, if they’re going to continue to use a paper check, if they would use certified mail rather than using a private delivery service. Certified mail can use a P.O. Box. So the taxpayer is going to get their proof of mailing, They’re going to get their proof of delivery and avoid the problem altogether.

So those are our recommendations under the Lockbox system and trying to avoid those misdirected payments to taxpayer assistance centers.

Thank you.

MS. KUBEY: Thank you, Pat.

Next, Charles Read will present on third-party authentication.

MR. READ: Thank you, Phyllis.

I want to echo the comments of my colleagues and appreciate all the help we’ve gotten from the Service and all the members throughout who have just been wonderfully helpful.

Issue 2 is Third-Party Authentication. In January of 2018, the IRS instituted a new identity verification process to be used by the IRS toll-free telephone and walk-in assisters.

Third-party authorization forms must have a taxpayer’s information and periods for which authority is being granted, signed and dated by the taxpayer. These forms must also specify the third party’s information. Before the 2018 new identity verification process, third-party callers had to provide the IRS with the taxpayer’s information and the information for the representative.

However, the IRS discovered that cyber criminals obtained and posted stolen electronic filing identification numbers on the Dark Web as a crime kit for identity thieves, who would then use the stolen information to access taxpayer transcript data and incorporate that data into fraudulent tax returns or for other illegal purposes.

Realizing that the acceptance and processing of third-party authorizations had not kept pace with the current trends in fraud, the IRS added a third-party SSN and date of birth to the information requested.

Practitioners, knowing the damage that could be done with someone's Social Security number and date of birth, expressed concern about providing their personal information on any matter unrelated to their personal business and when privacy is frequently not feasible.

The IRS is seeking to develop a process that would allow a third party to enter their SSN via telephone keypad, eliminating the need to provide the information to the IRS verbally. The IRS anticipates having that process in place by 2020.

IRSAC does have some recommendations. First is to expedite the digital entry process. This would be beneficial to the IRS, taxpayers, and third-party representatives. It will also assist the CSR by eliminating the need to key in the SSN.

Possibly revamp the entire CAF number program. If the CAF number system is reworked so verification of identity is required before issuing a CAF number, akin to the PTIN program, stronger security would be in place on a go-forward basis. In addition, layers of protection like out-of-wallet security questions could replace the need for personal information.

Another is to institute possibly an RSA token option. RSA authentication mechanism consists of a token, either hardware or software, and changes every 60 seconds to foil criminals.

Incorporate an authentication option tree, a tree of other identifying information to authenticate a third party. The tree could include PTIN, client tax return data, payroll filing data, and other data points accessible by CSRs, with requests for Social Security number and date of birth toward the end of the tree.

Initiate an automated callback system through Online Services. The IRS could initiate an appointment-setting procedure for callbacks from the IRS to a third party. The third party would go online to request a callback at a specific scheduled time.

Six. Leverage the tax pro application. The IRS could use the multifactor authentication process already in place on e-services for third parties to retrieve online transcripts. This could be part of the tax pro application being developed.

CSR access to SMS codes. Provide CSRs with a desktop version of the IRS To Go app using the existing e-services process to send multifactor authorization to the third party.

Highlighting the CAF77 request to third parties. Publicize the ability and desirability for practitioners to check and eliminate out-of-date or fraudulent CAF filings. Also, the practitioner could realize his CAF number had been compromised and have it replaced.

Inform the practitioner community in much more detail of the entire problem.

And finally, research what other organizations needing to authenticate telephone inquiries are doing to ensure the identity of the caller.

Thank you.

MS. KUBEY: I’ll present the issue on the correspondence exam Taxpayer Digital Correspondence (TDC) pilot.

Correspondence exams obviously are a way of leveraging IRS resources because they can take care of examination issues with much less time and personnel hours as a field exam or a TCO exam. So they’re usually related to a specific issue, and there is a limited selection of tax return items that’s involved in a correspondence audit.

So these correspondence audits I think are ideally suited to a digital communication format, and with this pilot we have seen the taxpayers and the IRS personnel both have a very positive response to how the pilot is going. The one thing that’s kind of interesting is that there are a lot more contacts from taxpayers to the IRS with the TDC format because I think it’s just easier. It’s almost like, “Hey, I just thought of something, so I’ll just enter it in there.”

So one of our recommendations is educating the taxpayers, and perhaps the tax professionals who are representing them, that it might be more efficient to consolidate information and present it all in one fell swoop. That kind of ties in with a theme that has gone through many of our recommendations. It’s so easy to fall back on old habits, and to get people to try out something new and embrace it and use it is tough. But I think once we cross that hurdle, we’ll really go great guns with this program.

The digital correspondence ideally should facilitate ease and speed from initiation to resolution of the examination. Especially in the earlier stages of the pilot, we found that that was not always the case because there were additional contacts. But I think as the second stage of the pilot has progressed, we're finding that there are more positive correlations and higher rates of resolution and less time than with a normal snail-mail and fax-related correspondence exam.

So we looked at the pilot, and one of the big issues, of course, was that the utilization rate was not high among the people who were invited to use it. So looking at how we could increase usage, one thing was to leverage through tax professionals. Currently, the taxpayer is invited to participate. Again, it's just easier not to, I think. It's easier not to go through the process. So I think if we can get the tax professionals involved and maybe create a way where the tax professionals could ask to be part of the digital correspondence audit, I think that might increase usage because, obviously, we who do representation are much more familiar with the process. We know how to respond, we know how to use the digital services, so I think it would be a natural fit. And if that is in place -- the ability to request participation -- we could really get the word out through the IRS Nationwide Tax Forums, through stakeholder liaisons, through the various tax professional organizations that we all belong to.

Second, we thought there could be more prominent highlighting of the digital option in the correspondence. In the first stage of the program, there was a neat little flyer that had some color. It was something that caught the taxpayer’s eye. So I think they were probably more likely to respond than once they got the letter revised to include a paragraph about it. The flyer was no longer included, and it’s just kind of another text option.

So last year in our report, we looked at revising some of the collection letters, and we looked at colors and icons and kind of a behavioral approach to driving taxpayers to the desired behavior. And I think this is a program that really could benefit from that. They need to be able to perceive that this is really the best thing since sliced bread and that it will change their lives.

[Laughter.]

MS. KUBEY: So I think there's opportunity for better marketing there.

We also were looking -- and I was interested to hear Michele talk about the online services chat option because we think, in addition to the digital correspondence, that there might be an opportunity to do quick answers/questions through a chat option through the platform, and I think that might also move cases along more quickly.

We thought it would be good to analyze why taxpayers and, if applicable, their representatives begin the digital correspondence process and then drop out. Obviously, a lot of it may be the authentication factor, but just to kind of look at those cases where people start out and don't follow through and see if there's a common thread that perhaps could be addressed.

We also, in our appendix, we suggested some taxpayer-friendly guidance, just how to present the information and just reminding them that basically their job is to help the examiner know what they already understand as the taxpayer -- what they did, how they did it, and why they did it -- and that we’re just trying to understand what they did so that we can all determine the correct amount of tax, nothing more, nothing less.

And finally, of course, the ever-present theme of balancing the security of taxpayer information with accessibility to the program. And finally, and I think maybe most importantly, could we consider this platform for other uses. The one that really popped up in our minds was the AUR Program, the Automated Underreporter Program, which is usually something that requests, again, a limited selection of items. Currently you can respond via mail or via fax, and one of the big problems is trying to figure out whether the IRS actually received your information. So, of course, we’re all calling and tying up IRS resources. I think if we could submit this information digitally and have an immediate confirmation that it had been received, that that would be a good thing and would free up resources on both sides of the equation.

The other thing we thought of was could this platform be used for accepting returns and paperwork and submissions that are not currently filed through e-file, such as the 1040-X and some of the CAA application forms. If we could submit so-called paper-filed documents digitally through this portal, it may also save time and money and create more ease of use.

I think that is it for the digital correspondence.

We’ll be happy to accept questions.

MS. BEARD NIEMANN: First off, I want to thank everyone. You know, it’s so wonderful to see the passion in this room on all these tax issues, and it helps to let us know if we’re getting it right. So I can’t thank this committee enough for the time that you put in and your dedication.

Let me just start with taxpayer digital communications. It was funny that Phyllis mentioned our glossy that we did with our first notice, which sounded really good, but this is what really happened. Everybody got that, and instead of contacting us, they thought it was a scam.

[Laughter.]

MS. BEARD: The comments that we heard was it was too nice for the IRS to send out.

[Laughter.]

MS. BEARD: So we had to move on to a letter. I am reading through the report, and I'm hoping the third time is the charm, because we have research involved now, and we are going to look into doing some behavioral activities and how it relates to taxpayers and everything. We took your recommendation last year, and we've been doing notices with collection, and it's been very interesting doing behavioral studies on the thought process, and it's working. It's been really good. But that's the true story about the really nice glossy.

[Laughter.]

MS. BEARD: You mentioned AUR. Every year we've been looking at the results of the pilot, and we're looking at areas we can expand into that, and that definitely is on the list. I mean, this has really gone well. The one thing that is interesting, Phyllis mentioned that they think of something or they find something, they send it to us. Okay, the time on case for this program has gone up for that reason. So hopefully we can start getting the taxpayers to send everything together. But the feedback on it has been really, really positive.

Let’s see what else. I made some notes here.

Also, we’re thinking of expanding it. Right now it’s just in Philadelphia, but we’re looking to expand it into some of the other campuses, and we’re working directly with Online Services on some improvements and everything. So I think in the future you’ll see more of that, and David might even mention this next, but Charles mentioned doing callback. We’re working on that. That might be sooner instead of later because that would really help us.

So there’s a lot of things out there, ideas and everything, but we hope you’ll keep giving us the ideas because it comes down to, and I hate to say it, resources. We can’t really do too much more right now even with the pilot because we only have so many people that can answer. So I’m going to put a plug in here right now, too, for IRS.

Speaking of resources, in case you haven’t seen, we are hiring. SB/SE is hiring 3,000 people this year. We are on USA Jobs right now. We’re probably going to bring in about 800 revenue agents throughout this year, and 750 ROs; also tax compliance officers, and I know that Doug will also be hearing. CI has it out there. So we need you to tell your family and friends it’s a great place to work; we don’t have a recruitment office because we haven’t hired in so long, so we’re trying to roll that out real quick. So if you could just spread the word.

That was my famous plug.

Another thing that’s in our priority this year is virtual currency. So that was very timely. I agree with all the recommendations there.

And I also agree that we probably do need to talk about -- we are all doing something, and we’re doing the John Doe summonses, and we’re looking at the results and all of that. But I think that we do need to probably connect maybe a bit more than we are with LB&I and CI, and doing that and getting more guidance out and everything.

But in SB/SE, some of the priorities that we're working on also is the non-filer strategy. That will be big this year. We're really trying to work on some areas to decrease the tax gap. You know, we keep talking about it, and every year it's about $458 billion. So we're looking at different ways to decrease that, and we're actually going to be sharing a report with Secretary Mnuchin in the next few weeks on some ideas for that. So that's really impacting SB/SE because I think one of the things that you brought up, Sharyn, was doing some kind of doc matching for virtual currency. We're trying to look into doing doc matching because as long as we have that, people are usually compliant. It's that percentage that we can't do that, the matching and everything.

I think that's probably all I have to say for now. I'd better give you some time. But thank you so much.

MR. ALITO: Good afternoon. David Alito, the Deputy Commissioner for Wage and Investment. And thank you all again. I want to personally thank, of course, our subgroup, Phyllis, Sharyn, Charles, and Pat for the wonderful recommendations.

As I'll touch on, as I've heard many of the recommendations, a lot of those also have a touch point in ways that we're dealing with some of the digital services, so really absolutely appreciate them.

I also want to thank you all personally, too. I know you've heard this, but this is volunteer time on your part. You come up with the time you spend, and then working with our subgroups and working with all of us is extremely important to us because we're all focused on the customer experience. Whether that's the practitioner side, whether it's the taxpayer side, it's how do we continue to improve that experience. So these recommendations are valuable.

What I also like about the recommendations as we go through them is they're a good balance for us, and by that I mean we, of course, try to look for an IT solution and a digital solution because that has the widest breadth that sometimes causes things to move a lot faster, but it also is subject to budget. So at the same time you're offering us some IT solutions, which we will definitely look at how we pursue, you also offer us a nice balance of, given our current environment and that we don’t have a digital solution, what are some of the things that we can do, whether it’s outreach and different things that we can get started on in the shorter run. So I absolutely appreciate those.

As you mentioned with IT, one thing we’ve learned too is that when we put it out there, the taxpayer has to like to use it. I think of “Where’s My Refund?” It’s been around for a long time, but we used to have I think it was a cycle chart, some horrible thing that we had for years that was very confusing.

MS. CAUSEY: Yes, the refund cycle chart, yes.

MR. ALITO: When we came up with the tracker, what we found is taxpayers like it. It was simple. They got into it. But an interesting dynamic there is we have the customer service representatives, and we get millions of refund calls, or used to get millions of refund calls. Of course, the first year the tracker came out, people flocked to it and used it, and then they turned around and called us --

[Laughter.]

MR. ALITO: -- and said, is that accurate? Is that information accurate?

[Laughter.]

MR. ALITO: But what we saw is it’s a slow ship to turn. Customer culture change is always a little bit slow. But what we saw is it trickled off a lot more the next year, it trickled off even more the second year, the third year. So they liked it, they used it, and now, of course, with the accuracy being we told you it’s going to come on this day, half the time we’d get comments back, “Well, it came before you said.” So we kind of use that as our high water mark of ease of usage, because if they didn’t like it -- I mean, you’re consumers. If you had to go buy something from a company and it was so painful, my thought is, “I’m not doing it here, I’ll just go buy it elsewhere. There are other alternatives.” So we know it has to be ease of use.

You touched on a few things. So we had asked the committees to look at Free File, the use of Lockbox, and third-party authentication. Dennis, Kathy, and the rest of the team, I know that Free File got elevated to a larger group. We absolutely appreciate the feedback we heard there. As Kathy mentioned, the Free File MOU was signed in November. We absolutely still hear your comments. It is something we're going to look at, to answer your question. Yes, we will continue to look at those recommendations both on the MOU side as well as the process side, because it's a strong program. A little over 2.5 million taxpayers use it, and these are taxpayers that it offers them a free service, and we want to continue to look at how can we continue to make it robust.

Some of the things I hope you're happy to see is some of the things in the MOU about removing the links to non-Free File products, the return of the taxpayer to the page if they don't qualify, getting them back in the Free File environment, bringing that to their first option when they go on a private site, to bringing them back to Free File first, and ensuring that they know there's a free option.

We absolutely appreciate the recommendations around increasing the visibility, looking at the traffic. We've seen an uptick, but do people not understand, looking at your recommendations, and how can we make sure that it’s out there, and how can we use it.

The taxpayer experience is really very interesting about something as simple as how do we survey our folks, how do we know what the taxpayer experiences are, what are the options there. So that, to us, was really something to take a look at, looking at the viability of the program. So we absolutely appreciate it.

We hear your concerns about the timing of that, and we’ll take heed to those and appreciate your feedback on that.

On the Lockbox, I had some side conversations. You know, it’s interesting, because when you look at volume, it’s not enormous, but the dollars are big. It goes back to one of those things of how do we communicate. Sometimes, of course, we do it to ourselves. We see an uptick in electronic means, but it’s also a little bit slower. Someone gave me an example this morning of you would like to see taxpayers go the easiest route, but then you send them a piece of paper where the first option is to tear off the bottom and send you a check. I was, like, okay, good point.

So we kind of look at how we place things, where we do it. We know that for most taxpayers, and what we learned from Michele, they look to a search engine first. They don't come -- you know, IRS sometimes, we'll look at our website and go, "Well, we think it follows a nice pattern, but a consumer doesn't do that." How do they get their information? How can we put it out there?

So we're really looking at how can we build on that collaboration. I like the thoughts about looking with the PDS companies. What's our interaction with them now? How can we build on that? Of course, we have a lot of discussions with the software industry, the preparers, the transmitters, and are there opportunities there to do it?

It is an easier option. We've even seen in our own culture with the phone environment where it used to be we would try to touch each taxpayer, go to the next thing, where we've kind of paused them in the last couple of years and said let's really try to spend a little extra time educating them.

A good example, even our walk-in offices, when a taxpayer -- some religiously like to come in with checks every month, and that’s okay, we’re happy to get those checks. But in the last few years we really kind of paused folks and said, “Well, you might not have to make this visit.” Just like you don’t have to go to the DMV to get your tag, you can go do this, and we do see folks who say, “Oh, I didn’t know that,” and take the time to walk them through there and say, “How do you do it?” Or even on the phone, when people call for appointments we’ll try to – “Oh, what do you want to do? Do you want to make a payment? Well, do you know you can go on IRS Direct Pay? Do you know you can do this? Do you know you can make an ES payment that way?”

It’s a slower ship to turn, but it’s those kinds of inroads, along with your recommendations for how do we keep bringing that awareness to it, bringing that identity to it, which is really important to us.

On third-party authentication, you hit it on the head. Absolutely our first, primary thing is do we feel comfortable knowing that the person we’re speaking to is the person we’re speaking to -- is the person who they say they are -- regardless of who they represent, who they work with and so forth. But it’s who is the person talking to us.

Appreciate the thoughts about IVES. I know you had some folks from the Customer Account Services working with Ben and Antonio’s team and looking at that too, because we do continue to look at how do we build that authentication and look at the third parties. We like the thoughts about the tax pro account. It is something we want to continue to look to, and what’s the ability to get there. But as we looked at some of the digital entry, I was very interested in the IRS To Go, the desktop solution, sending the access code. You mentioned the tokens, things like that, that we can do, because we do work with you all quite often. How do we get to the known person, create that channel? How do we then get the access to the information you need?

Transcripts, I know, are always a hot topic, to get that information, because we want to prepare you not only on the collection audit side, but on the customer service side you need to know what is the taxpayer's situation in order to be able to address it. The quicker we're able to get you that information, because, of course, working with you all, it does make it a quicker process. You know the right questions to ask, you're helping the taxpayer navigate the process.

So, I agree with Lisa, absolutely pleased by the recommendations. When we talk to our teams, I always get great feedback on the things you bring up, the ideas you bring up, the push-back on different things, which is tremendously important to us because we need that stakeholder thought, we need that stakeholder involvement.

We work with our teams. We take these reports back. Of course, we're already working with those teams when we go back. We socialize and we look and we work with our partners on the SB/SE side of the house. If Doug and LB&I are creating a new product, my folks are the ones that print it. So we all have to work in tandem as we go, so we keep our ears out for solutions that each other is doing.

I just want to close by saying we absolutely value the partnership. We appreciate these recommendations.

The time that you spend on this full report -- and we go through it, all the items in here. And, as I said, knowing that this time is volunteer time on your behalf, that you all have walks of life, you have things that you're trying to do, but that commitment to helping us and helping yourselves build that customer experience is really important to us. So, thank you all very much.

MR. VENTRY: Thank you, Lisa. Thank you, David. Thank you, SB/SE and W&I Subgroup. You obviously had the most work of all of us this year.

[Laughter.]

MR. VENTRY: So, thank you for all your hard work.

The next subgroup is the Office of Professional Responsibility. Director Whitlock is unable to be with us today, so receiving the report is going to be Mel Hardy, the Director of National Public Liaison.

OFFICE OF PROFESSIONAL RESPONSIBILITY SUBGROUP REPORT

MR. HARDY: A programming note. The role of Steve Whitlock will be played by Mel Hardy.

[Laughter.]

MR. KAY: Thank you, Steve.

He’s trying to be Steve there.

[Laughter.]

MR. KAY: One other point. This will be the last OPR Subgroup report. I don’t think there’s going to be an OPR Subgroup next year, although that’s still in process. That’s not one of the four BODs, so it’s probably not going to be there.

But I’d like to thank you, Steve, for your help. You were there at all of our meetings. You provided input and timely responses.

Brian, we want to thank you. You’re always able to find, with a few clicks on your computer, anything since March 1st of 1913 until today that the Service has done, said, or thought about that would help us get to whatever we needed to get to.

[Laughter.]

MR. KAY: We discussed one of the topics this morning, that being correcting and updating Circular 230, which is vitally important.

The other two topics that Jeff and I are going to talk about, I’ll start off with the first one, which is publicizing or publishing OPR actions. To date, as we speak, OPR takes a lot of actions, and some of them become higher, as in suspension or censure or disbarment, and those become public. We will know at least some of the details, but not a lot of the details; but we'll know that something is out there, and we can provide statistical information. So we'll know that there were X number of actions filed and matters that were resolved, but we don't really know much else.

We feel that, both for practitioners and for taxpayers, it's good to know what type of activity is bad and what the repercussions are for that specific type of activity. In fact, probably about two months ago, an announcement in 2018 was out, and that's the announcement where the Service reached agreement with -- I think it was like three practitioners to be able to provide some details about their case, and that got a lot of publicity. I mean, it was in all the tax sections, there were discussions at the ABA Tax Section about it. It got a lot of very positive feedback because we knew more about it.

But what happens now is we feel that OPR can issue sanitized statements of examples. The Service feels, and they're probably right, that a practitioner's identification information is taxpayer return information that is also covered by 6103. But when Congress added what's called the Haskell Amendment to 6103 -- the Haskell Amendment, I'm sure most of you guys know, but just to refresh your recollection, the Haskell Amendment to 6103 is the amendment that allows the Service to provide highly sanitized, non-tax return information so that they continue to issue statistical data and compilations of data, which is very helpful as it is -- that's how they can tell you that we had 513 cases last year that were resolved on various matters.

But we feel that they're looking at purely the statistical studies part, because when we brought this up, we've had a lot of good discussions with Steve, who responded to this already, and he indicated that he and counsel's position was that you have to have at least three -- so you can't say that a practitioner didn't file the return. You have to say there's at least three, and I don't know where the number three came from, but three was the number he used. And his example would be there were 50 tax practitioners who did not file their return, and the sanctions were from A to B. We feel that does cover part of the Haskell Amendment, the part that deals with statistical studies. But it completely ignores the “or” part, the “or compilations.”

When you look at the definition of a compilation -- I didn’t look at every dictionary, but Google is great for online quotes.

[Laughter.]

MR. KAY: So I was able to get the definition of “compilation” from Google, five or six different dictionary definitions, and it’s all talking about grouping. So, for example, the best example I can give, because it’s always better to understand when you have examples, is fairy tales. A compilation is a group of fairy tales. So you have Little Red Riding Hood, you have Three Bears, and The Three Little Pigs. A compilation would be you have all those three stories, one following another. I’ve got four grandchildren. That’s why I picked that as an example, because it was currently on my mind when I was thinking about this.

But the statistical study part of it, which is what the Service does good right now, would say that there were five furry but mean animals that all violated certain norms, and here are the norms that they violated. But the compilation would be you would have the entire story of Little Red Riding Hood. You wouldn’t know who Little Red Riding Hood was. You wouldn’t know where he or she lived or what type of practitioner Little Red Riding Hood was. You would just know that he or she had a grandparent, mother or father, that had issues.

We really think that it would be much more helpful to have the details. Again, you don’t need to know if it’s a CPA or an attorney. You don’t need to know if they’re in Washington or Florida. It would be very helpful, and the example that we provided is that if there was a failure to file by someone for X number of years and they cooperated, here’s what the agreed-upon result was. If they didn’t cooperate and they didn’t file for X number of years, here’s what it was.

So it’s not taxpayer identification information.

It doesn’t identify anyone. It clearly comes within the Haskell Amendment’s guidelines, and yet it would be much more helpful than just knowing that there were five furry mean animals. Pigs weren’t the bad guys, though. There were five furry mean animals that violated the rules, and there were three bears and two wolves.

This might be why this is our last report.

[Laughter.]

MR. SCHNEIDER: Well, I don’t know if I should say thank you, Shelly, or follow it up with the Three Bears.

When we decided to do cyber security, I readily took it on because Florida, as some of you may or may not know, is probably one of the highest states for identity theft. It still is, and it’s not going to change. Being from South Florida, I do identity theft consulting all the time, much to my chagrin.

So we started thinking about what do we need for OPR to combat that. Now, we’re not in the business of protecting the Internet and the World Wide Web, but what can we do? One of the things that we can do is require tax practitioners to become more diligent in what they’re doing.

For example, there is one note from the Center for Strategic and International Studies that came out with a number of $449 billion in losses related to identity theft, and it’s not going away anytime soon. We all hear the stories about Target, and now Facebook got targeted. But one of the biggest processes is tax practitioners. And why tax practitioners? Because who has all of the data for taxpayers? Social Security numbers, Federal I.D. numbers, ITINs, they have everything there. So what can we do about that?

The Gramm-Leach-Bliley Act came out and put together something that’s called the Safeguards Rules, and there are certain things that we’re talking about. I wrote in my report -- I’m just going to read it -- that it says: denoting at least one employee to manage the safeguards; constructing a thorough risk analysis on each department handling nonpublic information; develop, monitor, and test the program to secure that information; and to change the safeguards as needed with the changes in how information is collected.

So we took that position that it's important that tax practitioners be responsible for the information that they're obtaining. Whether it be through a software program, through their own documents, through faxes they send out, their systems can be vulnerable. So we need to make sure that tax practitioners are held responsible for the security of that data.

We're not saying how specifically. I'm not saying that -- in Circular 230, we have to know what we're doing, to paraphrase. But I'm not saying that we as tax practitioners now have to be computer and IT programmers. That's not going to happen. But they need to have somebody, be it in their firm or a consultant outside, to protect the data.

Many organizations, including the ABA, have these rules. Thirty-one states have put together rules about securing data. So we feel that tax practitioners, be it attorneys, enrolled agents, CPAs, need to also be secure. The IRS already knows this. They already put together the Security Summit 101, put together guidelines. They have already updated Publication 4557 about securing taxpayer information, what's called

"Safeguarding Taxpayer Information." It's important. It's already known out there, but now the tax practitioners need to know that if they're not doing their job, they should be held responsible in some way.

So basically, the committee recommends that Circular 230 include affirmation and disciplinary language for practitioners and their firms to meet a standard of competency related to technology. It's there for everything else, so why not this?

MR. VENTRY: Thank you, OPR; and thank you, Mel, for serving in Steve's capacity.

Our last subgroup is LB&I, and we are pleased to have Commissioner O'Donnell with us. Take it away, Shawn.

LARGE BUSINESS AND INTERNATIONAL SUBGROUP REPORT

MR. O'BRIEN: Great. Thank you, Dennis.

We're here today with the two issues, one of which we covered this morning, which we were asked to provide recommendations on how to increase the quality of taxpayers' transfer pricing documentation, which Diana did a great job of summarizing the issue and our recommendations, so we're not going to repeat that issue.

The second issue is how can LB&I use the new country-by-country reports in its risk assessment of taxpayers, and we did provide some recommendations, although somewhat brief. But Stuart Hurwitz is going to present that issue to the group.

MR. HURWITZ: LB&I asked the LB&I subgroup to review the utility of the country-by-country reports for out-bound risk assessment. We believe the country-by-country reports, on a new Form 8975, provide additional and very important information regarding a multinational enterprise’s business activities than is currently required to be reported on Forms 5471, 5472, and 8858. And when used with the information documented on those forms, it makes such reporting more useful, with a great deal of more specificity and clarity, thus making risk assessment more efficient.

For instance, country-by-country reports inform the Service for each of the multinational enterprises that file the form of the number of employees per country or tax jurisdiction’s taxes they pay, anomalies from previously reported tax returns and reports, and whether the results in a jurisdiction deviate from potential industry comparable and market trends. This reporting provides new and comprehensive information that would otherwise have to be secured after committing to a lengthy and expensive audit, thereby defeating the concept of early risk assessment.

It seems to be a more useful exercise to design algorithms with existing databases and the specific information provided with the country-by-country reports than drafting algorithms using only the current general information secured from those forms now being used to assess risk.

Chapter 4 of the Handbook on Effective Tax Risk Assessment, which the IRS helped to conceive, identifies very clearly the benefits of using the country-by-country reports to enhance risk assessment. Frankly, it’s a roadmap to the effective use of the country-by-country reports to assess risk.

As an aside, and this is an unsolicited comment, we suggest that the Service consider requiring multinational enterprises not participating in an advance pricing agreement to nonetheless provide an annual report, as required by an advance pricing agreement. This could be a suitable addition to the information reported on the forms and the country-by-country reports to assess risk.

Thank you.

MR. O'DONNELL: All right. Thank you, subgroup. Shawn, Diana, Stuart and Dave, I really have appreciated working with you and Sandy this year. I think we made a great deal of progress. It was a very collaborative effort to get to where we got to.

I also want to thank the three of you who are rolling off of the subgroup this year. Tthank you all for your service to LB&I. It's meant a great deal to us, and I think we made a lot of good progress.

So the recommendations, especially in the earlier discussion that Diana went through, are very important. What she doesn't go into a great deal of detail about is the FAQs that they came up with are quite good. They have very good examples of what a taxpayer should be collecting and reporting to help us better understand what they've done, which will enable us hopefully to deselect, and we use that word a lot, which is to knock it into an examination of a taxpayer. So to the extent that we can avoid that, we save everybody time and effort.

Transfer pricing consumes a lot of our technician time, and we’re looking for whatever we can do to not get into an audit of a taxpayer that has complied and only focus on those where we think that there is enough risk to warrant a further look. An important part of what they pointed out, and I’ll draw attention to it in my remarks here, is that to the extent that we do need to conduct an audit, we feel like we can have a streamlined examination because of the additional documents that could be made available if taxpayers followed FAQs.

So we fully agree with the recommendations in the report. We will work to get these FAQs out. We may adjust them a little bit, but the wording was something we worked with the subgroup on, so I think it shouldn’t take too much effort to get there.

But again, I want to thank you very much. The focus on improving the relationship between the administration, tax administrator, representatives, taxpayers, is something we take very seriously. We're working very hard to improve our oversight of transfer pricing issues. We did issue the five transfer pricing directives at the beginning of this year, and we continue to watch how that's playing out, and we'll make further adjustments to our approach as we go forward.

But really, thank you for the work, for the effort, for the substantial contribution to us going forward, and I look forward to continuing to work with the subgroup as it is newly constituted. So, thank you all very much.

CLOSING REMARKS

MR. VENTRY: Thank you very much.

So, we're getting close to wrapping up here.

Final remarks, closing remarks, first mine and then Kathy's, and then Mel's.

What we haven't done yet is thank the National Public Liaison and thank the communications team. This just doesn't happen without you guys, and your willingness to engage us at the very highest level is very much appreciated.

We also haven’t said thank you to two of the people who are the rubber-meets-the-road kind of folks, John Lipold and Anna Millikan. So thank you to the two of you, and thank you to the rest of your team.

We’ve noted before and we noted in the report, and I think it’s worth saying that we were grateful to Acting Commissioner Kautter as well for his guidance. He brought the leadership team in towards the end of the year and reminded us that these bodies work best when they engage directly with the agency, when they’re independent of the agency, and when they bring a critical eye. That was much appreciated.

Personally, my final remarks are to my fellow IRSAC members who just did yeopersons work throughout the year. As you guys have already acknowledged, this is time away. It is volunteer time. It’s five times a year, two-and-a-half to three-and-a-half days. That’s a big ask. That’s a lot of time away from the family. That’s a lot of time away from your primary day job. And yet your commitment to tax administration is incredibly appreciated by folks like all of you. I mean, we are working with folks whose lives are tax administration, and I'd like to think that we're making progress on this. So, thank you to my team.

MS. HETTICK: Well, thank you, Dennis. Of course, I want to reiterate the thanks to the NPL team and Communications and all the IRS. It really has been a great year. It's been a year where we've had some tough issues to tackle, and we've come at it from different perspectives, and we've come to some common ground.

I was glad to hear Dennis make reference to Acting Commissioner Kautter when he did remind us very specifically how important it is to be objective and independent from the IRS as the IRSAC team, because that's how we can be most beneficial for the tax administration. So, I appreciate that for sure.

I also want to just make one comment as well, Dennis. In the general report this year, we did add the follow-up to the 2017 recommendations. I don't know if you all saw that, but super, super helpful for us to get that information. I know that Anna was instrumental in tracking that down. But that's really essential for the IRSAC team to have. We, of course, would have liked to have had it maybe a little sooner, but perhaps that trend will change. But that's very helpful for us to understand what the status is and where things are on the plates in the different divisions. So we certainly appreciate that and look forward to the 2018 follow-up.

And then there's Dennis. I would like to personally thank Dennis. He has done a tremendous job this year and invested an enormous amount of time and energy into every issue, not just the specific issues that were on his plate. Dennis is very, very well spoken, well written. He will be hard shoes to fill for me, but I have learned a lot just watching and observing, and Dennis is a great leader.

I mentioned this last night, and I'll say it again for the benefit of the entire group. Dennis just has impeccable integrity. The truthfulness and honesty in which he functions and works is admirable, and I hope to keep that trend, most certainly.

And then finally, I do want to say that this really is an exciting time for IRSAC. I'm really looking forward to next year. It's going to just present a whole new opportunity for us to work together. It’s not going to feel the same, it’s not going to look the same, which is what is great about it. It’s a change. It’s bringing in more people and getting behind issues and hopefully elevating the really important issues in a consistent manner where there’s one advisory group able to do that.

So I’m really looking forward to the opportunity to serve next year, and hopefully we’ll be in touch with all of you returning members before January so we kind of have a heads-up on what we’re all going to expect.

With that, I just thank you again. And, Dennis, thank you for your outstanding service.

[Applause.]

MR. HARDY: So, before I make my final remarks, I did take very copious notes, Shelly, during your presentation earlier, and also before. I will engage with Steve and let him know just what you all had to say. I think it was stellar. On behalf of Steve, I thank you for all of the energy that the OPR group put into the report, very thoughtful, very engaging, and it gives us something to really think about. So I'll be sure to have a conversation with him on that.

I thank all of the IRSAC members for your tremendous amount of energy and engagement. I've told people both internally and externally that these advisory groups are such a crucial part of what we do in the IRS. Knowing about things like billable hours and all of that, we really could not pay for the type of talent and energy that all of you put into this. So on behalf of NPL, C&L, I couldn't say it better than Commissioner Rettig did, but we thank you, and I just want to take this opportunity to thank all of my team, John, Anna, everyone else, for all the hard work.

So with that, as Terry mentioned and Kathy said, we're looking forward to the new IRSAC, to a new chapter in the advisory committee. We have obviously a great champion in the new commissioner. I've heard him speak three or four times already, and he consistently mentions the fact that he was an IRSAC chair. He holds that with a great sense of pride. I think moving forward, we will be in good hands under his leadership.

With that, thank you all for your time, your commitment, and for being here. Safe travels home.

[Applause.]

[Whereupon, at 11:51 a.m., the meeting was concluded.]

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings Before:

INTERNAL REVENUE SERVICE

In the Matter of:

Internal Revenue Service Advisory Council (IRSAC)

Where held as herein appears and that this is the original transcript thereof for the file of the Agency, Department, Commission, Board, Administrative Law Judge or the Institute.

Further, I am neither related to or counsel for any of the party of the above proceeding.

Nathanael Riveness
Official Reporter

Date: November 15, 2018

Approved: Dennis J. Ventry, Jr.
Dennis J. Ventry, Jr., IRSAC Chair

Dated: 1/25/19