

Internal Revenue Service Advisory Council

Annual Report

November 2017



**The Internal Revenue Service Advisory Council 2017 Public Report
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**INTERNAL REVENUE SERVICE
ADVISORY COUNCIL**

GENERAL REPORT

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NOVEMBER 15, 2017

General Report of the Internal Revenue Service Advisory Council

The predecessor to the current Internal Revenue Service Advisory Council—which was originally called the Commissioner’s Advisory Group—was first established in 1953, a year before the enactment of the Internal Revenue Code of 1954 and the reorganization of the “Bureau of Internal Revenue” into the “Internal Revenue Service.” The IRSAC’s operations are now governed by the Federal Advisory Committee Act (FACA), a “government in the sunshine” law enacted in 1972, which requires that advisory groups’ advice be made public.

As a Federal Advisory Committee, the IRSAC’s purpose is to serve as an advisory body to the Commissioner of Internal Revenue. According to its charter, the IRSAC was formed to provide an organized public forum between IRS officials and representatives of the public for discussing relevant tax administration issues. Because a central purpose of the FACA is to ensure transparency in the work of government agencies and to keep Congress—and the public—informed of the activities of various advisory bodies, the IRSAC is required to hold a public meeting each year and to memorialize its advice in at least one written, public report during the year. This report summarizes the IRSAC’s work during 2017 and presents our recommendations to the Commissioner and other IRS leaders.

The IRSAC membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, academia, and the payroll community. The IRSAC currently consists of 21 members with substantial experience and diverse tax backgrounds, many active in professional organizations but all selected in their individual capacities because of their expertise, interest in, and

commitment to improving federal tax administration. Specific subject matter and technical expertise in federal tax administration issues is generally required to help members advance the IRSAC's mission.

This year's IRSAC includes enrolled agents, certified public accountants, and lawyers. These members, who come from firms of varying sizes, help taxpayers prepare and file their tax returns and otherwise comply with the law, and they represent taxpayers in disputes with the IRS, both administratively and in court. The group also includes law and accounting professors, a state revenue official, a large city taxpayer advocate, a corporate tax executive, an appraiser, and a software developer. In sum, the IRSAC members interact with all operating divisions of the IRS, including Appeals and the Office of Chief Counsel, as well as with taxpayers of all sizes and types (from low-income families, trusts, and estates to multinational corporations, passthrough entities, and nonprofit organizations). Collectively, they represent the agency's major stakeholders, customer segments, and a broad cross-section of the taxpaying public.

The members of the IRSAC are volunteers, are bound by a duty of confidentiality, and receive no compensation for their service. They eschew conflicts of interest and fully subscribe to the principle that the tax system will operate most effectively when the IRS, taxpayers, their representatives, and other stakeholders work together collaboratively. As a group, the IRSAC adheres to a consensus model of decision-making.

Working with IRS leadership, the IRSAC reviews existing practices and procedures, and makes recommendations on both existing and emerging tax administration issues. In addition, the IRSAC suggests operational improvements, conveys the public's views on professional standards and best practices for tax professionals and IRS activities,

offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the Commissioner and senior IRS executives on substantive tax administration issues.

The members appreciate the assistance and support provided by personnel from the IRS Office of National Public Liaison (NPL) and the operating divisions, specifically including Melvin Hardy, Director, Office of National Public Liaison; John Lipold, Chief, Relationship Management, NPL; Anna Millikan, NPL Program Manager; Maria Jaramillo, NPL; Brian Ward, NPL; Johnnie Beale, Wage & Investment; Rose Smith, Online Services; and Mary (Maggie) Monahan, Large Business & International.

The Council is grateful for the support provided by IRS executives and Operating Division personnel throughout the year and we thank them for their commitment to the IRS's mission and for engaging in the meaningful discussions and dialogue that each subgroup held on numerous important issues. Knowing the demands on IRS executives and other IRS representatives, the IRSAC sincerely appreciates the time and effort devoted by them to the Council.

Finally, we note that the fixed duration of the term of the Commissioner of Internal Revenue means that John A. Koskinen's service as the head of the Internal Revenue Service will end before this report is released in conjunction with the IRSAC's public meeting on November 15, 2017. The members of the IRSAC, individually and as a group, express their appreciation to Mr. Koskinen for his service to the nation as Commissioner. The group's sentiments were conveyed directly to the Commissioner before his departure in a letter that reads, in part:

The daunting challenges confronting the agency—including budget constraints, antiquated IT systems, identity theft efforts, and mandates to

implement new legislation as complicated, capacious, and controversial as the Affordable Care Act and the Foreign Accounts Tax Compliance Act—would give many, if not most, leaders pause. But you embraced them and the intense scrutiny and oversight that come with leading an \$11 billion organization that interacts with nearly every American.

From our vantage point as IRSAC members and practitioners who deal with the IRS on a daily basis, the American people should be exceedingly grateful that you answered the call of duty. Your skillful dedication to balancing the IRS's twin goals of taxpayer service and tax enforcement, administering the tax code with fairness and integrity, and empowering the IRS's employees while holding them accountable have borne fruit. We have observed firsthand the high esteem in which the IRS workforce holds you; their respect and loyalty toward you is no doubt owing to yours toward them. We thank you for your willingness to speak truth to power and for the optimism, acumen, and integrity you have demonstrated throughout your term as the agency's 48th Commissioner.

* * *

The IRSAC is currently organized into four subgroups—the Small Business/Self-Employed and Wage and Investment (SB/SE-W&I) Subgroup, the Large Business and International (LB&I) Subgroup, the Office of Professional Responsibility (OPR) Subgroup, and the Digital Services (DS) Subgroup.

Issues selected for inclusion in this annual report represent those to which the IRSAC members have devoted particular attention during four, fact-gathering working sessions of the entire Council and the subgroups, numerous conference calls involving the subgroups, and ongoing communications via telephone and email throughout the year. The issues covered in this report originated from topics that members deemed particularly important or that were raised by IRS management as deserving attention. Nearly all issues involved extensive research efforts and consultation with IRS personnel.

Subgroup Reports—Summary of Issues Discussed

The *Large Business and International (LB&I) Subgroup*, chaired by Thomas Cullinan, made recommendations in its report regarding (1) the revised LB&I Examination

Process (LEP), including how LB&I might measure the effectiveness of that process and improve communication and coordination, between LB&I and taxpayers; (2) LB&I's new "campaign" approach of enhancing compliance on identified issues, including proposals on how the IRS might obtain feedback from various parties to better enable it to revise particular campaigns to increase efficiency and effectiveness; and (3) whether Schedule UTP, relating to so-called Uncertain Tax Positions, should be modified or abandoned in light of the changed enforcement environment.

The *Digital Services (DS) Subgroup*, chaired by Stephanie Salavejus, made recommendations on three issues: (1) the Tax Professional Account, including improving communication with a commitment to a timeline and coordinating with industry and state agencies to identify and implement the best solutions, as well as empowering taxpayers to authorize tax professionals to assist with compliance with the same abilities present today through paper; (2) leveraging Application Programming Interfaces (APIs) to implement a framework to support real-time authorization, thereby providing taxpayers the ability to unlock their taxpayer information and import tax information into tax software; and (3) the IRS's implementing a digital method to process Form 2848 immediately, thereby facilitating the provision of timely assistance by representatives to taxpayers and reducing costs for the IRS and taxpayers.

The *Small Business/Self Employed Wage and Investment (SBSE/W&I) Subgroup*, chaired by John McDermott, addressed and made recommendations concerning (1) the W-2 Verification Code pilot program, (2) the development of a system to allow taxpayers to lock their tax accounts to protect the integrity of their tax returns, (3) marketing/promoting priority practitioner service improvements to the practitioner community, (4) the

implementation of a program to engage private debt collectors to collect outstanding inactive tax receivables, and (5) the development of new collection notices to improve taxpayer responsiveness. These topics share the common themes of protecting taxpayers and ensuring the integrity of the tax collection system, the importance of clear and effective communication to improve the delivery of IRS services, and the development of systems and practices to improve the efficiency of IRS operations.

The *Office of Professional Responsibility (OPR) Subgroup*, chaired by Walter Pagano, developed recommendations on (1) the need for express statutory authority to confirm the Treasury Department's ability to establish, enforce, and require minimum standards of competence for all tax practitioners, including tax return preparers, (2) educating practitioners and preparers about their responsibilities under the Internal Revenue Code's penalty provisions and the Treasury Department's practice standards contained in Treasury Circular 230, and (3) the use of generally accepted appraisal standards in IRS valuations equally applying one set of standards to all appraisers and appraisals might improve the IRS's processes.

General Report

Issues covered in the IRSAC's General Report typically represent topics that have been identified by members as broad and Service-wide and do not fall under the purview of any particular subgroup. This year, the Council has identified three issues: (1) the continuing need for the Internal Revenue Service to be adequately funded; (2) attendance by Compliance personnel from the Operating Divisions and Counsel attorneys at Appeals Division conferences; and (3) the future of the IRSAC (*i.e.*, suggestions for strengthening the role and effectiveness of the Internal Revenue Service Advisory Council).

Before turning to these three issues, we note that during the year, the IRSAC received reports on the staffing, priorities, and activities of the Office of Appeals, the National Taxpayer Advocate, and the Office of Chief Counsel. We also engaged in a very illuminating and helpful discussion with George Contos and his colleagues in the Office of Strategic Planning of ongoing efforts to update and vivify the IRS's Strategic Plan. The IRSAC was heartened by the IRS's commitment to improving the taxpayer experience, not only by better leveraging new and emerging technology tools, but also by utilizing and building upon relationships that practitioners have with their clients and, more generally, taxpayers as a whole. The IRS's commitment to collaborating with professional associations and other external stakeholders—including the IRSAC—is commendable, as are the agency's efforts to make the IRS an employer of choice and therefore ensure a qualified and engaged workforce. We were especially pleased that the Strategic Plan focuses in part on better understanding (and positively affecting) both taxpayer and tax practitioner behavior.

Given the reality of ongoing budget constraints, of course, the process by which the agency sets and adjusts its priorities and implements its Future State initiative remains critical. Accordingly, the IRSAC believes an ongoing dialogue with the Office of Strategic Planning and other IRS leaders concerning the Strategic Plan should be a continuing part of the IRSAC's activities, ideally early in the year.

Finally, as part of its recurring interest in sound administration of the Internal Revenue Code's penalty provisions, the IRSAC received a very informative, and positive, update on the Office of Servicewide Penalties (OSP), which was the subject of detailed attention in last year's General Report. The mission of the OSP is to promote fair,

consistent, and effective administration of the application of the Code's civil penalties across the entire IRS. To accomplish this mission, the OSP is charged with, among other things, soliciting and analyzing internal and external stakeholders' input and views on the effect of civil penalties on taxpayer compliance and incorporating that information in formulating policy and guidance.

The IRSAC is very much pleased that OSP's staffing and activities have increased. The Council was briefed on a number of OSP studies underway to measure the efficacy and effectiveness of programs and tools such as the Reasonable Cause Assistant and the First Time Abate initiative. The IRSAC commends OSP for these recent efforts, and encourages the OSP to bring even greater transparency to its activities. The IRSAC believes that properly understanding the reasons for taxpayer noncompliance (including whether it was volitional or inadvertent) is key to ensuring taxpayers' perception of the fairness of the tax system. We are supportive of OSP's efforts to assess the efficacy of expanding programs to abate penalties in appropriate cases, including whether some penalties should be abated automatically (*i.e.*, without any action on the taxpayer's part).

ISSUE ONE: THE ESSENTIAL NEED TO PROVIDE THE INTERNAL REVENUE SERVICE WITH ADEQUATE FUNDS TO FULFILL ITS MISSION

A recurring issue for the tax system—and the IRSAC—has been the critical importance of providing stable, adequate funding to the Internal Revenue Service. (The IRSAC’s 2016 and prior reports may be accessed [here](#).) This topic demands continual attention because of its fundamental importance to the effective functioning of the government. The Internal Revenue Service is one of the world's largest, most efficient tax administrators. To succeed in its mission of providing “*America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all,*” the IRS must have sufficient funds to discharge its statutory duties, including helping the large majority of taxpayers understand and meet their tax obligations while ensuring that the minority who are unwilling to comply pay their fair share.

Regrettably, overall funding for the IRS has decreased dramatically—by approximately \$1 billion—since FY2010, even though the requirements imposed by Congress have expanded during the same period. The agency’s increased workload is attributable not only to population growth and economic expansion, but to the enactment of the Patient Protection and Affordable Care Act (ACA), the Foreign Account Tax Compliance Act (FATCA), and other complex laws, which spawned the need for guidance and educational outreach as well as enforcement initiatives to ensure compliance.

The consequences of the cutbacks have not been minor or hypothetical. They undeniably affect every facet of the agency’s work. As Commissioner Koskinen has emphasized, the budget reductions have forced hiring freezes, training reductions, and the

scaling back of both taxpayer assistance and enforcement activities. They have forced the IRS not to “do more with less” but, unavoidably, to “do less with less.” Thus, the inability to invest in modernizing the IRS’s Information Technology infrastructure, employee recruitment, and essential training has compromised the quality and timeliness of telephone assistance and other taxpayer services, slowed the processing of refunds and the issuance of necessary forms and guidance, impaired the IRS’s ability to meaningfully address tax noncompliance through audits and other enforcement and collection mechanisms, and made more difficult the task of safeguarding taxpayer information. The budget cuts are particularly concerning at a time when many of the IRS’s most experienced personnel are retiring or are eligible to retire.

The IRSAC fully appreciates the fiscal imperatives and the well-grounded commitment to accountability that have fueled both budget reductions and rigorous congressional oversight. Crafting the IRS’s budget has always entailed a balancing of competing interests. We reluctantly conclude, however, that the balance has been skewed in recent years. Actions to defund mandated programs and otherwise diminish the IRS are, in our view, ill-advised, and counterproductive. They do a disservice not so much to the agency and its employees, but to taxpayers and the Nation as a whole. Because underfunding prevents the IRS from delivering high-quality customer taxpayer service and otherwise doing its job, it harms all taxpayers by impeding the IRS’s efforts to fairly and fully administer the laws.

Because an efficient, well-functioning IRS is essential to every aspect of every agency and program of our federal government and because imprudent budget cuts exact a heavy toll on all taxpayers, the IRSAC was heartened by the testimony earlier this year by

incoming Treasury Secretary Steven Mnuchin concerning the need to adequately fund the IRS. At his confirmation hearing before the Senate Committee on Finance, Mr. Mnuchin acknowledged the unavoidable consequences of staff and budget reductions on the IRS's ability to deliver taxpayer services, combat noncompliance, and collect taxes owed. He also spoke knowledgably of the harm done by reduced IRS staffing (in terms of sheer numbers and expertise) as well as the need to "bring the IRS up to date." Finally, he emphasized the absolute necessity of having a strong in-house technology team "to protect Americans' information at the IRS and keep our financial architecture safe from malicious attacks," adding that "to the extent we have resources, we can collect more money."

Regrettably, although the need for an increased IRS budget remains unabated, Secretary Mnuchin's powerful testimony has not yet produced sufficient results. The IRSAC wholly supports providing adequate funding to the IRS. We say this as a representative group of professionals who deal with the tax law, the tax agency, and taxpayers on a daily basis. The continued failure to do so will put our tax system, and jeopardize the IRS's efforts to collect the revenues necessary for the government to "provide the common defense and promote the general welfare."

ISSUE TWO: ATTENDANCE BY COMPLIANCE AND COUNSEL PERSONNEL AT APPEALS DIVISION CONFERENCES

The Appeals Division was established in 1927 with the mission to resolve cases, without litigation, on a basis that is fair and impartial to both the IRS and the taxpayer and in a manner that enhances both voluntary compliance and public confidence in the integrity and efficiency of the IRS.¹ When an IRS examination ends without agreement between the taxpayer and the Compliance function—Examination, Collections, and Accounts Maintenance—the taxpayer has the opportunity to protest the proposed assessment administratively by asking Appeals, a separate part of the agency, to review the areas of disagreement and hold settlement discussions with the taxpayer. While Compliance personnel and representatives of the IRS Office of Chief Counsel have participated in the past in preconferences with Appeals and the taxpayer (if they are held), they generally do not participate beyond that point. This separation of Appeals from the Compliance function and Counsel helps safeguard the independence and impartiality of Appeals.

In 2016, the Appeals Division implemented changes in its conference procedures that, among other things, expand the circumstances in which Appeals may invite personnel from the Compliance (Examination) function and the Office of Chief Counsel to participate more broadly in Appeals conferences. Earlier this year, Appeals reiterated its support of those changes and announced a pilot program, effective May 1, 2017, for Appeals Team Cases requiring the attendance of Compliance personnel (as well as Chief Counsel attorneys) at conferences held by approximately one-third of the Appeals Team Case

¹ Appeals Mission Statement, IRM 8.1.1.1.

Leaders (ATCL). (These ATCL cases typically involve matters that had been examined by Large Business & International Division.) The IRSAC appreciates that these changes were intended to aid case resolution, but is concerned about their practical effect.

Ensuring the independence of Appeals from the operating divisions is indispensable to Appeals' achieving its mission. The concept of Appeals' independence is so vital that Congress expressly addressed this requirement in the Internal Revenue Service Restructuring and Reform Act of 1998, which among other things prohibits *ex parte* contact between Appeals and other parts of the IRS.² Taxpayers must have the confidence that they will be able to work with Appeals professionals who will be independent of the other divisions of the IRS. If the independence of Appeals, or even the appearance of independence, is compromised, taxpayers would see little benefit of utilizing Appeals in an effort to resolve their cases administratively. The alternative would be litigation, which would invariably be more costly and time consuming. Furthermore, while the principles of the *ex parte* contact prohibition may not be directly implicated in the changes (since the taxpayer would still be involved in the process), the IRSAC is concerned about the initiative's potential effect on the appearance and substance of independence.

Since its inception 90 years ago, Appeals has been able to reach mutual agreements in the vast majority of disputed cases. While Appeals serves as the IRS's primary administrative alternative dispute resolution (ADR) forum, it does not operate in the same manner as other forms of ADR. An Appeals Officer (AO) is not technically a "neutral" party. Rather, Appeals employees are vested with the authority to resolve matters, weighing the merits of arguments on both sides and taking into account (among other things) the

² Pub. L. No. 105-206 § 1001(a)(4).

hazards of litigation.³ Based on the experiences and observations of many IRSAC members, Appeals is a true “success story” for the IRS.

The IRS recently released a set of frequently asked questions (FAQ) relating to the involvement of Compliance and Counsel personnel in Appeals conferences. The document explains that the goals of the initiative are “to improve conference efficiency, reach case resolution sooner, and offer earlier certainty for issues in future years.”⁴

Narrowing the scope of factual and legal differences and making the process more efficient are clearly laudable goals for Appeals. The IRSAC has reservations, however, whether the new initiative is necessary to achieve its ends, is concerned that the initiative will not succeed and is concerned about the potential ill effects of the recent changes. To appreciate our concerns, it is important to first consider traditional Appeals large case procedures:

- When Large Business & International (LB&I) considers raising an issue during an examination, it generally prepares a Notice of Proposed Adjustment (NOPA). The taxpayer is provided an opportunity to respond. If LB&I holds to its view, it will prepare a Revenue Agent’s Report (RAR), which will discuss, in detail, the facts and legal positions of both the IRS and the taxpayer.
- Upon receipt of the RAR, the taxpayer has 30 days to prepare a protest. A well-drafted protest will generally set forth a detailed description of the facts and the applicable legal precedent and then discuss the application of the law to the facts; it will also discuss the taxpayer’s differences with the law and the facts as described in the RAR.
- Upon receiving the protest, LB&I has the opportunity to prepare a rebuttal that addresses each disagreement or interpretative nuance it has with the facts or legal arguments contained in the protest. Pursuant to Rev. Proc. 2012-18, the rebuttal can be shared with the taxpayer.

³ Policy Statement 8-47, IRM 1.2.17.7.

⁴ Appeals Team Cases Conferencing Initiative: Frequently Asked Questions about Compliance Attendance at Conferences.

- Before the Appeals conference with the taxpayer begins, a pre-conference meeting is held with LB&I personnel (including pertinent specialists and Counsel), who can present their position to the Appeals professionals. Taxpayers are invited to attend the pre-conference.

As the foregoing summary confirms, the current Appeals procedures in LB&I cases already serve to focus Appeals professionals on legal and factual differences in a case. Greater participation in the preconference by taxpayers is a worthy goal, but the IRSAC questions whether the required and routine attendance of Counsel and Compliance personnel at Appeals conferences is conducive to that goal.

More important, we are concerned about the potential negative consequences of having Compliance personnel and Counsel attorneys in Appeals conferences as a matter of course. First, the initiative could require additional time to arrange meetings and secure input from the additional participants. Second, and more concerning, it could change in the customary dynamics of the Appeals process, undermining its core value. A third, ancillary concern is that the involvement of Compliance personnel in Appeals could disrupt the taxpayer's working relationship with the examination team in future years.

Currently, the Appeals discussions take place between the two parties (the Appeals officer and the taxpayer), both with the ability to reach a reasoned resolution of the issues. Under the new initiative, additional players (from Compliance or Counsel) participate in the process, and while they technically may not have the ability to resolve issues, from the taxpayer's perspective they can disrupt the process and can unduly influence the decision-maker. This can affect the appearance, if not the reality, of Appeals' independence. To be sure, the taxpayers involved in the ATCL pilot program are likely sophisticated and well-represented; nevertheless, the unintended consequences of the change could be substantial.

In addition, alternatives already exist for cases where the taxpayer and the IRS agree that continued Compliance or Counsel participation would be helpful. Fast Track Settlement (FTS)⁵ is an ADR alternative that has been effectively used, on an optional basis, if both the taxpayer and LB&I reasonably believe that settlement is achievable. FTS is a non-binding, voluntary process where an Appeals professional effectively acts as a traditional neutral. Another alternative is the Rapid Appeals Process (RAP).⁶ This voluntary process does give Compliance and Counsel a seat at the table, while keeping settlement authority with Appeals. The idea behind RAP is to focus on areas of agreement and disagreement. This, of course, is the same goal as the new initiative, though made mandatory.

In conclusion, the IRSAC is concerned about the significant negative effect that the new initiative could have on the Appeals resolution process and the existence and appearance of Appeals' independence. Our first preference is for Appeals to reinstate its prior policy of limiting the involvement of Compliance and Counsel personnel in Appeals conferences pending further study and discussions with the practitioner community and other affected stakeholders. Alternatively, we recommend that, as Appeals evaluates the current pilot, it pay especially close attention to the potential detriments discussed in this report.

⁵ IRM 8.26.1; IRM 8.26.2; Pub. 4539; Rev. Proc. 2003-49, 2003-25 I.R.B. 1044.

⁶ IRM 8.26.11.

ISSUE THREE: THE FUTURE OF THE IRSAC

Although the precise charter, structure, and the operating procedures of the IRSAC have by no means remained constant since its initial establishment as the Commissioner's Advisory Group in 1953, the advisory body's essential duty has remained unchanged over six and a half decades: to provide the Commissioner of Internal Revenue with candid advice about how to improve tax administration. The IRSAC's current charter broadly defines the group's duties, as follows:

The IRSAC reviews existing policy and/or recommends policies with respect to emerging tax administration issues, suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, [and] procedures, and advises the Commissioner or his delegate and senior IRS executives with respect to issues having substantive effect on federal tax administration. The IRSAC researches, analyzes, considers, recommends, and advises IRS on issues that include customer service, compliance, taxpayer segment-specific issues, and factors regarding non-compliance.

The charter specifies that the IRSAC is to provide a written report to the Commissioner "at least annually," and it is the understanding of the current members of the IRSAC that the group's advice has historically indeed been limited to a single, written report each year. (This is not to say that the information exchange between the IRSAC members and IRS personnel has not been ongoing and productive, only that formal recommendations have been confined to the written report presented at the public annual meeting.)

In light of ongoing technological advances (which enable the IRSAC members and their IRS counterparts to conduct their work other than at a limited number of face-to-face meetings during the year) and the time-sensitive nature of some topics that the IRSAC regularly addresses—*e.g.*, the IRS's strategic plan, its budget, and the need to clarify the Treasury Department's authority, via Treasury Circular 230, to regulate tax practitioners

(and tax return preparers)—we believe it would be productive for the IRS to consider how the IRSAC can operate most effectively in the future.

An initiative to “reimagine the IRS Advisory Council,” overseen by the Designated Federal Officer but also involving both IRS employees and IRSAC members, seems especially important with the impending appointment of a new Commissioner of Internal Revenue and the very real prospect of significant tax law changes as part of an ongoing tax reform effort. Among the issues that the IRSAC believes could appropriately be addressed in the review are—

- The circumstances under which the IRSAC may file interim reports with the Commissioner.
- Since a central purpose of FACA is to ensure that Congress and the public are kept informed of the activities of various advisory bodies, whether and when it is permissible for the IRSAC to formally disseminate its views more broadly, for example, to the Taxpayer Advocate or Congress.
- Whether there may be a role for the IRSAC, working with the Office of National Public Liaison, in reaching out to other stakeholders (such as professional associations) to gather feedback, or participate in open forums, on select topics. (This past year, the IRSAC informally communicated with representatives of certain associations as part of the research state of its work on some issues.)

At this time, the IRSAC makes no recommendations pertaining to these issues, other than that they be reviewed. In addition, we believe it would be beneficial to consider the mix of in-person and virtual meetings (or conference calls) to enable the IRSAC to better and more efficiently shape its agenda and do its work. For example, the IRSAC did not have the opportunity to meet with the Chief Counsel or the Taxpayer Advocate until its final working session (in September), long after the group had identified the issues to be covered in its annual report; our meeting with representatives of the Office of Strategic Planning did not occur until July. Incorporating virtual meetings more fully into the

IRSAC's operating procedures would have allowed the IRSAC to receive these reports earlier in the year and to more realistically consider whether the information conveyed in those reports merited attention in the annual report. (The subgroups did effectively use conference calls with pertinent operating division personnel throughout the year.)

Finally, the IRSAC appreciates that a number of factors, including the constricted IRS budget, led the IRS to combine the SB/SE and the W&I subgroups two years ago. Given the importance of the work done and the constituencies served by SB/SE and W&I, augmented by our experience the past two years, the IRSAC believe that the IRS should reinstate SB/SE and W&I as separate subgroups.

**INTERNAL REVENUE SERVICE
ADVISORY COUNCIL**

**LARGE BUSINESS & INTERNATIONAL
SUBGROUP REPORT**

**THOMAS A. CULLINAN, SUBGROUP CHAIR
ESTARRE (STAR) FISCHER
STUART M. HURWITZ
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TIMOTHY J. McCORMALLY
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DAVE THOMPSON, JR.**

INTRODUCTION/EXECUTIVE SUMMARY

The LB&I subgroup appreciates the cooperation it received from LB&I. Our discussions were candid and addressed several complex issues. We commend LB&I's transparency and willingness to listen.

In this report, the LB&I subgroup makes recommendations on three different topics. First, the subgroup has made several recommendations regarding the new LB&I examination process, including how LB&I might measure the effectiveness of that process and improve communication and coordination. The subgroup also made several recommendations for improving LB&I's use of the Acknowledgement of Facts. Second, the subgroup made recommendations intended to facilitate LB&I's new "campaign" approach, including our thoughts on how it might obtain feedback from various parties to better enable it to revise campaigns to increase efficiency and effectiveness. Third, the subgroup recommended that LB&I undertake a study to consider whether Schedule UTP should be modified or abandoned in light of the changed enforcement environment.

ISSUE ONE: LB&I EXAMINATION PROCESS

The Internal Revenue Service introduced the Large Business & International Examination Process (LEP) in 2016. Designed to provide an organizational approach for conducting efficient examinations from the first contact with the taxpayer through the final stages of issue resolution, LEP is described in IRS Publication 5125 (2-2016). See also IRM 4.46 LB&I Examination Process. Many aspects of LEP are working well; in particular, LEP has resulted in closer collaboration on the formulation and issuance of Information Document Requests (IDRs). The LB&I subgroup understands that the IRM is in the process of being revised to reflect the new issue-based “campaign” initiative and that additional changes will likely be made to LEP as LB&I gains experience with the campaign process.

Following discussion with LB&I, the subgroup determined to provide comments and recommendations on three aspects of LEP:

1. Metrics—What metrics can be used to measure the effectiveness of LEP?
2. AOF—Part of the LEP is the Acknowledgment of Facts (AOF) presented to the taxpayer by the examination team for unagreed issues. How can the AOF process be improved?
3. Coordination and Communication—How can communication and coordination in LEP be improved to ensure efficient and timely closure of examinations?

In developing its recommendations, the subgroup invited input from other professional colleagues including Tax Executives Institute members, other tax advisers and LB&I taxpayers, but the comments below represent the views of the IRSAC itself.

Metrics

Based on the work of the subgroup, the IRSAC believes that qualitative and quantitative metrics are needed to assess both how well LEP is working and to identify

possible improvements. Qualitative metrics could be obtained through post-examination surveys seeking taxpayer and examination team feedback on what worked and did not work in the process. To ensure candid feedback, it may be best that the surveys are submitted to a third party or other group that has not been involved in the taxpayer examination. When aggregated with data from multiple taxpayers, the feedback could be helpful for identifying systemic issues and areas for improvement. It could also be useful to improve subsequent examinations of a particular taxpayer.

There are several areas where quantitative measures could be helpful, beginning with determining the effectiveness of the examination plan. One of the key aspects of LEP is the preparation of an examination plan that articulates the issues to be examined, lays out a timetable for the examination, and identifies the personnel involved. While the presence or absence of particular factors may not, by itself, signal the optimal (or suboptimal) application of the LEP, the IRSAC believes that in measuring the effectiveness of the planning process, the following metrics be considered:

- Was the examination completed on time (measured by the initial examination plan)? If not, were the reasons for the variance from plan discussed by the parties and documented in the case file?
- Were extensions of the statute of limitations required? If so, why, how many, and for how long?
- Were new issues raised that were not included in the initial plan? What resources were devoted to these issues? Was the reason for the addition of the new issues documented in the case file?
- Were IRS subject matter experts (*e.g.*, economists, counsel, computer specialists) involved in the examination who were not identified in the initial plan?
- How many of the issues not included in the initial plan resulted in tax adjustments?

Monitoring these factors, and following-up when appropriate, will help determine how effective the planning process is, identify ways in which planning can be improved, and make the examination run more smoothly.

Quantitative measures associated with the conduct of the examination could also be helpful:

- Average time IDRs are outstanding.
- Average time elapsed after an IDR response is submitted for the IRS to inform the taxpayer whether the response is complete or additional information is necessary.
- Time elapsed after all IDRs are answered for the examination team to issue a Notice of Proposed Adjustment (NOPA) or inform the taxpayer that there will be no adjustment.
- Average time between referral to a subject matter expert and receipt of advice. Form of advice received.
- Average time to close a case.

It may also be desirable to capture information on the effort required relative to the tax compliance achieved. Some issues are complex and require extensive factual development before the correctness of the taxpayer's position can be assessed. Sometimes, of course, the result of the exercise is a NOPA and a proposed assessment that is ultimately sustained (in Appeals or court). Other times, however, there may be considerable time spent when, at the end of the day, there is no adjustment. Voluntary compliance is the ultimate goal, but the amount of resources to achieve that goal must also be considered.

On the one hand, devoting significant time and resources to issues that do not produce adjustments could be a sign that LEP is not working well. On the other hand, agents should not be discouraged from dropping ("no-changing") issues that are without merit. The IRSAC is concerned that if the IRS tracks IDRs or time spent relative to the dollar amount of NOPAs issued, agents may become so invested in a particular issue their

assessment of the merits of that issue becomes skewed. Thus, we urge the IRS to consider this balance in fashioning any metrics.

Acknowledgment of Facts (AOF)

The LEP provides a process for the examination team to provide a statement of facts related to an unagreed issue and ask the taxpayer to acknowledge those facts are accurate. The goal of the AOF process is to ensure that all facts have been developed to facilitate resolution of the issue, either during the examination or, if the issue goes to Appeals, without the case needing to be referred back to the examination team for further factual development. In some cases, the AOF process has proven problematic, and we recommend the following to help achieve the intended result:

- Require a clear description of the legal issue. It may not be possible to know what facts are relevant without a clear exposition of the legal issues involved. In the proffered AOF, the examination team should explain what the legal issue is before setting forth the relevant facts.
- Ensure the AOF posits facts and not legal arguments. Some examination teams use the AOF as an advocacy piece to get the taxpayer to accept their legal theory. The AOF should be limited to facts.
- Include all relevant facts. The AOF should include not only the facts relied upon by the examination team, but also those considered relevant by the taxpayer. Discrepancies may arise because each has a different view of the issue. They may also arise because the examination team views a particular piece of evidence (*e.g.*, an email) as proving a fact, while the taxpayer believes that other evidence must also be considered before a fact is established. We understand that the process allows the taxpayer to present additional facts for inclusion or to separately state disputed facts, but not all taxpayers understand they have those options.
- Provide training. This is a complex area and examination teams may need additional ongoing training to better understand the process and the intended goals. Taxpayers may also benefit from better information on the process, including, if appropriate, access to training materials.

Communication and Coordination

While the goals underlying the LEP are laudable, many taxpayers have expressed concern that the LEP can result in inefficiencies and failure to close examinations in a timely manner because of the number of IRS parties involved, the sufficiency of the coordination among those parties, and the lack of access and transparency between them and the taxpayer. Taxpayer examinations can be delayed for any number of reasons (some attributable to taxpayer actions, IRS actions, or outside factors), but communication and coordination are key to managing expectations and ultimately achieving good results.

An examination of a large taxpayer can raise complex procedural and substantive issues. To address this, the examination team may involve a number of experts—Chief Counsel, International Agents, Economists, Practice Networks - including those involved in campaigns. The large number of people involved complicates coordination and communication efforts, and may make it difficult to meet agreed timetables. The involvement of a large number of people and the importance of coordination are not new challenges. The IRSAC believes it is in the interest of both the IRS and the taxpayer to conclude examinations promptly. Information is more readily available the closer in time the examination is conducted to the tax year in issue. It also provides earlier financial certainty for the taxpayer.

Recommendations

The IRSAC has the following suggestions:

1. Identify all personnel working on a case.

The IRS examination team should identify any personnel working on a case as they are engaged and the case manager should facilitate direct contact between the taxpayer and those personnel when appropriate.

2. Identify the “decision maker” for each issue.

It is often not clear who has the ultimate say so on a substantive issue. The IRS should decide who that individual is and tell the taxpayer.

3. Make a single examination manager accountable.

Give the case manager or other identified person express authority over administrative aspects of the case, *i.e.*, over everything other than substantive tax matters. This would include examination scope, materiality thresholds, years under examination, cycle time, IDR timing and volume, and all other organizational aspects of the examination. That individual should then be held accountable for smooth conduct and timely closure of the examination. Diffusing this authority, or failure to hold individuals accountable, is a recipe for delay. The case manager will need to take initiative to ensure regular calls or meetings with the IRS personnel involved as well as regular communication with the taxpayer. The case manager should also monitor the examination for instances of steadfast examiners or resistant taxpayers and take early action to rectify such situations.

ISSUE TWO: CAMPAIGNS

LB&I requested that the subgroup consider how LB&I can gain external feedback throughout the campaign process to ensure external comments are considered by LB&I so appropriate adjustments can be made to individual campaigns and the campaign process in real time.

Background

Due, in part, to decreased funding and staffing, LB&I has undertaken a major reorganization a principal aspect of which is to transition much of its examination work from its historical enterprise-based examination system to a more issue-based system. A key aspect of this revised approach is LB&I's focusing less on traditional examinations of large taxpayers and more on issue-specific compliance "campaigns." According to TIGTA's report, "The Large Business and International Division's Strategic Shift to Issue-Focused Examinations Would Benefit From Reliable Information on Compliance Results," No. 2016-30-089 (Sept. 14, 2016), LB&I indicated that the majority of the future examination workload will be selected using "campaigns."

The campaign approach shifts the task of identifying issues from revenue agents in the field to a more centralized risk-based assessment approach relying on the expertise of subject matter experts. LB&I published an agile development model, which features an "integrated feedback loop," to demonstrate how LB&I will identify, develop, and adapt to new compliance issues. The integrated model illustrates how LB&I will use data analysis, as well as feedback from examiners (and other participants in the process), to identify areas of potential non-compliance for campaign consideration. An initial analysis is performed to describe and scope the issue, for example, determining the number and types of tax

returns potentially involved, the resources required to address the issue, and whether the issue involves permanent or temporary change in tax.

If the scoping phase indicates that the non-compliance issue is potentially significant, the campaign development phase will begin. The potential campaign issue will be referred to the appropriate IRS Practice Area to analyze the legal authorities involved, determine what training will be necessary, study the resources necessary to address the issue, consider the best treatment streams to bring taxpayers into compliance, and determine the tax return population with the issue present. Potential campaign issues are then presented to the Compliance Integration Council, which includes LB&I leadership, for consideration and approval. As part of the approval process, the council considers whether additional information is necessary or changes to the potential campaign are required, and whether resources exist within LB&I to address the issue.

After a campaign is announced LB&I moves to an execution phase by contacting the taxpayers whose returns include the campaign issue, applying the treatment streams, and resolving cases. The LB&I leadership assigned to each campaign hosts “network” calls with agents examining taxpayers with the campaign issue. The progress of each campaign will be monitored by LB&I (using various metrics) to determine whether taxpayer behavior is changing as a result of the campaign or if different treatment streams (including revised forms, published guidance, etc.) will be required to accomplish the goals. The monitoring phase is also important to determine whether resources are being used efficiently or changes are necessary.

The first set of campaigns was announced on January 31, 2017. LB&I identified 13 campaigns involving various types of non-compliance concerns. LB&I has publicly stated

that it will continue studying additional potential non-compliance issues and add new campaigns in the future. LB&I has emphasized that the “integrated feedback loop” has an external as well as an internal facet. Hence, LB&I has stressed the importance of working with taxpayers and the practitioner community to ensure its views regarding various issues that may or do present risks are properly articulated.

LB&I has also pledged to maintain a dialogue with taxpayers, practitioners, and other stakeholders on campaign development and other important tax administration issues. As part of its efforts to promote transparency and an understanding of the campaign process and the initial tranche of campaigns, LB&I sponsored a number of webinars to explain the new campaigns and allow external stakeholders to ask questions.

Recommendations

In developing its recommendations, the subgroup met with LB&I executives, studied articles, press, and other publications discussing the campaign approach, and collected feedback directly from taxpayers, tax practitioners, and other external stakeholders. Based on the subgroup’s work, the IRSAC recommends the following:

1. More Transparency will Result in External Feedback

LB&I should strive to become more transparent by publishing (and periodically updating) information regarding the overall campaign structure and the specific campaigns. The information should include training manuals for revenue agents working campaign cases, any changes to specific campaigns, and to the extent disclosure would not undermine tax administration the metrics for each campaign. The IRSAC believes that transparency by LB&I will naturally produce the external feedback that LB&I is seeking. In addition, it

may have the correlative effect of encouraging self-correction and voluntary compliance by taxpayers that may not be initially identified as the subject of particular campaigns.

Some examples of activities LB&I may consider undertaking are:

- hosting more public meetings with different external groups (*e.g.*, professional associations);
- publishing FAQs and feedback received on the campaign process, particular campaigns, and soft letters used as campaign treatment streams;
- hosting presentations through the IRS Office of National Public Liaison; and
- reviewing articles published in the tax press regarding campaigns on irs.gov.

2. Feedback through IRS Revenue Agents

LB&I should assess ways to use revenue agents to gather and communicate external feedback to LB&I leadership. The subgroup understands from discussions with LB&I leadership that a list of “Standard Questions” has been developed for revenue agents who are examining campaign cases to provide certain information regarding the cases they are working on. The questions cover various topics including whether: adequate training is provided; the specific campaign issue warrants examination; an adjustment was proposed; the applicable treatment stream is an effective way to achieve the compliance goal; and the revenue agent has any overall feedback regarding the campaign being worked. The IRSAC recommends that these standard questions be expanded to include questions that would solicit external feedback provided to the revenue agents working the campaign cases.

Solicitation of external feedback should be encouraged by LB&I during campaign training sessions. The feedback provided by revenue agents should include any comments or written communications received addressing specific campaign issues. The “network” calls could also be a platform for revenue agents to provide the external feedback received during the examination.

During the scoping phase of campaign development, LB&I should review responses to Information Document Requests (IDRs) and other communications received from taxpayers and other external stakeholders during examinations of the same issues that are being assessed for campaign consideration. Revenue agents who suggest a campaign could be required to include helpful external responses to IDRs covering the suggested campaign issue.

3. Feedback through Practice Networks

LB&I should consider publishing detailed information on announced campaigns in the same manner currently used in respect of Practice Units. The purpose of the Practice Units is to provide IRS staff with explanations of general tax concepts as well as information about a specific type of transaction. The publication of the Practice Units is intended to advance transparency generally, which could prompt feedback from external stakeholders that facilitates the updating, correction, or other refinement of the Practice Units. LB&I leadership has stated that the use of Practice Units will continue to evolve as the compliance environment changes and new insights and experiences are contributed. The Practice Unit website already provides a link to an email address (lbi.practice.unit.public.feedback@irs.gov), which allows external stakeholders to provide feedback on particular Practice Units.

4. Revisions to the IRS Future State Guiding Principles to Encourage External Feedback

The IRSAC recommends that the guiding principles of the Future State be expanded to describe LB&I's interest in external feedback to shape the future state of LB&I. Currently, the guiding principles do not mention how external feedback will be used by LB&I in the new campaign approach to non-compliance. The integrated feedback loop should be edited to show how external feedback will factor into the development of campaigns.

ISSUE THREE: SCHEDULE UTP

LB&I asked the subgroup to consider how LB&I may use Schedule UTP in light of both the decreased filing thresholds and LB&I's overall shift to more issue-based enforcement. More specifically, LB&I asked the subgroup to consider how Schedule UTP may be revised to increase taxpayer compliance, yield more helpful information, enable better use of LB&I resources, and better serve taxpayers (*i.e.*, reducing their burden in eliminating the need for further probing in many cases).

Background

In previous years, the IRSAC has focused on one or more aspects of risk assessment. In continuing that work, LB&I asked the subgroup to look at Schedule UTP. Schedule UTP was first issued in 2010 and seeks to leverage information and insights derived from audited financial statements. The schedule asks for a concise description of tax positions in respect to which the taxpayer of a specified size establishes a reserve in its audited financial statements. When issued in 2010, Schedule UTP was required to be filed by taxpayers with more than \$100 million in assets. The threshold was reduced in 2012 to \$50 million and then to \$10 million in 2014. The lower filing threshold has significantly expanded the number, size, and compliance profile of taxpayers required to file the form.

The IRS formally announced that it was considering adopting what became Schedule UTP in Announcement 2010-9, in which the IRS explained that it was developing a schedule requiring certain taxpayers to report uncertain tax positions in order to improve tax compliance and administration, as follows:

The information developed in the course of complying with FIN 48 or other accounting standards is highly relevant to understanding the taxpayer's tax positions and assessing how those positions affect the taxpayer's tax liability. *United States v. Arthur Young*, 465 U.S. at

815. That information also would aid the Service in focusing its examination resources on returns that contain specific uncertain tax positions that are of particular interest or of sufficient magnitude to warrant Service inquiry, as well as allowing examination teams to identify all of the issues underlying the tax returns more quickly and efficiently.

Noting that the additional reporting would take the form of a schedule that would “require the annual disclosure of uncertain tax positions in the form of a concise description of those positions and information about their magnitude,” the IRS explained that the schedule would—

not require the taxpayer to disclose the taxpayer’s risk assessment or tax reserve amounts, even though the Service can compel the production of this information through a summons. *United States v. Arthur Young*, 465 U.S. 805, 815 (1984). While the Service intends to require the reporting of uncertain tax positions, the Service is proposing to otherwise retain its existing policy of restraint as described in Announcement 2002-63, 2002-2 C.B. 72, and IRM 4.10.20.

In response to feedback from taxpayers and practitioner groups, Announcement 2010-17 sought to address concerns about the new schedule’s effective date and scope, and a draft Schedule UTP, along with draft instructions, was released in Announcement 2010-30.

The IRS received numerous comments on Schedule UTP before it was finalized. Specifically, numerous commentators stressed that the IRS’s reliance on FIN 48 information could prompt certain taxpayers to be more aggressive in their financial reporting (*i.e.*, they might become less likely to establish reserves in respect of tax items), and many others expressed concern that the disclosures required by the new form could intrude on the work product privilege. The subgroup believes that Schedule UTP, as promulgated in 2010, reflects the IRS’s balancing of those and correlative concerns.

Currently Schedule UTP requires a taxpayer to provide concise descriptions of each disclosed Uncertain Tax Position identified. There is no specific penalty applicable in respect of the failure to file a required Schedule UTP or the filing of an incomplete or inaccurate schedule.

Based on its review of the data from the schedules filed, LB&I has expressed concerns that the item descriptions provided on the schedules are in many cases not sufficient to identify, without further investigation, the actual issue in respect of which an uncertain tax position exists. Indeed, LB&I has determined that a significant number of Schedules UTPs submitted for 2010 to 2015 were either minimally compliant or not compliant at all because, for example, a description does not provide sufficient information for LB&I to understand the issue. Consequently, additional efforts on the part of LB&I were required to evaluate those tax returns and schedules. When LB&I determines that one or more of a taxpayer's descriptions are inadequate, it issues a "soft letter" to the taxpayer. In addition, if the taxpayer is under examination, the LB&I examiner may issue an IDR to the taxpayer.

Recommendations

Circumstances have changed significantly since Schedule UTP was promulgated. Faced with diminished resources, the IRS has migrated to a more issue-based examination focus, which is one of the treatment streams embodied in LB&I's "campaign" approach. While the original goal underlying Schedule UTP—assisting LB&I in identifying potential compliance issues by making greater use of audited financial statements—may be laudable, the subgroup has serious reservations about its utility in practice. While taxpayers frequently bristle at the burden imposed by new reporting requirements, usually that burden

is theoretically counterbalanced by the benefit derived by the IRS. With respect to Schedule UTP, however, the information provided to the subgroup by LB&I suggests the benefit—if any—is minimal.

To be sure, the compliance burden on any individual taxpayer may not be great, but the aggregate cost of compliance to taxpayers (as well as to LB&I) is likely significant and has only grown as more taxpayers have been required to complete Schedule UTP. Stated simply, the cost may not be worth it.

Moreover, given the history of the schedule's development (including the initial scaling back of required disclosures in response to the expressed concerns of taxpayers, practitioners, and other stakeholders) and LB&I's experiences to date, the IRSAC believes there are serious questions whether the intended benefit of Schedule UTP can ever be achieved. To answer that fundamental question, we believe additional work is needed.

Hence, the IRSAC recommends that LB&I revisit the goal of Schedule UTP in light of its experience to date, the current environment, and new campaign approach to ensuring taxpayer compliance. Once that analysis is completed, LB&I can consider whether, even if there were more informative descriptions, the data on Schedule UTP would contribute materially to achieving the desired goal. If the answer is no, the form should be discontinued. If the answer is yes, the next step would be to consider possible modifications to the form.

Specifically, LB&I should initiate an assessment of Schedule UTP, with a set deadline for determining whether Schedule UTP will be modified or abandoned. An initiative would enable LB&I to better assess what its goals are for Schedule UTP and whether and how those goals are achievable. As part of that assessment, and apropos the

large number of minimally compliant or noncompliant “concise descriptions,” the IRSAC recommends that LB&I endeavor to determine the cause of the noncompliance—is it due to ignorance of the filing requirements, the amorphous (subjective) nature of “uncertain tax positions,” or volitional noncompliance? (The reasons for minimal compliance are possibly quite different from those for noncompliance.) It seems to us that one path to answering the question would be to follow-up on the current issuance of soft letters in respect of inadequate concise descriptions.

In assessing whether Schedule UTP should be modified, the IRSAC recommends that LB&I consider, among other things, the additional compliance cost on taxpayers; the potential effect of any changes on privilege or work product; and the possible adverse effect on the preparation of financial statements. We recommend that LB&I weigh those costs against the benefit (*e.g.*, better and more useful information) accruing from any modification.

We further recommend that LB&I, as part of the initiative that the subgroup is proposing:

- Assess whether the utility of the schedule is different based on the size of the taxpayer and whether and how frequently it is audited. This effort would test the proposition that Schedule UTP yields new or more useful information in respect of smaller taxpayers (*i.e.*, those not under continual examination) than in respect of those that are part of the Coordinated Industry Case program.
- Consider whether Schedule UTP or the accompanying instructions could be modified to require more objective disclosures. As noted above, LB&I has found that a significant percentage of responses to current Schedule UTP are non- or minimally compliant. The subgroup wonders if removing the flexibility that the current schedule allows for in responding to the questions posed might lead to more useful information. We note that in prior years the subgroup likewise suggested that LB&I consider using more objective questions to risk assess issues and taxpayers, but as in those prior recommendations we recognize that there

are drawbacks with that approach as well, including the need to constantly revise the objective questions.

- LB&I seek comments from the IRSAC and other stakeholders before releasing any revision.
- After any proposed changes to the form are devised, LB&I should consider again whether the revised form will materially advance the articulated goal for the form. If not, the form should be eliminated.

**INTERNAL REVENUE SERVICE
ADVISORY COUNCIL**

DIGITAL SERVICES SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The Digital Services Subgroup appreciates the cooperation of the IRS representatives who took a keen interest in providing updates and presentations relating to the current state of the IRS's digital initiatives. We commend the Office of Online Services' (OLS') transparency and progress toward an enterprise-wide modernization that is essential for the IRS to provide 21st century customer service. Even though the IRS faces significant resource challenges, the OLS team remains passionate about and committed to providing taxpayers with quality customer service through a full suite of options.

Enterprise-wide modernization is an ambitious task requiring the IRS to invest in innovative technology, new infrastructure, and additional human resources. The additional investment will provide a significant return in the ability of the IRS to provide both highly responsive customer service and the tools required by the IRS employees who support the various customer service options. The objective is to *expand* the customer service channels, not curtail or entirely eliminate traditional, higher cost channels, in order to provide all taxpayers with the service channel of their choice. Savings achieved by use of digital channels can be redeployed to better support taxpayers through phone and in-person contact. Also, as more taxpayers opt-in to receive correspondence digitally versus paper, the IRS will realize immediate and substantial cost savings.

In this report, the Digital Services Subgroup makes recommendations on three different topics.

1. The subgroup makes several recommendations regarding the digital Tax Professional Account (TPA).

These recommendations include improving communication, committing to a deliver timeline and coordinating with industry and state agencies to identify and

implement the best solutions. The subgroup also makes recommendations on empowering taxpayers to authorize tax professionals to assist with compliance, similar to the abilities present today through paper authorization.

2. The subgroup makes recommendations for leveraging Application Programming Interfaces (APIs) to implement a framework to support real-time authorization.

This will provide taxpayers the ability to unlock their taxpayer information and import tax information into tax software. Specifically, the subgroup recommends the IRS build upon the success of the Third-Party Refund Status API Pilot Project.

3. The subgroup recommends that OLS implement a digital method to process Form 2848 immediately, thereby improving the timely assistance by representatives and reducing costs for both the IRS and taxpayers.

ISSUE ONE: TAX PROFESSIONAL ACCOUNT

Background

The IRS seeks to develop an online account for tax professionals to obtain access to their clients' tax-related information as well as to tools and services to assist their clients in meeting their tax obligations. The Tax Professional Account is a component of the IRS Future State/Third-Party Strategy in order to provide better, faster service and to improve the user experience for a tax professional community.

The IRS has achieved commendable success with the launch of the taxpayer online account. The IRSAC applauds the IRS's efforts to date, but strongly encourages the IRS to expand the online features and, in particular, to implement a digital Tax Professional Account sooner rather than later. Tax professionals require a similar level of functionality so they can assist taxpayers in meeting their compliance obligations efficiently, securely, and effectively. Maintaining momentum will move the IRS in the direction of providing taxpayers and tax professionals with the means to engage with the IRS virtually, the method of which many taxpayers now expect and demand. Delaying the availability of a Tax Professional Account would impair the IRS's ability to leverage tax professionals for customer service. Tax professionals routinely filter client questions, troubleshoot, and resolve tax issues, and intervene on behalf of taxpayers—all without requiring IRS contact. With a majority of taxpayers using a professional to prepare a return, leveraging the tax professional only makes sense. Tax professionals can also encourage the use of online account; the result will be increased adoption of online services by taxpayers.

Recommendations

1. Commit to and communicate a timeline for the release development of the Tax Professional Account.

The IRSAC understands that the IRS is facing challenges in the development of the Tax Professional Account. This initiative is resource dependent, and currently lacks committed funding and competes for available resources. For the IRS's strategic plan to be a feasible, however, it must honestly reflect the objectives of the IRS and the needs of all taxpayers.

The IRS conducted interviews with tax professionals to better understand today's workflow in resolving issues with the IRS and identify opportunities for improving the system. Tax professionals overwhelmingly stated that having online access and client authorization to information would be extremely beneficial, and more important, allow them to provide the level of customer service that taxpayers expect.⁷

The 2017 IRS Nationwide Tax Forums provided tax professionals with a vision of the Future State, including demonstrations of the prototype digital Tax Professional Account. Tax professionals provided feedback through individual interviews and unambiguously expressed interest in helping the IRS get to the Future State.⁸ For this to happen, the IRS must commit to a strategy and actionable timeline to keep key external stakeholders engaged.

⁷ IRS Tax Professional Interview Findings, Journey Maps, Personas and Opportunities (July 8, 2016).

⁸ See <https://www.aicpa.org/ADVOCACY/TAX/DownloadableDocuments/recommendation-for-21st-century-irs.pdf> (“As tax practitioners, we advise millions of taxpayers on tax matters, assist them with compliance responsibilities, and represent them before the IRS. We understand what is working and not working with tax administration from both taxpayer and practitioner perspectives. As one of the IRS's most significant stakeholders, we are both poised and committed to being part of the solution.”).

Regrettably, the digital Tax Professional Account prototype offers no promise of functionality, has no backend data structure or a release date, and provides little detail on its features or release dates. At this point, the IRS describes the account as “notional,” meaning that it is still an idea rather than a critical customer service strategy. Thus, it could leave the tax professional community questioning the IRS’s commitment to the delivery of this invaluable tool.

The 2016 report of the Electronic Tax Administration Advisory Committee (ETAAC) recommended the IRS develop tangible goals and timelines for effectively delivering on its plans and staying committed to its digital taxpayer service plans in coordination with important stakeholders.⁹

The IRSAC echoes the ETAAC’s recommendations. Secure account access would allow tax professionals to meet their clients’ expectations, increase voluntary taxpayer compliance, streamline and reduce expensive service channels, and leverage the trusted client relationships to facilitate a digital-first approach to interacting with the IRS.

2. Implement techniques proven successful by industry and state agencies.

The IRSAC recommends that the IRS work with industry and government partners to solve tax administration challenges, such as improving taxpayer service through an online account. Industry partners can provide insight and best practices to help the IRS design a 21st century taxpayer service experience and achieve taxpayer adoption of the IRS digital service strategies. The IRS should also engage and collaborate with state departments of revenue to find and implement the best solutions.

⁹ The Electronic Tax Administration Advisory Committee’s June 2016 Annual Report to Congress, at 12, available at <https://www.irs.gov/pub/irs-prior/p3415--2016.pdf>.

States such as California,¹⁰ Illinois, Massachusetts, and Hawaii have implemented online accounts for tax professionals to serve their clients. These states face the same taxpayer service (and budget) challenges as the IRS but have prioritized allocation of resources to streamline processes, improve efficiencies, and improve taxpayers' experience. They have strategically focused on digitally enabling tax professionals as a key strategy in reducing its customer service burdens, increasing adoption of taxpayer digital channels, and improving overall customer service by providing round-the-clock account information and functions to its taxpayers. As these states have done, the IRS should prioritize and implement digital accounts for tax professionals to achieve similar outcomes.

3. Empower taxpayers to authorize their tax professionals to assist with compliance.

Taxpayers should be able to authorize third parties, such as tax professionals, Volunteer Income Tax Assistance (VITA) volunteers, and tax software providers to electronically receive tax account information as part of the tax preparation process.¹¹

Security is at the forefront of concerns, and the IRS will need to expand monitoring and responsiveness to ensure a high level of security. This includes use of security best practices such as behavior analytics to understand the user's online experience and identify suspicious behavior.

Taxpayers will likely take a more active role in controlling their own accounts, but the online options should include capabilities for taxpayers to control information and actions that can be conducted by the third party. The 2015 Taxpayer Advocate Annual Report recommends against boilerplate broad access to third parties with minimal

¹⁰ State of California, Franchise Tax Board Internal Revenue Service Oversight Board Public Forum, "Pivoting Away from Paper" (May 13, 2014).

¹¹ ETAAC 2016 Annual Report to Congress, Key Outcome 2 recommendation 15, *available at* <https://www.irs.gov/pub/irs-pdf/p3415.pdf>.

restrictions. Tax professionals should only have privileges granted by the taxpayer by means of a third-party authorization, such as a POA (enabled by IRS Form 2848). Taxpayers should also have the ability to immediately revoke any third-party authorization. All of the capabilities should be enabled digitally.

4. Provide capabilities for tax professionals to act on behalf of their clients.

Tax professionals will be instrumental in educating taxpayers and the key to increasing the taxpayer's adoption of the IRS's online services. They should be treated as valued partners in tax administration and should be able to conduct via the online account the same activities they currently perform on paper.

Tax professionals with authorization should be able to receive access to the same information the taxpayer receives. Secure messaging, document exchange capabilities, and video communication channels could enable tax professionals to interact with the IRS on behalf of their clients in a secure, efficient, and effective manner.

5. Architecture and infrastructure sufficient to support current and future development technology.

The IRS's infrastructure needs to support a continually evolving tax ecosystem and future technologies such as Chat Bots and Artificial Intelligence (AI). It is vital to plan for today's development projects but also to continue planning for future projects that will improve taxpayer service. Leveraging successful customer service models currently used in private industry (such as Chatbots and AI)¹² will keep the IRS moving forward to delivering 24/7 taxpayer service.

¹² See <https://ymedialabs.com/using-chat-bots-banking-industry/#2>.

ISSUE TWO: THIRD-PARTY APPLICATION PROGRAM INTERFACES (APIs)

Background

APIs present several unique challenges that the IRS will have to resolve to achieve success. The APIs need to be agile and react fast to the constantly changing environment. Evaluating the input from a variety of stakeholders (service providers, software developers, tax professionals, and other relevant third parties) has provided the IRS with a list of the most important APIs as well as guidelines for assessing APIs.

APIs provide the IRS the capability to focus on the customer's needs rather than managing data presentation. APIs also enable third parties to better participate in digital solutions. The IRS needs to move more in this direction to also enable authorized third-party software companies to use the data effectively in serving their customers. Development of APIs signal to the tax industry that they are a valued partner and that the IRS wants to work in partnership with industry to solve issues.

The IRSAC recommends that the IRS take a strategic approach on how the IRS can remove obstacles for API use. Well-defined parameters are vital to simplify the design of these capabilities. For example, the current framework does not support real-time authorization. A modernized approach will provide taxpayers with the ability to unlock their taxpayer information and to import tax information into tax software.

In order for APIs to enable third-party providers, the IRS must address and solve how third parties will be authorized via APIs. This issue is not as simple as enabling an individual tax pro or individual third party to receive information. It involves providing authorization to the person(s) through an application and likely outside of the current authorization framework. To be effective, the application will have to have the capability

for the user to be authorized by the taxpayer outside of the current authorization process (*i.e.*, filing of Forms 2848 or 8821 or through a third-party designee when a return is filed).

The IRS will need to create a taxpayer centered authorization solution, empowering taxpayers to choose third-party designees. Specifically, a click-through authorization process should be developed that streamlines, simplifies, and automates the process for taxpayers to authorize the IRS to share refund data with a third-party designee.

The IRS needs to develop a holistic API strategy that emphasizes consistency, robustness, improved user experience, and efficiency. The IRS also needs to develop a long-term API strategy including funding for the delivery of these services. The IRS will also need to look at what kind of IT systems changes are needed to support the rollout of an API strategy that prioritizes data as well as the back-end services. After the API long-term and short-term strategies are developed, they need to be clearly communicated to both internal and external stakeholders.

Recommendations

1. Identify types of beneficial API for incoming information received early.

As part of a long-term strategic approach to customer service, the IRSAC recommends the IRS develop APIs for information statements and transactions. A logical beginning point could start with an API that imports W-2s and 1099s from the IRS and then allow the transfer of W-2 and 1099 information for import to tax software.

The IRSAC recommends the IRS move forward in building the capabilities for utilizing APIs. The following are some examples of API's that the IRS may want to develop:

- Verify Income—Provides the Adjusted Gross Income (AGI) of a taxpayer for a given year. Could be utilized for a variety of purposes including financial and educational institutions.
 - Refund Status—Returns the current status of a taxpayer’s refund. May be used by the taxpayer via IRS.gov, the mobile application IRS2Go, or via a third-party tax preparation firm on behalf of a taxpayer.
 - ACH Payment—A suite of services to allow a taxpayer to make a payment, schedule payments, edit/delete payments, view pending payments, or view past/processed payments. Recommended to be included via IRS.gov website.
 - Online Payment Agreement—Functionality will validate a taxpayer’s eligibility for establishing an online payment agreement, as well as creating a new agreement and maintaining existing agreements. Could be utilized by multi-channels.
 - Calculators as a service: (Earned Income Tax Credit), OIC (Offer in Compromise), Energy Star rebate calculator. Could be utilized by multi-channels (*i.e.*, IRS.gov and software providers).
 - Assigning a payment from one tax period to another—API would enable taxpayer or tax professional to move a payment to the correct period. Would be very beneficial for the taxpayer and tax professional to assist in resolving payments applied to the wrong period.
 - Prior year(s) tax information to tax preparer—API would enable tax preparer to look up prior year tax information for their client. Would be extremely helpful to the tax professional.
 - PTIN (Preparer Tax Identification Number) lookups by the taxpayer—Would assist taxpayer.
2. Enable real-time and robust authorization methods for tax software.

The current framework does not support the real-time authorization of software to access taxpayer data. The IRS is developing an enterprise-wide authentication strategy for all IRS interactions and collaborating with the Security Summit on this strategy.

As reported in the ETAAC's 2016 report to Congress,¹³ the current limits on third-party authorizations are a significant obstacle to enabling transfer of account and compliance information to software providers. Software providers need the ability to receive a broader scope of a taxpayers' account information including, but not limited to, current year information, prior-year return and account information, compliance activity and status.

Expanding the current process taxpayers grant access to tax information through Form 8821 and Form 2848 increases the complexity with a digital platform. The IRS needs to create an authorization process for software providers to receive tax account information and transfer it to taxpayers and their authorized tax professionals that support a good user experience.

3. Build upon the success of the Third-Party Refund Status API Pilot Project

The IRSAC recommends that the IRS build upon the success of the Third-Party Refund Status API Pilot Project. The pilot was designed to inform individual taxpayers of their Form 1040 individual income tax refund status via their self-preparation tax software company, *i.e.*, taxpayers could learn the status of their income tax refund through their software provider instead of having to call the IRS or visit the IRS website.

Three iterations of the pilot project were successfully implemented during the 2015, 2016, and 2017 filing seasons. In each year, the IRS refined and improved the pilot program for the taxpayer and the participating software companies. Several key objectives have been met through this pilot: (1) the IRS delivered an externally-facing API, developing a better understanding of challenges associated with sharing business functionality with

¹³ ETAAC 2016 Annual Report to Congress, <https://www.irs.gov/pub/irs-pdf/p3415.pdf>, Key Outcome 2 recommendation 15.

external partners (in this case software developers); (2) the IRS learned about third-party taxpayer authorization requirements and processes; and (3) the IRS validated a security model that supported external partners. In addition, during the pilot, the IRS captured detailed metrics to encourage accurate sizing of information system changes that would be required for full implementation and rollout of this program.

The pilot was limited in scope to a small number of software companies that participated and the daily volume had a cap. The IRSAC recommends that the IRS continue the pilot as it develops full-scale implementation plans for this API. Because discontinuing the pilot project while working on full-scale implementation may give an incorrect impression that the IRS is not committed to moving forward on the expansion of the program or future development of APIs, we believe this would be a step backward. In our view, this is a great example of what taxpayers need, want, and expect from the IRS. It also is an excellent example of how the agency can partner with industry to deliver improved service to the taxpayer via digital tools. Hence, the IRSAC recommends the IRS commit to a time frame for the expansion and rollout of this pilot and build upon the success of this pilot for future API expansion and growth.

ISSUE THREE: FORM 2848 POWER OF ATTORNEY AND DECLARATION OF REPRESENTATIVE

Background

Form 2848 is used to authorize an individual to represent a taxpayer before the IRS and is an essential component of tax professionals providing services to taxpayers. The representative must be eligible to practice before the IRS pursuant to Treasury Circular 230 (such as attorneys, certified public accountants, appraisers, and enrolled agents).¹⁴ Certain other individuals (such as immediate family members, officers, partners, employees, and fiduciaries) may also represent a specific taxpayer before the IRS because of their special relationship with a taxpayer as long as they present satisfactory identification and proof of authority to represent the taxpayer.¹⁵

Currently, Form 2848 is only allowed to be mailed or faxed to the IRS. The IRSAC recommends that the IRS implement a digital method to process Form 2848 and to provide notification when a Power of Attorney (POA) is received, accepted, and withdrawn. In addition, the IRSAC recommends that the IRS review the digital mechanisms offered by various state agencies to authorize tax professionals to act on behalf of taxpayers.

Recommendations

1. Implement a Digital Authorization Method to Process Form 2848

A power of attorney needs to be processed before an individual may assist a taxpayer who has been contacted by the IRS in a variety of situations, and often the requested responses are time sensitive. For most taxpayers, contact by the IRS causes stress

¹⁴ Publication 947, at 3, “Who Can Practice Before the IRS?,” *available at* <https://www.irs.gov/pub/irs-pdf/p947.pdf>.

¹⁵ Publication 947, at 4, “Other individuals who may serve as representatives,” *available at* <https://www.irs.gov/pub/irs-pdf/p947.pdf>.

and anxiety. The lengthy processing times associated with the current manual processing of Form 2848 prolong this stress and anxiety and increase the possibility that taxpayers will not receive the benefit of representation in critical matters, such as levy actions.

According to the Internal Revenue Manual,¹⁶ third-party authorizations on Form 2848 are processed onto the Centralized Authorization File (CAF) at two Wage & Investment (W&I) sites—the Memphis and Ogden Accounts Management Campuses. International third-party authorization requests are processed only at the Philadelphia Accounts Management Campus. Items received in the CAF Functions are processed first in first out (FIFO), regardless of the method used to submit the authorizations. Generally, receipts are processed within five business days, and all receipts (except international bulk receipts) are date stamped. Processed authorization forms are sent to the Customer Account Services (C-Site) in Kansas City after all actions are taken, and the authorization is processed to the CAF. There are approximately 170 CAF Tax Examiners for all three CAF sites. A summary of the 2016 CAF receipts provided by Wage & Investment follows:

¹⁶ Internal Revenue Manual, Part 21, Chapter 3, Section 7, *available at* https://www.irs.gov/irm/part21/irm_21-003-007r.html.

FY 2016 CAF receipts — Receipts are not tracked by form types they are broken down by domestic, international fax and paper (mail). Volumes include all authorizations types: Forms 2848, Power of Attorney; Forms 8821, Tax Information Authorization; and Forms 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return. International forms are processed exclusively in the Philadelphia CAF unit, and TAS Expedite forms are processed only in the Ogden CAF Unit. In an effort to maintain the five-business day processing timeframe Philadelphia CAF began processing a limited number of domestic fax receipts in 2016.

	Memphis	Ogden	Philadelphia	Enterprise Total
DOM FAX	1,302,206	1,240,556	46,949	2,589,711
(Int'l) FAX BULK	NA	NA	103,777	103,777
REVOCATIONS/CAF77	137,186	160,725	4,641	302,552
INTL PAPER	NA	NA	80,384	80,384
TAS EXPEDITE	NA	2,047	NA	2,047
INTL FAX	NA	NA	72,431	72,431
DOM PAPER	332,889	258,009	NA	590,898
Total	1,772,281	1,661,337	308,182	3,741,800

This recommendation is not new. The IRSAC has provided recommendations related to digital authorizations in its 2013, 2015, and 2016 annual reports.¹⁷ Since at least 2014, the ETAAC has addressed the desirability of digital authorizations in its annual

¹⁷ 2013 IRSAC Public Report, Wage and Investment Subgroup Report, Issue 1, *available at* <https://www.irs.gov/pub/irs-utl/2013%20IRSAC%20Full%20Report.pdf>.

2015 IRSAC Public Report, Small Business/Self-Employed and Wage & Investment Subgroup Report, Issue 4, Recommendation 4b, *available at* <https://www.irs.gov/pub/irs-utl/2015-IRSAC-Full-Report.pdf>

2016 IRSAC Public Report, Small Business/Self-Employed and Wage & Investment Subgroup Report, Issue 2, Recommendation 10, *available at* <https://www.irs.gov/pub/irs-utl/2016irsacfinalreport.pdf>.

reports.¹⁸ The IRS Future State addresses online third-party authorizations.¹⁹ The National Taxpayer Advocate has addressed issues related to Form 2848 in multiple reports. For example, in her *Objectives Report to Congress for the Fiscal Year 2017*, the National Taxpayer Advocate states, “The IRS should bring IRS Form 2848, *Power of Attorney and Declaration of Representative*, into the 21st century by building the online account system to provide specific checkboxes addressing authorizations for each type of action a preparer could take on behalf of the taxpayer on the online account system.”²⁰

Finally, on April 3, 2017, multiple associations (American Institute of CPAs, alliantgroup, LP, Crowe Horwath, LLP, National Association of Enrolled Agents, National Association of Tax Professionals, National Conference of CPA Practitioners, National Society of Accountants, National Society of Tax Professionals and Padgett Business Services) submitted the “Ensuring a Modern-Functioning IRS for the 21st Century” framework to the Chairmen and Ranking Members of Congress of the House Ways and Means Committee and the Senate Finance Committee.²¹ This framework includes recommendations regarding a digital mechanism for POAs and disclosure authorizations and replacing the CAF with a consolidated online solution utilizing electronic signatures and an algorithmic-driven approval process that is as close to real time as possible.

¹⁸ 2014 ETAAC Report, Key Outcome 4, Recommendation 9, *available at* <https://www.irs.gov/pub/irs-prior/p3415--2014.pdf>

¹⁹ 2015 ETAAC Report, Key Outcome 3, Recommendation 11, *available at* <https://www.irs.gov/pub/irs-prior/p3415--2015.pdf>

²⁰ 2016 ETAAC Report, at 31 and 32, *available at* <https://www.irs.gov/pub/irs-pdf/p3415.pdf>

¹⁹ IRS Future State, Working Draft Dec 2016, at 9, *available at* https://www.irs.gov/pub/newsroom/future_state_102v2.pdf

²⁰ Objectives Report to Congress for the Fiscal Year 2017, Volume 1, at 111, *available at* https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-JRC/Volume_1.pdf

²¹ Ensuring a Modern-Functioning IRS for the 21st Century, at 10, *available at* <https://www.aicpa.org/ADVOCACY/TAX/DownloadableDocuments/recommendation-for-21st-century-irs.pdf>

The IRS previously allowed the electronic filing of Form 2848 through e-Services. In 2013, however, the IRS retired the Disclosure Authorization and Electronic Account Resolution e-Services products. In MSP#18 of her 2013 Annual Report to Congress, the National Taxpayer Advocate addressed concerns of the IRS's "Sudden Discontinuance of the Disclosure Authorization and Electronic Account Resolution Applications."²²

In 2013, the National Taxpayer Advocate stated that the IRS did not modify its marketing plan once low usage became a concern, and noted that nearly 4,000 practitioners signed a petition urging the IRS to reverse its decision.²³ In previous Annual Reports, the National Taxpayer Advocate had written about the problems experienced with processing authorization requests through the CAF unit. "Specifically, the ineffective and outdated high-speed fax machines used by the CAF have failed to transmit all pages, break down frequently, and sometimes do not even receive authorizations."²⁴ The processing times were addressed in the National Taxpayer Advocate's 2012 Annual Report to Congress—*Most Serious Problem: IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation.*²⁵

2. Notification

Often, the taxpayer and individual representative have no way of knowing if a Form 2848 has been received or processed until either the individual representative gains access information via e-Services or the taxpayer receives a letter from the IRS. When a

²² National Taxpayer Advocate 2013 Annual Report to Congress, Volume 1, MSP#18, at 188, *available at* <https://taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Volume-1.pdf>

²³ National Taxpayer Advocate 2013 Annual Report to Congress, Volume 1, MSP#18, at 195, *available at* <https://taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Volume-1.pdf>

²⁴ National Taxpayer Advocate 2013 Annual Report to Congress, Volume 1, MSP#18, at 195, *available at* <https://taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Volume-1.pdf>

²⁵ National Taxpayer Advocate 2012 Annual Report to Congress, MSP#16, at 23, *available at* <https://taxpayeradvocate.irs.gov/2012-annual-report/downloads/2012-Annual-Report-to-Congress-Executive-Summary.pdf>

representative has to contact the IRS several times to confirm the processing of a Form 2848, more IRS resources are consumed, and the taxpayer may incur additional fees for the representative's time. It appears the IRS is starting to offer email notifications for IRS DirectPay and EFTPS. Email notifications to taxpayers and individual representatives to confirm a POA has been received, processed, or withdrawn should be included with any digital method of processing Form 2848.

In addition, several states offered confirmation of receipt which helps relieve taxpayer and tax professional stress regarding if the information has been received. New York, Colorado, California, and Illinois are a few of the states that the IRS may want to review.

3. State Tax Agencies and Uniformity

Many states have implemented digital authorization, as well as hybrid solutions which include accepting PDFs of the POA via email. The State of Illinois recently researched and surveyed the 50 states. Of the 50 states that were recently surveyed—

- 100% accept mail submissions.
- 48% accept email submissions.
- 72% accept fax submissions.
- 16% accept online submissions.

Many states accept a combination of the various methods and have much shorter turn-around time frames for processing the POAs that are submitted online or via email. In addition, several states confirm receipt, which helps relieve taxpayer and tax professional stress. The IRSAC recommends that the IRS reviews the systems in New York, Colorado, California, and Illinois if it has not already done so. In addition, many of the states are looking at uniformity as they develop and implement more electronic offerings related to online accounts and POAs. Based on experience by the states regarding development and

implementation of electronic filing and payment programs, there could be substantial benefits if there were a uniform and standard platform for the IRS and the states for processing a POA.

Conclusion

Digital technology is available with other IRS services, and the attendant security, authentication, and authorization issues are being addressed. Online accounts for individual taxpayers has been developed and is available through irs.gov. In addition, Direct Pay provides for secure payment of taxpayer liabilities, the e-Services platform provides secure access to selected taxpayer information by an authorized individual, and EFTPS is used to process sensitive payroll data. Finally, according to Online Services, digital communication is currently being tested on a limited basis (including the use of secure messaging with selected SBSE correspondence exams).

Thus, the IRSAC recommends that the IRS implement a digital method for processing Form 2848 as soon as possible. The current methods are inefficient, outdated, not cost effective, and do not provide any type of verification or authentication. Providing a method to quickly, efficiently, and securely process Form 2848 through a digital method will not only provide peace of mind to taxpayers and allow timely assistance by representatives, but will permit better use of IRS resources. In addition, in our opinion, the instructions and information currently requested on Form 2848 need to be revised. More specific and detailed authorizations should be provided, and the instructions should be revised to conform with the filing requirements. Finally, any digital processing method should make it easier for taxpayers to authorize multiple individuals and to replace or revoke a prior authorization.

**INTERNAL REVENUE SERVICE
ADVISORY COUNCIL**

**SMALL BUSINESS/SELF-EMPLOYED AND WAGE & INVESTMENT
SUBGROUP REPORT**

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Small Business/Self-Employed (SB/SE) and Wage & Investment (W&I) Subgroup has five members whose varied practices are those of CPAs, enrolled agents, attorneys, academia, small business, and government. The members' collective tax experience includes tax return preparation, tax planning and advice, and representation of individual and business taxpayers from many segments of our society with a wide range of income on diverse issues before all levels of the IRS and in the courts. We consider service on the IRS Advisory Council a privilege, and we are pleased to present this report. We thank SB/SE Commissioner Mary Beth Murphy, W&I Commissioner Ken Corbin, and the IRS personnel of their respective divisions for their cooperation and assistance in the development of this report. We especially thank our liaisons for their guidance and facilitation of our efforts during the year.

The SB/SE and W&I divisions requested our assistance with the five topics presented in this report. Our report addresses:

- 1. The W-2 Verification Code pilot program**
- 2. The development of a system to allow taxpayers to lock their tax accounts to protect the integrity of their tax returns**
- 3. Marketing/promoting priority practitioner service improvements to the practitioner community**
- 4. The implementation of a program to engage private debt collectors to collect outstanding inactive tax receivables**
- 5. The development of new collection notices to improve taxpayer responsiveness.**

These topics share the common themes of protecting taxpayers and ensuring the integrity of the tax collection system, the importance of clear and effective communication

to improve the delivery of IRS services, and the development of systems and practices to improve the efficiency of IRS operations.

ISSUE ONE: W-2 VERIFICATION CODES AND ENGAGING TAX PRACTITIONERS

Executive Summary

When a fraudulent tax return is filed claiming a refund, it often includes a fraudulent Form W-2, *Wage and Tax Statement*, to support information on the return. Since the IRS's ability to match W-2 data on tax returns with employer data in the early part of the filing season is limited, there is significant opportunity for improper refunds to be issued. The IRS employs several filters to screen for fraudulent returns. A return displaying characteristics indicating a possible fraudulent return undergoes additional screening. This additional review delays refunds for those returns that ultimately successfully pass the screening process. W-2 verification codes (VCs) provide another level of security to authenticate claims of wages and withholding on electronically filed tax returns. This will allow the IRS to continue processing returns that might have otherwise been pulled for review and to more quickly process refunds to taxpayers. The IRS asked for the IRSAC's recommendations on both the functionality and utilization of the W-2 VC and on how to better engage the tax practitioner community to increase usage.

Background

The filing season for submitting electronically filed tax returns generally opens before the IRS can match W-2 data submitted on tax returns with W-2 data submitted by employers and payroll service providers (PSPs). In the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Congress advanced the deadline for employer W-2 submission to January 31.²⁶ Even with this earlier filing deadline, and assuming that the

²⁶ Protecting Americans from Tax Hikes Act of 2015, § 201. Prior to 2017 filing season (for 2016 returns), W-2 data could be submitted as late as the last day of February, if filed on paper, or the last day of March, if filed electronically.

employer/PSP information is processed and available by mid-February, there remains a significant gap between the start of the filing season and the time when the IRS can process and use the matching data from legitimate W-2 forms to screen for refund fraud. Thus, there are several weeks during which tax returns are being electronically filed and refunds are being processed by the IRS with limited ability to match W-2 data.

While the PATH Act mandates delaying refunds (until mid-February) for tax returns claiming the Earned Income Credit and Advanced Child Tax Credit,²⁷ there remains significant opportunity, especially early in the filing season, for fraudsters to submit fraudulent refund claims without claiming these refundable credits.

IRS statistics from the 2017 filing season (for 2016 returns) show the highest number of tax returns, by week, were transmitted during the week ending February 4, 2017, with a close runner-up being the following week ending February 11, 2017. Consequently, even with the PATH Act's earlier deadlines and the additional provisions for delaying refunds of refundable credits, there is a period during which W-2 information is not available to review for fraudulent returns. The IRSAC believes VCs provide an important means of authenticating W-2 data during this period.

The W-2 VC pilot program developed from discussions between the payroll reporting agent²⁸ (RA) community and the IRS and was incorporated into the IRS Security Summit. The VC is a 16-character combination of numbers and letters incorporating elements of data unique to each W-2 form. The VC is generated by the RA based on taxpayer and employer data and an algorithm supplied by the IRS. The VC is printed on

²⁷ Protecting Americans from Tax Hikes Act of 2015, § 201.

²⁸ Reporting agents are payroll service providers authorized by their clients, via IRS Form 8655, *Reporting Agent Authorization*, to sign and file returns on behalf of those clients. The IRS hosts a quarterly Reporting Agent Forum.

copies B (federal copy) and C (employee copy) of the W-2 form and is entered into the tax return software by the taxpayer or tax preparer along with other required W-2 data.

The 2016 filing season (for 2015 returns) saw the initial W-2 VC pilot program involve four RAs and two million W-2 forms. The IRS, in post-processing analysis, independently calculated the VCs and compared them with the VC entered by the taxpayer or tax preparer. When the VC was entered, the validation rate was 94 percent. The 2017 filing season (for 2016 returns) expanded the pilot program by including seven RAs and 47 million W-2 forms. If the taxpayer or preparer had a W-2 with a VC, the VC was entered 34 percent of the time. When the VC was entered, it was validated 97 percent of the time. Further expansion is planned for the 2018 filing season.

When generated and used correctly, VCs are an excellent tool to authenticate wages and withholding claimed on e-filed tax returns, particularly in the early part of the tax season when many refund returns are filed. While missing or incorrect VC data will not in itself delay the processing of the tax return, correctly entering the VC allows for speedier processing. After the VC is validated, the return can continue through the processing system, and, if the return is not stopped for other reasons, the taxpayer will receive their refund more quickly.

Despite these benefits, VCs are underutilized. There is a significant gap between VCs issued and VCs entered into the electronically filed tax return. Multiple factors contribute to the underutilization. Some taxpayers who receive Forms W-2 with VCs are not required to file a return; others may file their returns on paper (the VC cannot be used on paper-filed returns). Further, because VCs are not generated and used on all W-2 forms, their entry in an electronically filed tax return cannot be mandated. Additionally, the

various software programs used by taxpayers and tax return preparers do not uniformly explain, prompt for, or encourage entry of the VC.

In the 2016 and 2017 filing seasons, there was no dedicated space on the W-2 forms for the VC. This omission is remedied on 2017 W-2 forms (box 9, “Verification Code”) and this standardization should lead to more consistent use of VCs on 2017 tax returns, as tax preparation software will be able to more easily direct users to find the VC.

Taxpayers and tax preparers need to be convinced of the value of entering VCs. The utilization of VCs will increase if the value of these codes in validating claims of wages and withholding on e-filed returns is communicated effectively. The IRSAC believes the tax professional community will embrace and utilize the VC if it perceives that VC data entry is beneficial for both their clients and for the taxpaying public.

Recommendations

To enhance the functionality and utilization of the W-2 verification codes, the IRSAC recommends that:

1. The IRS should continue to use and promote the W-2 verification codes as part of its suite to prevent tax-related identity theft. These codes serve to ensure the integrity of Forms W-2, especially during the early weeks of the tax return filing season.
2. The IRS should expand its outreach efforts to the tax practitioner community to encourage preparers to input the VC data properly. This outreach can be done via the IRS Nationwide Tax Forums, partnering with tax professional membership organizations, enlisting the IRS stakeholder liaisons at the state and local level, and including promotional content in IRS webinars and on the IRS website

- (www.irs.gov). The IRS should also explore using the PTIN renewal process to inform tax preparers of the purpose, benefit, and importance of correctly entering VCs into their tax preparation software.
3. The IRS should expand its outreach efforts to taxpayers. Taxpayers should be made aware that the purpose of VCs is to validate the claims of wages and withholding on their e-filed tax returns, thereby allowing their returns to be processed more quickly and efficiently. Taxpayers should be engaged and strongly encouraged to enter VCs themselves and to remind their tax preparers to enter VCs.
 4. The IRS should engage the tax software vendors to prominently prompt for and encourage VC data entry. The assistance of software vendors is important in driving behavior of both taxpayers and tax professionals entering the data required to file tax returns electronically. A diagnostic message or other reminder to enter the VC would achieve higher and more accurate utilization of VCs. Preventing refund fraud is important²⁹ and the software providers should be strongly encouraged to highlight the need for VC data entry.
 5. The IRS should continue to explore methods of expanding the VC program. Considering budgetary issues and the evolving cybersecurity environment, the IRSAC recommends the IRS work with more payroll software developers and include more RAs. The IRSAC encourages the IRS to consider whether the VC data can be used for other purposes. If the scope of the W-2 VC program expands

²⁹ The U.S. Department of Justice states “Working to stop Stolen Identity Refund Fraud, or SIRF, is vital because these schemes threaten to disrupt the orderly administration of the income tax system for hundreds of thousands of law abiding taxpayers and have cost the United States Treasury billions of dollars.” <https://www.justice.gov/tax/stolen-identity-refund-fraud>.

and additional uses are found, the value of this tool for improving security and reducing fraud will be enhanced.

ISSUE TWO: ACCOUNT LOCK/UNLOCK

Executive Summary

Stolen Identity Refund Fraud (SIRF) remains a high concern of the IRS as it works to prevent tax returns claiming fraudulent refunds from being submitted and processed. While the IRS has developed programs that have reduced the number of fraudulent tax returns that have been processed, the agency is constantly looking for additional methods to further reduce the number, just as fraudsters are continually striving to get those returns through the system. A new strategy under consideration by the IRS in this ongoing battle is a system to allow taxpayers to secure their accounts to prevent SIRF returns from being filed and permitting their legitimate returns to be submitted. While this program is in its infancy, the IRSAC was asked to review this concept, called Account Lock/Unlock, and to comment on the issues presented by its implementation.

Background

The electronic filing of income tax returns has been available for many years and is now the most prevalent means of filing. In Fiscal Year (FY) 2005, over 130 million individual tax returns were processed, of which around 68 million were submitted electronically, roughly 51 percent of all these returns. These numbers have increased dramatically. In FY2016, of the more than 152 million individual tax returns submitted, nearly 132 million were transmitted electronically accounting for over 86 percent of all returns. Of the tax returns submitted electronically, the percentage of self-prepared returns has increased from 37 percent in FY2012 to 40 percent in FY2015. One incentive for individuals who prepare their own returns to submit them electronically is that the processing time for issuance of a refund is generally reduced to 2-3 weeks, depending on

when the return is submitted. A paper filed return can take twice as long, or longer, to be processed. While the electronic filing of tax returns is efficient and advantageous to taxpayers and the IRS, the system presents opportunities for fraudsters to file returns to claim fraudulent refunds.

Fraudsters tend to submit SIRF returns, reporting few income sources, early in the filing season, before the IRS has the information for data matching, especially W-2 information. Legitimate taxpayers often need to wait until March or later in order to gather everything they need to prepare or to have their tax returns prepared. Simplistic SIRF returns, using Form 1040A or 1040EZ, can be prepared and submitted early in the filing season before the actual taxpayer can file their return. Account Lock/Unlock is a way to prevent this type of abuse of the electronic filing system.

As currently envisioned, Account Lock/Unlock would be a voluntary program. The taxpayer would log into the IRS website and create an account. Once created, it would be “locked” to prevent the submission of any tax return with the taxpayer’s social security number until the taxpayer again logs on to the IRS website and “unlocks” the account. There would then be a “window” or limited time period during which the account would remain unlocked to allow the tax return to be filed. After the return is filed, the account would “relock” automatically. In the case of taxpayers who are married and filing jointly, the spouses would need to set up individual accounts, and both accounts would need to be unlocked.

The IRSAC believes Account Lock/Unlock would reduce SIRF, but there are issues to be addressed in the design and implementation of the system:

1. *Coordination between the taxpayer and the tax return preparer.* Not all returns are prepared right in front of the taxpayer. Taxpayers who use professional tax practitioners (*i.e.*, CPAs, EAs, or attorneys) to prepare their returns typically are not present when their returns are prepared. In these situations, the tax return, once prepared is sent to the taxpayer for review. After review, the taxpayer signs and delivers Form 8879 to the preparer, authorizing the preparer to submit the return. The return is then filed electronically by the preparer. Under Account Lock/Unlock, the taxpayer would currently be required to go to the IRS website, unlock the account, and notify the preparer. The preparer would then have to submit the return during the period the account is unlocked. If the return is not filed within the unlock period, the preparer would have to contact the client to have the account unlocked again. Moreover, there are multiple reasons an e-filed tax return might be rejected and need to be corrected and resubmitted. This correction and resubmission process, however, could easily extend beyond the unlock window, placing an additional burden on the preparer and taxpayer. The additional time needed for the tax return preparer to contact the client could be a significant demand on the tax return preparer in the midst of a busy tax season when time is a precious commodity. The Account Lock/Unlock process should minimize the burdens of coordinating between taxpayers and tax return preparers.

2. *Changes in Filing Status.* Questions remain concerning how taxpayers signing up for this program will indicate their filing status. For example, how will two individuals previously registered indicate if they are now married? How will married

taxpayers indicate if they will file jointly or separately? How will they indicate a change in their filing status? What if a taxpayer becomes a widow or widower, divorces, or remarries in the same year? Often, divorces are acrimonious. Could one party take advantage of the lock/unlock program to wreak havoc or emotional distress on their soon-to-be ex-spouse by locking them out of filing a tax return?

3. *Dependents.* Would a dependent have to register for and be required to unlock a return in which they were being claimed? Dependents are not just minor children, but can also be elderly or infirm parents. What if the dependent is also filing a tax return? For example, a teenager who has an afterschool or summer job for which they need to file their own return. What if the dependent is even younger? Must the parent create an account for the minor as well?

4. *Survivors.* If a parent becomes incapacitated or dies, how would a representative, guardian, or adult child of the taxpayer gain access to the parent's account information in order to file a return? In such a case, would the representative be required to paper-file the tax return?

5. *Fraudulent Returns.* When the taxpayer unlocks the account so a return can be transmitted, this also provides a window of opportunity for a fraudulent tax return to be submitted. Tax return fraudsters often submit those returns early in the filing season. If locked out of an account they are attempting to use, they could set up a program similar to "robo-calling" to resubmit a fraudulent return continually, until such time as the account is unlocked. If a fraudulent return is filed before the actual return is submitted, what recourse will the taxpayer have to inform the IRS that a fraudulent return got in first?

6. *Robo-Filing.* A fraudster might set up a robo-filing program. Can the IRS detect if a tax return is being submitted repetitiously and where it is coming from? Would the IRS contact the taxpayer to confirm the valid submission of a tax return to the account? How long would the taxpayer have to respond, and if they do not respond timely, would the return be automatically rejected?

7. *Account Setup.* If the taxpayer logs on to the IRS website to set up an account, what can the taxpayer do if an account has already been created by a fraudster? What controls would there be for usernames and passwords? What if the taxpayer changes email accounts or other contact information?

Recommendation

The IRSAC commends the Account Lock/Unlock strategy and encourages its further development. In refining the program, the IRS should consider the questions listed above. The IRS should identify as many weaknesses as possible and develop strategies to prevent them from being implemented. The IRS, working with its stakeholders, should consider every possible scenario by which this program, if implemented, might be circumvented by those who would abuse the tax system to defraud the government and taxpayers.

ISSUE THREE: MARKETING/PROMOTING PRIORITY PRACTITIONER SERVICE IMPROVEMENTS TO THE PRACTITIONER COMMUNITY

Executive Summary

In 2002, the IRS launched the Practitioner Priority Service[®] (PPS) which includes a nationwide telephone hotline dedicated to tax practitioners.³⁰ Specially trained representatives who are intended by the IRS to be the practitioners' first point of contact staff the PPS. These representatives serve an important role as a conduit between tax professionals and the IRS. Because of budget constraints for fiscal years 2010 through 2015, the IRS reallocated resources from PPS to other priorities, and the level and quality of services provided by PPS decreased. In 2016, the IRS dedicated additional resources to restore PPS, improving practitioner access to the PPS. Yet, surveys showed that practitioners remain dissatisfied with the quality of service.

The IRS asked the IRSAC for suggestions to improve the practitioners' PPS experience. We reviewed the IRS's current PPS model and also looked at New York State and California models. The IRSAC recognizes the important role practitioner-focused hotline services play in providing effective and efficient tax administration, and are pleased to submit our recommendations.

Background

Trained IRS customer service representatives handle inquiries concerning taxpayer accounts and staff the PPS hotline. To use PPS, practitioners must have valid authorizations to represent clients and must be actively working with their clients to resolve their clients' tax account issues.³¹ Calls outside the scope of PPS are transferred to other IRS areas.

³⁰ The IRS PPS number is 866.860.4259.

³¹ The scope of the PPS provided by the IRS is specifically outlined on the IRS website. See <https://www.irs.gov/tax-professionals/practitioner-priority-service>.

Due to the IRS’s budget cuts between 2010 and 2015, staffing was reduced by more than 12 percent since 2010. During 2014 and 2015, only 45 percent of practitioners’ calls were answered after an average of 45 minutes on hold.³² According to the *Journal of Accountancy* and *The Tax Adviser*’s 2016 “Tax Software Survey,” a majority of CPAs who called the PPS found it difficult or very difficult to reach a representative.³³ (See accompanying chart.)

How easy was it to get through to an IRS customer service representative?³⁴

Very Difficult	
1	29.6%
2	21.0%
3	25.2%
4	17.9%
5	6.3%
Very Easy	

In 2016, Congress provided additional funding to improve taxpayer services, and the IRS improved the PPS answer rate to 84 percent and decreased the average wait time to 7.3 minutes.³⁵ Practitioner perception of the quality of service, however, did not improve. According to a *Journal of Accountancy* survey titled, “AICPA Members Weigh in on IRS Service Levels,”³⁶ conducted in April 2016, satisfaction with the quality of PPS remained low. Only one-third of the respondents reported that they received an answer to

³² See <http://www.journalofaccountancy.com/issues/2016/oct/irs-hotline-for-tax-professionals.html>.

³³ Of the 3,851 respondents, almost 40 percent indicated they used the PPS during the 2016 tax season. Of those, 51 percent responded that it was difficult or very difficult to get through to a customer service representative.

³⁴ See <http://www.journalofaccountancy.com/issues/2016/oct/irs-hotline-for-tax-professionals.html>.

³⁵ See National Taxpayer Advocate, *Fiscal Year 2017 Objectives Report to Congress*. See also <http://www.journalofaccountancy.com/issues/2016/oct/irs-hotline-for-tax-professionals.html>.

³⁶ See <http://www.journalofaccountancy.com/news/2016/may/aicpa-members-weigh-in-irs-service--levels-201614539.html>.

their question at least “most of the time” without being transferred to another agent. The lack of training of PPS staff seemed to result in poor customer service. In response, the AICPA Tax Executive Committee Chairman Troy Lewis suggested at a forum hosted by the National Taxpayer Advocate that “[t]o ensure that we have meaningful access to the IRS, the agency needs to regularly provide a systematic, reliable, and economical source of training to their employees.”³⁷

Dissatisfaction arises when practitioners are transferred to multiple IRS representatives before having their questions addressed, and when the practitioners’ expectations of the scope of service that PPS should provide exceeds what PPS representatives are actually capable of providing. Further, some level of dissatisfaction is likely the residual effect of poor experiences from 2015 and 2016. As Will Rogers observed, “It takes a lifetime to build a good reputation, but you can lose it in a minute.” It will take multiple consistent good experiences with PPS to overcome a single poor one. Some practitioners will need to be encouraged to re-engage with PPS before their opinions, based on prior experience, will improve.

The IRSAC researched services similar to PPS provided by several states for those which may benefit the IRS to review.

The New York State Department of Taxation and Finance has a Tax Practitioner Hotline³⁸ which efficiently directs the caller to the proper representative. After going through a series of prompts, the calls usually go straight through to a live person who is able to assist the caller.

³⁷*Id.*

³⁸ The New York State Tax Practitioner Hotline number is 518.457.5451.

The State of California Franchise Tax Board provides numerous tax practitioner services, including phone services, self-service information, a secure email service, and a live chat service.³⁹ These services and information about each are readily available on the Franchise Tax Board website. One of the phone services is the Tax Practitioner Hotline to assist practitioners with their client tax returns or accounts.⁴⁰ The website asserts “In most cases we can answer your question the same day we receive it.” After dialing the number, a recorded message states the current average wait time. While on hold, a caller is provided with various recorded messages about other services available to the practitioner.

Recommendations

1. Establish a detailed marketing and outreach plan that clearly defines the scope of services provided by PPS, publicizes the improved level of services based on objective criteria, and encourages practitioners to use the PPS.
2. Direct PPS marketing to the English-as-a-second-language (ESL) and Limited English Proficient (LEP) communities. Although English remains the most widely spoken language nationwide, there are more than 25 million LEP individuals as of 2013.⁴¹ Sixty million Americans speak a language other than English at home while more than one-fourth of them have limited or no English fluency.⁴² In New York City alone, 800 languages are spoken⁴³ and more than 35 percent of the City’s

³⁹ See https://www.ftb.ca.gov/professionals/taxnews/tn_tps.shtml.

⁴⁰ The California Tax Practitioner Hotline number is 916.845.7057.

⁴¹ “Language Access in State Courts”, U.S. Dep’t of Justice, Civil Rights Div., Fed. Coordination and Compliance Sec., at 2 (Sep. 2016), *available at* <https://www.justice.gov/crt/file/892036/download>.

⁴² Honorable Lynn W. Davis and Scott A. Isaacson, “Ensuring Equal Access to Justice for Limited English Proficiency Individuals,” 56 ABA Judges’ Journal 21-26 (Summer 2017).

⁴³ “Endangered Language Alliance” 2012, *available at* <http://elalliance.org/>; “Linguistics - Say what?,” The Economist (Sep. 10, 2011), *available at* <http://www.economist.com/node/21528592>; N. R. Kleinfeld, “New Yorkers, Self-Assured and Opinionated, Defend Their Values” ((Jan. 15, 2016), *available at* <http://www.msn.com/en-us/news/us/new-yorkers-self-assured-and-opinionated-defend-their-values/ar-BBog5Ms?li=BBnb7Kz&ocid=iehp>.

- population is foreign-born.⁴⁴ Making PPS better known to the ESL and LEP communities will help engage the participation of the less-involved practitioners whose practices are local and are focused on serving these communities.
3. Provide a call-back service. Long hold times and calls not getting answered during periods of high utilization or reduced service are major causes of dissatisfaction with PPS. Instead of requiring practitioners to stay on hold indefinitely, the IRS should implement a callback system. Like the California model, PPS announces a wait time. Additionally, PPS should provide the caller with the option to leave a phone number to receive a call back within an estimated time. For example, “You do not have to stay on the line. Our representatives will call you in approximately 60 minutes if you leave your number after the tone.” Additionally, the instructions should state how many times the representative will attempt to return the call. For example, “If you do not answer when we call, our representatives will attempt to call you three times before you are pushed back to the end of the queue.”
 4. Monitor practitioner complaints and follow up. Practitioners are the target audience of PPS and addressing their concerns would be the most effective way to improve the system. Develop a system to receive direct, immediate feedback from the practitioners that use the service. After each phone call with a practitioner, the representative might ask a series of scripted questions to solicit the practitioner’s feedback on the service received. A section of the IRS website should be dedicated to receiving comments from practitioners regarding their experiences with PPS and

⁴⁴ New York City Department of City Planning (2005), “The Newest New Yorkers: 2000,” *available at* https://web.archive.org/web/20090329053958/http://www.nyc.gov/html/dcp/pdf/census/nny_briefing_booklet.pdf.

their suggestions for improvements. Another direct feedback system would be to hold periodic forums dedicated to practitioners focused on improving practitioner-dedicated services. Additionally, the IRS should monitor surveys, and social media for practitioners' complaints about the hotline service and follow up on their concerns.

5. Provide regular customer service training to PPS representatives in addition to technical tax resolution training.

ISSUE FOUR: TAXPAYER AND PRACTITIONER CONCERNS REGARDING PRIVATE DEBT COLLECTION

Executive Summary

The 2015 Fixing America’s Surface Transportation Act (FAST)⁴⁵ requires the IRS to use private debt collectors to collect outstanding inactive tax receivables. Thus, the IRS contracted with four private debt collection agencies, and private debt collection commenced in April 2017. Previous efforts to use private debt collectors were generally not considered successful. Considering past experiences and the concerns expressed by a number of public and private interests, including the National Taxpayer Advocate, the IRS requested the IRSAC suggest ways to communicate the program to taxpayers and to provide feedback on public perception. Additionally, the IRSAC was asked for suggestions to mitigate or prevent scams and fraudulent schemes by persons abusing the existence of the private debt collection program.

Background

The FAST Act mandates the assignment of “all outstanding inactive tax receivables” for private debt collection.⁴⁶ The terms “inactive tax receivables” and “tax receivables” are specifically defined,⁴⁷ and certain tax receivables are not eligible for assignment to private debt collection.⁴⁸ The IRS contracted with four private debt collection agencies⁴⁹ (PCAs). The PCAs are required to comply with IRS collection practices, to respect taxpayer rights, and to comply with the Fair Debt Collection Practices

⁴⁵ Fixing America’s Surface Transportation Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (FAST Act), *amending* I.R.C. § 6306.

⁴⁶ I.R.C. § 6306(c)(1) and (2), *as amended by* FAST Act § 32102.

⁴⁷ I.R.C. § 6306(c)(2)(A), *as amended by* FAST Act § 32102.

⁴⁸ I.R.C. § 6306(d), *as amended by* FAST Act. § 32102.

⁴⁹ The debt collection agencies are CBE (Waterloo, Iowa), Conserve (Fairport, New York), Performant (Pleasanton, California), and Pioneer (Horseheads, New York).

Act. The PCAs must also operate in accordance with a policy and procedures guide developed by the IRS for the private debt collection program.

The IRS assigned the first accounts to the PCAs in April 2017 with each PCA receiving an initial inventory of 100 accounts per week. After an introductory period, the assigned accounts increased to 1,000 per week. It is estimated that by the end of September 2017 the total number of accounts assigned to PCAs was about 147,000.

This is the third attempt by the IRS to outsource collection of accounts to private contractors. The first attempt was a pilot program tested for 12 months in 1997, and the second was in a three-year program started in 2007.⁵⁰ Reviews of the previous programs found that they were not cost-effective and, further, that IRS personnel had more options available to assist financially distressed taxpayers to resolve difficult collection cases than their private sector counterparts.

Implementation of the current private debt collection program has been scrutinized by taxpayer representatives, members of Congress, watchdog groups, supervisory public agencies, and the public, all of which have expressed concern regarding a number of issues. The IRSAC notes the following issues.

1. *Complexity Is Added to the Tax Collection Process.* Except for the two limited private debt collection efforts discussed above, taxpayers and taxpayer representatives have dealt solely with the IRS concerning the collection of outstanding tax debts. The tax collection process is subject to complex laws and regulations, and the IRS is monitored by a host of governmental and private interests. The use of PCAs introduces new parties to the collection process and adds an additional layer of complexity, which

⁵⁰ The American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 881(e), 118 Stat. 1418 (2004).

potentially diminishes transparency. The IRS is the primary watchdog to monitor activities of the PCAs to ensure compliance with lawful collection procedures and respectful treatment of taxpayers. With the involvement of PCAs, taxpayers have new issues about which to be concerned. Is the PCA contact legitimate? What authority does the PCA have? What action can the PCA take? Must the taxpayer work solely with the PCA, or can the taxpayer request that his or her file be returned to the IRS? What payment options can the PCA authorize? To whom is payment to be made? Further, with additional parties now involved in working on a taxpayer's account, there is increased concern for maintaining the accuracy, integrity, and security of account information.

2. *Increased Opportunity for Identity Theft, Fraud, and Taxpayer Scams.* Fraudsters are likely to take advantage of taxpayer confusion and fear and use a cloak of apparent legitimacy to pose as private debt collectors to scam taxpayers.

3. *Taxpayer Privacy.* Persons not under the direct supervision and control of the IRS will have access to confidential taxpayer information. For taxpayer authentication purposes, the PCA employees will also have access to other private information of the taxpayer. This access increases the taxpayer's exposure to potential abuse of confidential personal information. Further, taxpayer information will now reside in one or more additional databases, increasing the taxpayer's exposure to potential identity theft by hackers.

4. *Authentication of the PCA by the Taxpayer.* It is fairly common for taxpayers to receive calls from fraudsters claiming to be from the IRS and seeking to coerce them into making immediate payments to fraudulent accounts. The IRS has expended considerable effort to educate and warn taxpayers regarding such calls, and, optimally,

taxpayers are properly wary of callers claiming to be from the IRS. How is a taxpayer to distinguish between a legitimate PCA caller and a fraudulent caller? To address this concern, the IRS sends an initial letter to the taxpayer noting the assignment of the taxpayer's account to a specific PCA and providing an authentication number that will be used to identify the PCA. The IRS requires the PCA to make the initial taxpayer contact by letter, informing the taxpayer of the assignment of the account and that the PCA will contact the taxpayer by telephone. The IRS assigned authentication number is used by the PCA caller to identify the PCA. This authentication procedure is good, but it can be mimicked and exploited by fraudsters. Wary taxpayers will want, and need, a means to independently confirm the legitimacy of the assignment of their accounts and the identity of the PCA.

5. *Profit-Motivated Collection Practices.* Because PCAs' compensation is based on a percentage of their collections, there is a concern, and a perception, that PCAs will be motivated to use aggressive tactics to pressure taxpayers to make payments. PCAs are charged with contacting the taxpayer and requesting payment in full. If the taxpayer cannot pay in full, the PCA is authorized to establish a payment plan. Because the PCAs do not collect financial information from the taxpayer, however, and do not make financial determinations of the taxpayer's ability to pay, they cannot differentiate between taxpayers who have the ability to pay and those who do not. Taxpayers who are experiencing severe financial hardship, and whose circumstances warrant their cases being classified as "Currently Not Collectable" (which under established IRS collection policies may exempt them from collection action) are the very taxpayers most likely to feel pressured or coerced to make payments that they would not otherwise be required to make. Other persons for

whom payments may be a financial hardship, and who may perceive any request or suggestion made by the PCA for payment as coercive, are those whose incomes are less than the Federal Poverty Guidelines.⁵¹ While section 6306(c)(1) of the Internal Revenue Code generally requires the assignment of “all outstanding inactive tax receivables,” section 6306(c)(2)(B), by definition, requires only the assignment of receivables the IRS deems to be potentially collectible. By retaining uncollectible receivables, the IRS can prevent those taxpayers who are most susceptible to pressure and intimidation from being subject to the actual or perceived use of aggressive collection tactics by the PCAs.

The above-expressed issues are inherent in the private debt collection program mandated by Congress and have been raised or noted by many others in letters, publications, and blogs. Further, the IRS recognized these issues and has developed procedures to address them. While the issues may not be eliminated, they can be managed to reduce their adverse effect on taxpayers.

Recommendations

Increased effective communication of relevant information to taxpayers is key to managing all the expressed concerns. Second, diligent monitoring of PCA activities by the IRS and strict enforcement of all laws, regulations, and protocols for respectful treatment of taxpayers will mitigate the development of systemic collection practice issues. Further, the IRSAC makes the following specific recommendations:

1. Provide additional information at IRS.gov directed to taxpayers whose accounts have been assigned regarding the private collection program. The information should include clear, concise statements of (1) the process for the taxpayer to

⁵¹ The poverty guidelines are updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

- authenticate the PCA, (2) the authority and actions that may be taken by the PCA, (3) the opportunities and the process for the taxpayer to request the return of his or her account to the IRS, (4) instructions for making payments, and (5) procedures to file complaints.
2. Provide instructions for submitting Forms 2848 and 8821, Powers of Attorney documents, authorizing a taxpayer's representative once an account has been assigned to a PCA.
 3. Monitor the development of new schemes to defraud taxpayers by persons impersonating PSAs and issue notices advising the public of such schemes.
 4. Provide a means at IRS.gov for a taxpayer to independently verify the assignment of his or her account to a PCA and the identity of the PCA. Consider adding this information to the transcript of the taxpayer's account.
 5. Encourage taxpayers to safeguard the unique authentication numbers assigned to their accounts and advise them to always require the caller or contacting party to accurately provide the first five digits of the number before giving the last five, and before giving any other personal information.
 6. Require or, at a minimum, encourage PCAs to provide information directed to taxpayers on the PCAs' websites. A survey of the PCA websites shows very little information directed to taxpayers. Only one PCA provides general information directed to the taxpayer with links to relevant IRS-provided information.
 7. Do not assign for private debt collection any accounts the IRS deems to be uncollectible based on financial information collected by the IRS. Although the IRS already excludes from assignment those accounts classified as "Currently Not

Collectible,” the IRS should additionally consider using historical collection data to determine a level of income measured by the Federal Poverty Guidelines that is statistically uncollectable and exclude such accounts from assignment to PCAs.

ISSUE FIVE: COMMENTS ON PROPOSED REVISED COLLECTION NOTICES

Executive Summary

One of IRS’s Future State⁵² themes is to “[u]nderstand noncompliant taxpayer behavior, and develop approaches to deter and change it.” Regarding the collection of delinquent taxes, the IRS initiated pilot programs to revise its collection notices. These collection notices are redesigned to understand taxpayer behavior (*e.g.*, what motivates a taxpayer to respond, what draws the taxpayer’s eye, what information gets the taxpayer’s attention, etc.) and to develop approaches to encourage payment of outstanding liabilities. The pilot programs will test the effectiveness of various prototype collection notices. The IRS has requested the IRSAC review the prototypes for two collection notices, the LT16 and the CP14, and provide comments and suggestions regarding the effectiveness of the notices.⁵³

Background

The mission of the collection program is to collect delinquent taxes and secure delinquent tax returns through the fair and equitable application of tax laws. At year-end 2014, Collection had an inventory of approximately 15 million potentially collectible tax debt cases⁵⁴ representing \$143 billion of unpaid tax debt.⁵⁵ During the period 2009-2014, the total tax debt inventory rose.⁵⁶

⁵² See <https://www.irs.gov/newsroom/irs-future-state>.

⁵³ Copies of the LT16 are attached as an Appendix. As the CP14 pilot program is still running, copies of these prototypes are not included in this report so as not to affect the results of the pilot program.

⁵⁴ A “case” is measured as a specific taxpayer covering one tax period (*e.g.*, a year or quarter).

⁵⁵ GAO-15-647, *IRS Case Selection – Collection Process Is Largely Automated, but Lacks Adequate Internal Controls*, at 5 (Jul. 2015).

⁵⁶ *Id.*

The IRS has a three-phase process for collecting unpaid tax debts. The first phase is the notice phase. The IRS sends automatically-generated notices to the taxpayer regarding outstanding debts or delinquent returns. These notices satisfy the IRS's statutory requirements⁵⁷ and collection goals. The notice phase resolves taxpayers' debt at the earliest possible opportunity and collects the greatest amount of potentially collectible debt with the least cost.⁵⁸

The goal of issuing a notice is to prompt a payment or response (*e.g.*, taxpayer disputes the debt, inquiries about payment options, or informs the IRS that the taxpayer cannot pay the full amount owed) from the taxpayer. Current collection notices, however, convey a blunt message that may discourage taxpayers from initiating contact with the IRS. For example, the current CP14 employs a curt, matter-of-fact tone that informs the taxpayer of unpaid taxes and emphasizes (in large bold letters) the taxpayer must pay the full amount immediately. The first page of this notice reinforces a "pay in full" message, and the second page provides information on how the taxpayer can contact the IRS to discuss payment arrangements. For many taxpayers, IRS notices are intimidating and often prompt inaction (*i.e.*, ignore it, and it will go away mentality) rather than action.

The IRS's pilot programs to revise some of its collection notices focus on taxpayer behavior. The revisions include improving the type and amount of information on the notices—attempting a balance between providing the requisite and pertinent information without overwhelming the taxpayer with material. Revisions also include changing the font and layout for ease of reading and understanding, and incorporating color and icons to

⁵⁷ Section 6303 requires the IRS send a notice and demand letter after it makes assessment when insufficient funds exist on the account to satisfy the liability.

⁵⁸ During FY2014, approximately 60 percent of the collections cases were closed in the notice phase. GAO-15-647, *supra*, at 8. "Closed" cases may not include the collection of taxes.

catch the taxpayer's eye. The collection notice prototypes are designed to get the pertinent information to the taxpayer in the shortest time and elicit a response from the taxpayer.

The IRS started two pilot programs with prototypes of the LT16 and CP14 notices. Both notices inform a taxpayer of a balance due for a specific tax year. The CP14 is sent to a taxpayer when the taxpayer owes money on unpaid taxes. The LT16 is issued to a taxpayer informing the taxpayer that because he or she has not responded to previous notices sent by the IRS, the IRS may take enforced collection action. The LT16 emphasizes the IRS must hear from the taxpayer about the overdue taxes or tax returns.

For the LT16 notice, six prototypes were created. Each prototype focused on various methodologies to reach the IRS's goal of understanding taxpayer behavior:

<u>NUMBER</u>	<u>PROTOTYPE</u>
LT16A	Minimalist
LT16B	Visual
LT16C	Urgent
LT16D	Installment Agreement
LT16E	Behavior
LT16G	Color

In June 2017, the IRS conducted a pilot program on the LT16 notice prototypes. The IRS issued 8,500 notices⁵⁹ for each prototype (LT16 A/B/C/D/E/G)⁶⁰ to a pool of taxpayers with an outstanding tax debt of at least \$50,000. The pool of taxpayers was randomly drawn and had been in Collection for between five and eight weeks.⁶¹

⁵⁹ Total of 59,500 collection notices were issued. A sample of 56,000 were used in analysis due to undelivered notices, etc.

⁶⁰ The current version of the LT16 notice is the LT16F.

⁶¹ The prototype notices were evenly distributed with respect to amount owed and number of taxpayers (individual). Prototype notices were not sent to entities; however, Collection is considering future prototypes directed to businesses.

Preliminary results from the LT16 prototypes were promising.⁶² There was an 11-percent increase in voluntary compliance for taxpayers who received an LT16 prototype notice with a \$63 increase per notice. There was a 6- to 8-percent decrease in the number of taxpayers with a maximum failure-to-pay penalty. There was a 13- to 31-percent increase in self-service tools (*e.g.*, IRS Online Payment Agreement program) and an 8- to 32-percent decrease in calls and written correspondence to Collection. The increase in online self-services and reduction in calls or correspondence to Collections had a corresponding effect of reducing costs for the IRS (*e.g.*, a 50-percent decrease in paper use). There was an 8- to 20-percent decrease in the average cost to address taxpayer cases. The LT16C (Urgent) and LT16D (Installment Agreement) prototypes were the best performing prototypes.⁶³ The IRS had received no complaints or taxpayer feedback regarding the LT16 prototype notices.

For the CP14 notice, three prototypes were created: CP14A, CP14B, and CP14D. In September 2017, the IRS conducted a pilot program on the CP14 prototypes, issuing 8,500 per prototype (total of 34,000). The results from the CP14 prototypes were not available as of the time of this report.

In reviewing the prototype notices, the IRSAC notes these issues.

1. *Taxpayer Rights.* All the prototypes for both the CP14s and LT16s provided the taxpayer with pertinent information: the purpose of the notice, debt amount, tax year, and applicable penalty and interest amounts. Also, all the prototype notices provided numerous links—a minimum of seven links to a high of twelve links—to the IRS’s website

⁶² The IRS’s final report of the LT16 prototypes will be completed in October 2017.

⁶³ Measures were based on total compliance actions, dollars collected per notice sent, compliance actions for self-service, phone calls, and mail.

where the taxpayer can locate additional information on many topics (*e.g.*, payment options, penalties, appeals, etc.)

Some prototypes, however, do not provide clear information regarding options for taxpayers who may be experiencing financial hardship or how taxpayers can dispute or appeal a debt.⁶⁴ Further, none of the prototype notices provides a telephone number a taxpayer could call regarding the notice itself (*i.e.*, to inquire on how the debt arose, to dispute the debt, etc.). Rather, the telephone number(s) provided on all the prototype notices were referring to whether the taxpayer could not find additional information online.⁶⁵ The telephone number provided in the current LT16F refers to whether taxpayers are “unable to resolve [their] tax issue now.” For non-tech savvy taxpayers, a phone call may be the only means of learning there are options other than payment of the debt. Last, none of the LT16 prototypes provide a timeframe in which a taxpayer must respond to avoid collection action. The current LT16F provides for a 10-day response date. Information regarding taxpayer rights and the timing of such rights is critical. A taxpayer should not have to go beyond the notice (*i.e.*, to an IRS website) to learn about such rights.

2. *Clear Communications.* Many taxpayers feel overwhelmed and unprepared when dealing with tax matters and with the IRS. Moreover, many taxpayers have a perverse impression the IRS is “out to get” taxpayers. It is this lack of experience and fear that fraudsters leverage in scams against taxpayers. Consequently, when a taxpayer receives written communication from the IRS, there is potential for misunderstandings. For example, the LT16D prototype provides a monthly payment amount if a taxpayer wants to set-up a streamlined installment agreement. Taxpayers may believe the stated monthly

⁶⁴ See Appendix, all Notice LT16 prototypes.

⁶⁵ Specifically, the notices stated, “If you can’t find what you need online, you can call the IRS at”

payment amount is an “agreed” amount for a specified time, not understanding the continual accrual of penalties and interest will extend the payment period or that the payment may not cover other tax periods not identified in the notice. Similarly, taxpayers unfamiliar with how penalties and interest accrue may believe such amounts stated on the CP14 prototypes are set.⁶⁶ Taxpayers also may not be aware that the failure-to-file and failure-to-pay penalties rates increase the longer the debt remains outstanding. Last, some of the prototype notices state a taxpayer may “delay” the payment of the debt (as opposed to postponing payments during periods of financial hardship).⁶⁷ “Delay” typically has a negative connotation in tax administration.

As a goal of the prototype notices is to encourage taxpayers to act, it is important there is a consistency between what is reflected in the notice versus what the taxpayer may encounter through the online self-service tools, a call center or Collections to avoid misunderstandings.⁶⁸ This is particularly the case for notice prototypes that estimate monthly payment amounts (*e.g.*, LT16D). A taxpayer who receives a notice reflecting an estimated monthly payment amount should also get a similar monthly payment amount through the online self-service tools or installment payment arrangements negotiated with Collections. If not, a taxpayer may feel the notice proposing a monthly payment amount was bait-and-switch.

3. *Incentivize a Taxpayer to Act.* The goal in creating the prototypes was to gauge taxpayer behavior (*i.e.*, what would make a taxpayer take action upon receipt of a

⁶⁶ For example, the CP14 A/B/C prototypes provided interest schedules reflecting the various rates of interest. Some taxpayers may not understand why the interest rates on underpayments adjusts quarterly.

⁶⁷ See Appendix, Notice LT16 A/B/C/G prototypes.

⁶⁸ IRS has some procedures in place to ensure consistency between notices and the call-in centers. For example, call-in centers ask the taxpayer for the reference number on the notice and what the notice states.

notice). Taxpayers should be motivated to respond to an opportunity to reduce their tax debt (e.g., the First-Time Abate (FTA)).⁶⁹ Further, considering the above comments regarding misunderstandings, the IRS Online Payment Agreement program should also include the opportunity to seek an FTA waiver. It would be misleading to propose a taxpayer may be eligible for FTA, but not provide the opportunity if the taxpayer acts through online self-service tools. An additional incentive to get taxpayers to act is to let them know they may be eligible for assistance from a low-income tax clinic (LITC).

The IRSAC notes that some of the language used in the prototypes could hinder the IRS's goal of inducing taxpayers to act. For example, in the CP14 prototypes there are several references to the taxpayer "waiting" to pay, implying the taxpayer is making a conscious choice not to pay the debt. While there may be taxpayers with the financial ability to pay a tax debt who nevertheless make the conscious decision not to do so, this is generally not the case. Rather, taxpayers with outstanding tax liabilities generally cannot pay the debt fully or, sometimes, even make installment payments. There are also opportunities in the prototypes to remove language that unnecessarily reflects negatively on the IRS. Specifically, some language can be modified to reflect actions that the IRS must take as opposed to the appearance the IRS is independently taking such action against the taxpayer (e.g., "we assess a penalty" vs. "a penalty is assessed").

4. *Reduce the Potential for Fraudsters to Take Advantage of Changes to Collection Notices.* As the IRS stated in its IRS Future State, "the world is changing," and so are IRS collection notices. The CP14 and LT16 prototypes differ significantly from the

⁶⁹ See IRM 20.1.1.3.6.1, First-Time Abate (FTA). The FTA is an administrative waiver under which IRS may relieve qualified taxpayers from failure-to-file, failure-to-pay, and failure-to-deposit penalties if certain criteria is met.

IRS's current version of these notices. Taxpayers and practitioners may not recognize the prototypes as being legitimate notices from the IRS. Fraudsters have tried issuing "notices" to steal from taxpayers.⁷⁰

Recommendations

1. *Taxpayer Rights.* Taxpayer's rights and options must be clearly stated and explained in all collection notices, especially on any deadlines. To further its Future State objectives, the IRS is including links to automated self-services on the notices. These online services must also clearly inform taxpayers of their rights regarding financial hardship considerations, opportunity and process to dispute a debt, appeal rights and procedures, etc. Final versions should include a contact number a taxpayer may use to discuss the actual notice itself, and such number should clearly state it is for questions regarding the notice.
2. *Clear Communications.* Whichever prototype notices are selected to replace the current CP16 and LT14 notices, these final versions should be vetted to avoid the opportunity for misunderstanding by a taxpayer. For example, collection notices should clearly state that penalty and interest amounts continue to accrue until paid in full. Information provided in the notice should also be consistent with IRS online service tools and call centers to minimize misleading information. Further, any links reflected in a notice should be functional.⁷¹
3. *Incentivize Taxpayers to Act.* The IRS should include a reference to the FTA program to incentivize taxpayers to act in response to a collection notice and ensure

⁷⁰ See IR-2016-123, *IRS and Security Summit Partners Warn of Fake Tax Bills* (Sept. 22, 2016).

⁷¹ The IRSAC notes that one of the links, www.irs.gov/installmentagreements, listed in several prototypes was not functioning at the time of review.

the FTA waiver opportunity is also available through Collection's online self-service tools. Further, the IRS should add to the CP14 and LT16 a reference to the LITC link on its website.⁷² Last, the IRS should consider neutral language in the notices so as not to disaffect a taxpayer.

4. *Reduce Potential for Tax Scams.* Although the prototypes are sent to a limited number of taxpayers, the IRS should include on its *Understanding Your IRS Notice or Letter* website information about the pilot programs and include samples of the prototype notices so taxpayers can verify the authenticity of a prototype notice. The IRS expressed concern about posting samples of prototypes before the results of the pilot programs are complete. To mitigate this concern, the IRS could only post a limited portion (*e.g.*, half of the first page) of a prototype notice to its website. Such a limited portion would be sufficient for a taxpayer or tax professional to verify the authenticity of these prototypes.

⁷² See <https://www.irs.gov/advocate/low-income-taxpayer-clinics/low-income-taxpayer-clinic-income-eligibility-guidelines>.

**INTERNAL REVENUE SERVICE
ADVISORY COUNCIL**

**OFFICE OF PROFESSIONAL RESPONSIBILITY
SUBGROUP REPORT**

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Office of Professional Responsibility (OPR) Subgroup consists of a diverse group of tax practitioners, including professionals with credentials as certified public accountants, lawyers, an appraiser, and an enrolled agent, who work in private practice (in firms of varying sizes) and as a law professor. This year the OPR Subgroup addressed three issues: (1) the need for express statutory authority to confirm the Treasury Department's ability to establish, enforce, and require minimum standards of competence for all tax practitioners, including tax return preparers, (2) educating practitioners about their responsibilities under the Internal Revenue Code's penalty provisions and the Treasury Department's practice standards contained in Circular 230, and (3) applying one set of standards to all appraisers and appraisals, equally applicable to both taxpayers and the IRS.

Historically, the OPR Subgroup has enjoyed a solid working relationship with the Office of Professional Responsibility, and this year was no exception. Indeed, OPR personnel were helpful and cooperative in the subgroup's working sessions, contributing data, and offering insight for the framework of this report.

The OPR Subgroup's recommendations on the following three topics are set forth in this report:

1. The Need for Express Statutory Authority to Confirm the Treasury Department's Ability to Establish, Enforce, and Require Minimum Standards of Competence for All Tax Practitioners, including Tax Return Preparers

Several recent court cases have impaired the ability of the Treasury Department to establish and enforce standards of competence for tax return preparers and other tax practitioners. These cases render the Treasury Department unable to protect the taxpaying public and the tax system from incompetent and disreputable tax practitioners rendering tax advice as well as advising on, preparing, and filing tax returns. Regrettably, taken to their logical conclusions, these cases prevent the Treasury Department from establishing and enforcing any standards of competence whatsoever on tax practitioners unless and until the IRS selects a taxpayer's tax return for audit (which occurs at a rate of less than one percent for individual returns).

The IRSAC firmly believes that all tax practitioners should be subject to the minimum standards of competency currently required of licensed and credentialed tax practitioners (including lawyers, accountants, and enrolled agents). To this end, the IRSAC recommends that the Commissioner request Congress to enact legislation expressly authorizing the Treasury Department under 31 U.S.C. § 330 to establish, enforce, and require minimum standards of competence for all tax practitioners, including tax return preparers.

2. Educating Practitioners and Preparers about Their Responsibilities under the Internal Revenue Code's Penalty Provisions and the Treasury Department's Practice Standards Contained in Circular 230

A sound tax system requires that all tax practitioners participate in continuing education to maintain essential expertise, currency, and skills. The IRS provides extensive educational resources for tax practitioners. However, the IRSAC believes that many tax return preparers do not know about them. To this end, the IRSAC recommends a technical change in the Preparer Tax Identification Number (PTIN) renewal process that will reach out proactively to help make these resources better known. It is especially important to help the non-credentialed tax return preparers, who may not be aware of the IRS's email alerts, newsletters, webinars and tutorials.

3. Generally Accepted Appraisal Standards in IRS Valuations

Valuation issues are pervasive in the tax law, including in the context of charitable contributions, distributions and exchanges of property, and gift and estate taxes. While differences of opinion about specific valuations are inevitable, the IRS could reduce cost and controversy by considering the adoption of the principles of uniform appraisal standards that are already followed by the appraisal profession and that, in certain circumstances (particularly in the context of charitable contributions), are already required of taxpayers when submitting valuations for federal tax purposes.

The IRSAC believes that the appraisal standards that taxpayers must follow when submitting valuations for charitable contributions, known as the *Uniform Standards of Professional Appraisal Practice* (USPAP), provide a generally accepted standard of care that, where appropriate, should be followed in other valuation contexts and by taxpayers and the IRS alike. Specifically, to improve the credibility, efficiency, and cost effectiveness

of IRS valuations, the IRSAC recommends that the IRS evaluate whether and where it should follow the principles of the USPAP.

ISSUE ONE: THE NEED FOR EXPRESS STATUTORY AUTHORITY TO CONFIRM THE TREASURY DEPARTMENT’S ABILITY TO ESTABLISH, ENFORCE, AND REQUIRE MINIMUM STANDARDS OF COMPETENCE FOR ALL TAX PRACTITIONERS, INCLUDING TAX RETURN PREPARERS

Executive Summary

Taxpayers, tax practitioners, and the Internal Revenue Service all benefit from enforceable minimum standards of conduct for tax practitioners. First and foremost, it is in the public interest and the interest of taxpayers particularly to safeguard the integrity of tax return preparation, tax advice and planning, tax representation generally, and the tax controversy process. The even-handed enforcement of minimum standards also benefits ethical practitioners who otherwise might find themselves disadvantaged by a seeming “race to the bottom” by unregulated practitioners. Recently, several courts have circumscribed the authority of the Treasury Department to establish, enforce, and require minimum standards of competence on tax return preparation and other pre-filing tax services, as well as on post-filing tax services prior to the audit stage.

To ameliorate the threat posed by these court decisions to competent tax advice and return preparation, to tax administration, and to the integrity of the tax profession, the IRSAC believes that Congress should extend to the Treasury Department express authority to establish, enforce, and require minimum standards of competence for the full range of tax practice, from tax advice and planning all the way through tax litigation.

Background

In 1884, Congress empowered the Treasury Department to “prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department.”⁷³ Under the same statute, Congress authorized the

⁷³ Act of July 7, 1884 (23 Stat. 258, 258).

Treasury to require these individuals to demonstrate competency⁷⁴ and, furthermore, to “suspend and disbar from further practice before his Department” any individual “shown to be incompetent, disreputable, or who refuses to comply with said rules and regulations.”⁷⁵ Under this authority, in 1886, the Treasury promulgated regulations published as Department Circular 13.⁷⁶ In 1921, the Treasury collected Circular 13 and subsequent administrative pronouncements⁷⁷ and republished them as Treasury Circular 230, which the Treasury has updated and amended periodically but never renumbered.⁷⁸ In 1982, Congress recodified the underlying 1884 statute “without substantive change” as 31 U.S.C. § 330, reauthorizing the Treasury Department to “regulate the practice of representatives of persons before the Department.”⁷⁹

Both before and after the 1982 recodification of the statutory grant, the Treasury Department exercised its express authority over attorneys, certified public accountants, enrolled agents, and other credentialed tax practitioners advising and representing taxpayers before the Internal Revenue Service.⁸⁰ That is, until now.

Discussion

Beginning in 2014, court decisions have chipped away at the Treasury Department’s longstanding authority to “regulate the practice of representatives of persons

⁷⁴ *Id.* at 258-59 (empowering the Treasury Department to “require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases”).

⁷⁵ *Id.* at 259.

⁷⁶ Department Circular 13 (Feb. 6, 1886).

⁷⁷ *See, e.g.,* *Falsone v. United States*, 205 F.2d 734, 741 (5th Cir. 1953) (acknowledging Treasury’s historical authority to promulgate rules and regulations “governing recognition of attorneys and agents representing persons before the Treasury Department”).

⁷⁸ For the most recent iteration of Circular 230, *see* <https://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

⁷⁹ Pub. L. No. 97-258, 96 Stat. 877, 877 & 884 (1982).

⁸⁰ Circular 230, § 10.3 (“Who May Practice”).

before the Department”⁸¹ by narrowly construing the terms “practice” and “representative” in 31 U.S.C. § 330. In so doing, these courts have vitiated Treasury’s oversight of tax practitioners, thereby hampering Treasury’s ability to establish and enforce standards of competence that both protect taxpayers and ethical tax practitioners and safeguard tax administration.

In *Loving v. IRS*,⁸² the D.C. Circuit held that the Treasury Department has no authority under 31 U.S.C. § 330 to oversee tax return preparers because preparing a tax return does not amount to “practice” or “representation” of taxpayers before the Internal Revenue Service.⁸³ Rather, according to the court, “practice” and “representation” as contemplated by the statute materializes only after a taxpayer’s “return is selected for audit or the taxpayer appeals the IRS’s proposed liability adjustments.”⁸⁴ Later the same year, in *Ridgely v. Lew*,⁸⁵ the same court invalidated the Treasury Department’s restrictions on contingent fees as applied to “ordinary” refund claims, that is, amended tax returns filed before an examination of the original return. As with *Loving*, *Ridgely* construed tax “practice” and taxpayer “representation” in the narrowest possible sense to omit all forms of pre-filing tax practice and, indeed, even some forms of post-filing practice.⁸⁶

⁸¹ See *supra* note 7 and accompanying text.

⁸² 742 F.3d 1013 (D.C. Cir. 2014), *affg* 920 F. Supp. 2d 108 (D.D.C. 2013).

⁸³ *Id.* at 1015-17.

⁸⁴ *Id.* at 1019.

⁸⁵ 55 F. Supp. 3d 89 (D.D.C. 2014).

⁸⁶ The IRSAC believes that these cases too narrowly construe the Treasury Department’s authority to regulate tax practitioners and return preparers. In particular, the IRSAC believes that 31 U.S.C. § 330 embodies a considerably broader concept of tax “practice” and taxpayer “representation” and, furthermore, that *Loving* and *Ridgely* are flatly at odds with congressional intent reflected in multiple statutes enacted over the last three decades. For more on the IRSAC’s position with respect to these two cases, see INTERNAL REVENUE SERVICE ADVISORY COUNCIL, 2016 ANNUAL REPORT 57-62 (2016).

The damage done by these cases is already being felt. In March 2017, a U.S. District Court in Nevada invoked *Loving*⁸⁷ to hold that the Treasury Department could do nothing to stop a disbarred lawyer from preparing federal tax returns. In *Sexton v. Hawkins*, the former lawyer had pled guilty to four counts of mail fraud and one count of money laundering, after which the Treasury suspended him from practicing before the IRS under its undisputed authority in Circular 230, §§ 10.50-52.⁸⁸ In holding that the Treasury was powerless to oversee the conduct of this disbarred felon, the court reasoned that tax return preparation fell outside the ambit of 31 U.S.C. § 330 and, incredibly, that Treasury lacked the authority to regulate the conduct of suspended practitioners previously authorized to practice before the IRS.⁸⁹

Taxpayers, ethical practitioners, tax administrators, legislators and policymakers, and the public at large should be very concerned that a disbarred felon preparing tax returns can run amok with no oversight, no required or enforceable minimum standards of competency, and no threat of discipline for misconduct.

As of September 1, 2017, there were 722,262 persons holding valid Preparer Tax Identification Numbers (PTINs), which are required of persons filing tax returns on behalf of other taxpayers.⁹⁰ Of those individuals, 370,582 (*more than half of all PTIN holders*) have no requirement to follow the competency standards promulgated by the Treasury Department and are not subject to discipline by any licensing bodies for professional

⁸⁷ *Sexton v. Hawkins*, 2017 U.S. Dist. LEXIS 38706 *9 (D.C. Nev. 2017) (finding “[t]he analysis and holding in *Loving* apply with equal force to this case”).

⁸⁸ *Id.* at *1-5.

⁸⁹ As to whether Treasury lacks the authority to regulate the conduct of suspended practitioners previously authorized to practice before it, the court’s opinion without logic or support suggests that suspended lawyers could continue practicing law without any repercussions from the bar association that suspended them for misconduct, the same bar association that originally granted them a license to practice law.

⁹⁰ *Id.*

misconduct.⁹¹ Meanwhile, the other 351,680 practitioners (less than half the total number of PTINs) are formally authorized to practice before the IRS and are therefore subject to the practice standards and disciplinary sanctions contained in Circular 230.⁹²

Fortunately, a growing number of elected officials has recognized the pressing need to pull all tax practitioners under the umbrella of the Treasury Department for purposes of establishing, enforcing, and requiring minimum standards of competency. Beginning in 2015, members of Congress have introduced bills designed to clarify and expand the scope of 31 U.S.C. § 330. Generally, these efforts have sought to expressly affirm the Treasury's authority to oversee paid tax return preparers and to sanction preparers for incompetency and other misconduct.⁹³ One of the latest efforts responds directly to the *Loving, Ridgely*, and *Sexton* decisions. The Tax Return Preparer Accountability Act of 2017 would authorize the Treasury to prescribe regulations overseeing “any tax return preparers who are not regulated by the Secretary under section 330,” and to further impose a \$1,000 penalty for every “federal tax return, document, or other submission” prepared by a preparer who is either not in compliance with Circular 230 or “suspended or disbarred from acting as a tax return preparer under such regulations.”⁹⁴

⁹¹ The 370,582 figure is derived from statistics contained in the Return Preparer Office Federal Tax Return Statistics, available at <https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics>.

⁹² *Id.* These persons include attorneys (30,258), certified public accountants (212,279), enrolled actuaries (362), enrolled agents (53,545), enrolled retirement plan agents (751), and persons having completed the IRS's Annual Filing Season Program (54,485).

⁹³ See e.g., S. 137, Taxpayer Protection and Preparer Proficiency Act of 2015 (introduced and co-sponsored by Sens. Wyden and Cardin); H.R. 1609, Tax Return Preparer Accountability Act of 2015 (co-sponsored by Cohen, Scott, Norton, and Maloney); H.R. 1778, Tax Refund Protection Act of 2015 (introduced by Rep. Bonamici); S. 935 (companion bill to H.R. 1778), Tax Refund Protection Act of 2015 (introduced by Rep. Booker); H.R. 4141, Tax Return Preparer Competency Act of 2015 (introduced by Rep. Black).

⁹⁴ H.R. 1077, Tax Return Preparer Accountability Act of 2017 (sponsored by Rep. Cohen) (recommending a new § 330A to follow 31 U.S.C. § 330).

Most important, the Trump Administration has endorsed affirming the power of the Treasury Department to establish, enforce, and require minimum standards of competency for paid tax return preparers. The President’s budget for fiscal year 2018 recognizes that “[p]aid tax return preparers have an important role in tax administration because they assist taxpayers in complying with their obligations under the tax laws.”⁹⁵ Thus, “[t]o promote high quality services from paid tax return preparers,” the President’s proposal would “explicitly provide” that Congress empower the Treasury with “the authority to regulate all paid tax return preparers.”⁹⁶

While the IRSAC commends these and other legislative efforts to provide the Treasury Department express statutory authority to “regulate all paid tax return preparers,”⁹⁷ the court cases discussed above—particularly the combination of *Loving* and *Ridgely*—necessitate a broader authorization that grants the Treasury Department the power to regulate all tax practitioners and not just tax return preparers.

Recommendation

As the IRSAC has done in each of the last three years, we recommend that the Commissioner ask Congress to enact legislation expressly authorizing the Treasury Department under 31 U.S.C. § 330 to establish, enforce, and require minimum standards of competence for all tax practitioners, including tax return preparers. Such legislation should define (or at least contemplate) tax “practice” and taxpayer “representation” as encompassing both pre-filing and post-filing professional tax services. In so doing, the

⁹⁵ OFFICE OF MANAGEMENT AND BUDGET, ANALYTICAL PERSPECTIVES, BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2018 118 (2017). According to the President’s budget, the proposal to “increase oversight of paid tax return preparers” would generate \$259 million over the next ten years. *Id.* at 119.

⁹⁶ *Id.* at 118.

⁹⁷ *Id.*

IRSAC lends its voice to the chorus of supporters from across the professional and political spectrum who recognize the dire need for federal oversight of tax practitioners, particularly those who are currently unlicensed and subject to no threat of discipline for misconduct detrimental to taxpayers, ethical tax practitioners, and effective tax administration.

ISSUE TWO: EDUCATING PRACTITIONERS AND PREPARERS ABOUT THEIR RESPONSIBILITIES UNDER THE INTERNAL REVENUE CODE'S PENALTY PROVISIONS AND THE TREASURY DEPARTMENT'S PRACTICE STANDARDS CONTAINED IN CIRCULAR 230

Executive Summary

A sound tax system requires that all tax practitioners participate in continuing education to maintain essential expertise, currency and skills. The IRS provides extensive educational resources for tax practitioners. However, the IRSAC believes that many tax return preparers do not know about them. To this end, the IRSAC recommends a technical change in the Preparer Tax Identification Number (PTIN) renewal process that will reach out proactively to help make these resources better known. It is especially important to help the non-credentialed tax return preparers, who may not be aware of the IRS's email alerts, newsletters, webinars, and tutorials.

Background

The term "tax practitioner" includes all lawyers, accountants, enrolled agents, appraisers, tax return preparers (whether or not credentialed or certificated), and others who assist taxpayers in complying with, and planning to take account of, the Internal Revenue Code. Of these, the IRS estimates that there are over 718,000 PTIN holders, who assist approximately 60 percent of all taxpayers who do not prepare their own tax returns.

Treasury Department Circular No. 230 (Rev. 6-2014) contains regulations governing practice before the Internal Revenue Service under 31 U.S.C. § 330. In particular, *Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service* applies to all credentialed individuals recognized as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents. It is encouraging that in addition to these credentialed individuals, there also are 54,484

non-credentialed tax practitioners who have *volunteered* to be subject to Circular 230 (as participants in the IRS's Annual Filing Season Program).⁹⁸ They have also volunteered to obtain 18 hours of continuing education, including a six-hour federal tax law refresher course. These non-credentialed individual tax return professionals, who have voluntarily agreed to maintain minimum competency standards for return preparation, exceed the number of IRS enrolled agents, who are credentialed, regulated by the IRS, and subject to Treasury Circular 230. Many of the tax practitioners who are subject to Circular 230 are well aware of their obligations.

However, the same cannot be said for non-credentialed tax return preparers, who are not subject to Circular 230. Many non-credentialed tax return preparers do not know that they may be subject to penalties, and this is another important component of the education that the IRSAC wishes to make more accessible. The Internal Revenue Code contains several assessable penalties that may be imposed on tax return preparers with respect to the preparation of tax returns for their clients.

Among the more common penalties assessed against tax return preparers are:

- Understatement of a taxpayer's liability due to unreasonable tax return positions—§ 6694(a)
- Understatement of a taxpayer's liability due to willful or reckless conduct— § 6694(b)
- Failure to furnish a copy of a tax return to a taxpayer—§ 6695(a)
- Failure to sign a return—§ 6695(b)
- Failure to retain a copy of a tax return—§ 6695(d)
- Negotiation of a taxpayer's refund check—§ 6695(f)
- Failure to exercise due diligence in determining a taxpayer's eligibility for child care credit; American Opportunity Tax Credit; and earned income credit—§ 6695(g)
- Disclosure of return information by tax return preparers—§ 6713 and § 7216
- Aiding or abetting in tax liability understatement—§ 6701

⁹⁸ According to IRS Return Preparer Office, federal tax return preparer statistics made available as of July 1, 2017.

- Frivolous tax return preparation—§ 6702

Recommendations

The IRSAC recommends that the Commissioner institute a nationwide program to provide greater outreach to educate *all* paid tax professionals including non-credentialed tax return preparers about the Internal Revenue Code, Circular 230, and the many IRS educational resources that are available. The IRSAC believes greater educational outreach will increase participation and engagement among the tax practitioner community, promote more effective tax administration, and enhance competency and due diligence among tax return preparers.

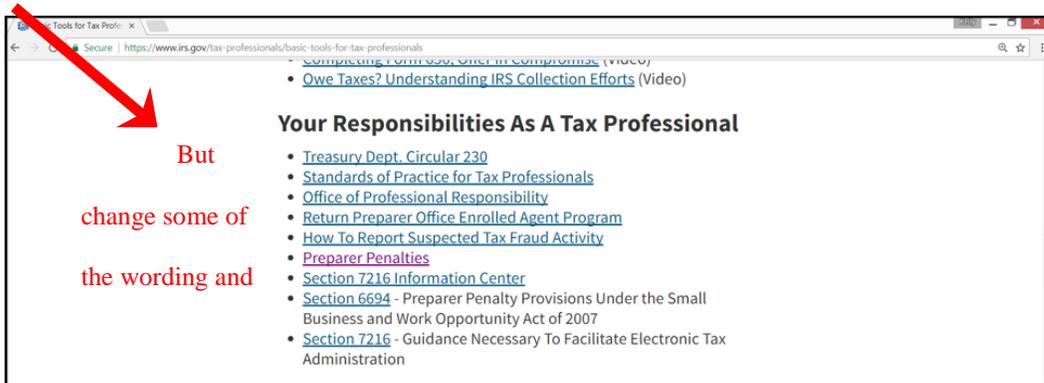
The IRSAC recommends the following four specific steps:

1. The IRS should develop a process by which the renewal process for a PTIN auto subscribes the individual to “E-news for Tax Professionals.” This is the weekly email update from the IRS that provides information on the week’s happenings, tax tips, tax return preparation updates and e-file news. Auto-subscribing (with an opt-out feature) will assist those who are unfamiliar with IRS tax pro resources.

	
e-News for Tax Professionals September 8, 2017	
Useful Links: IRS.gov Tax Professionals Home All Forms and Pubs Stakeholders Partners' Headliners	Issue Number: 2017-36 Inside This Issue <ol style="list-style-type: none"> 1. Be Prepared: With Irma Threatening, IRS Offers Advice to Tax Pros 2. Tax Relief Available to Hurricane Harvey Victims 3. Reminder: e-Services Outage 4. IRS Announces Five New Members for the Electronic Tax

2. The IRS should develop a means of routing the PTIN process so that during the final steps of the online PTIN renewal, once all information has been successfully submitted,

the final screen of the PTIN renewal process moves to the portion of the IRS website that shows: “Your Responsibilities as a Tax Professional.” This is on the Basic Tools for Tax Pros web page.



3. The IRS should reposition the sequence of information for tax professionals in order of importance to the PTIN holders. Our recommendations are shown in detail below.

Your Responsibilities as A Tax Professional

Headings (in revised order)	Notes
Summary of Practitioner Duties under Circular 230	Link to (new) “Summary of Practitioner Duties under Circular 230 (Subpart B)” (as shown below)
Summary of Preparer Penalties under Title 26	Change the name from “Preparer Penalties,” and move this up to 2nd on the list. Link to https://www.irs.gov/tax-professionals/summary-of-preparer-penalties-under-title-26
Office of Professional Responsibility	This link should include Treasury Dept. Circular 230 and Standards of Practice for Tax Professionals
Practice before the IRS – Pub 947	Add this to the list and link to https://www.irs.gov/pub/irs-pdf/p947.pdf
Return Preparer Office Enrolled Agent Program	Add reference to AFSP?

How to Report Suspected Tax Fraud Activity	
Section 7216 Information Center	

4. The IRS should provide a short summary of Circular 230 in the effort to encourage and assist ALL practitioners to read and understand Circular 230. The text below is based upon the Summary of Preparer Penalties under Title 26. It is helpful and can easily be accessed from the section of the IRS website that is entitled, “Your Responsibilities as a Tax Professional.” We recommend that this additional summary be posted there and possibly in other areas of the IRS website.

Summary of Practitioner Duties under Circular 230 (Subpart B)

See the text of Circular 230 to fully understand these provisions; do not rely on this summary.

- § 10.20 **Information to be furnished**—Locate and furnish information requested by an IRS official, including information regarding violations of Circular 230.
- § 10.21 **Knowledge of client’s omission**—Advice clients of any failure they make to comply with the law and the consequences of such noncompliance.
- § 10.22 **Diligence as to accuracy**—Exercise due diligence as to the accuracy of information in returns and other submissions to the IRS; may rely on other competent professionals.
- § 10.23 **Prompt disposition of pending matters**—Do not unreasonably delay the completion of matters pending before the Service.
- § 10.24 **Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees**—Avoid dealing disbarred or suspended practitioners or former IRS employees whose activities are prohibited by law.
- § 10.25 **Practice by former government employees, their partners and their associates**—Former government employees and their firms may be barred from participating in various matters on which they worked while in the government.
- § 10.26 **Notaries**—Do not notarize documents in a matter if you are also acting as the taxpayer’s representative.

- § 10.27 **Fees**—Do not charge unconscionable or, in most cases, contingent fees.
- § 10.28 **Return of client’s records**—On request, promptly return your client’s records to the client, generally, even if you have a pending fee dispute.
- § 10.29 **Conflicting interests**—Avoid conflicts of interest, such as when the interests of one client adversely affect the interests of another client.
- § 10.30 **Solicitation**—Do not make illegal, false, fraudulent, misleading, deceptive or coercive public or private statements regarding a matter pending before the Service.
- § 10.31 **Negotiation of taxpayer checks**—a tax return preparer must not negotiate or endorse government checks issued to the client.
- § 10.32 **Practice of Law**—Nothing in Circular 230 authorizes a non-attorney to practice law.
- § 10.33 **Best practices for tax advisors**—Provide high quality advice by adhering to the best practices; communicate clearly, establish the truth of facts and reasonableness of representations, advise clients of pertinent consequences, and deal fairly and with integrity.
- § 10.34 **Standards with respect to tax returns and documents, affidavits and other papers**—Act with good faith and integrity. For example, don’t sign a return or other document or advise your client to take a position that lacks a reasonable basis, takes an unreasonable position, willfully attempts to understate tax liability, or exposes the client (or yourself) to penalties under Title 26.
- § 10.35 **Competence**—Practitioners must possess the appropriate level of knowledge, skill, thoroughness, and preparation in respect of the matters for which they are retained.
- § 10.36 **Procedures to ensure compliance**—The principal tax practitioner in a firm must assure that procedures are in place to assure compliance with Circular 230, and especially §10.35, by all firm tax personnel.
- § 10.37 **Requirements for written advice**—Do not make unreasonable factual or legal assumptions, unreasonably rely on representations made, fail to take into account all relevant facts and circumstances or rely on the unlikelihood of audit.

Conclusion

Currently, the IRS is providing email campaigns, tax professional newsletters, webinars, and information, worksheets, and short tutorials in many different areas of the IRS website. However, a person must subscribe to these resources or go online and search them out. The IRSAC believes that these educational materials would be more widely used if they were provided directly to PTIN holders at the time of their renewal.

ISSUE THREE: GENERALLY ACCEPTED APPRAISAL STANDARDS IN IRS VALUATIONS

Executive Summary

Valuation issues are pervasive in the tax law, including in the context of charitable contributions, distributions and exchanges of property, and gift and estate taxes. While differences of opinion about specific valuations are inevitable, the IRS could reduce cost and controversy by considering the adoption of the principles of uniform appraisal standards that are already followed by the appraisal profession and that, in certain circumstances (particularly in the context of charitable contributions), are already required of taxpayers when submitting valuations for federal tax purposes.

The IRSAC believes that the appraisal standards that taxpayers must follow when submitting valuations for charitable contributions, known as the *Uniform Standards of Professional Appraisal Practice* (USPAP), provide a generally accepted standard of care that, where appropriate, should be followed in other valuation contexts and by taxpayers and the IRS alike.⁹⁹ Specifically, to improve the credibility, efficiency, and cost effectiveness of IRS valuations, the IRSAC recommends that the IRS evaluate whether and where it should follow the principles of the USPAP.

Background

Appraisal Standards

The definition of “qualified appraisal” in section 170(f)(11)(E)(i) of the Internal Revenue Code (relating to charitable contributions) includes a requirement that for an

⁹⁹ To improve the reliability of taxpayer valuations, since 2006 the IRS has generally required, especially for charitable contribution deductions and gift valuations, that taxpayers submit qualified appraisals performed by qualified appraisers. See Treas. Reg. § 1.170A-13 (“Recordkeeping and return requirements for deductions for charitable contributions”) and Treas. Reg. §§ 20.2053-4 (b) iv and (c) iv (“Deduction for claims against the estate”).

appraisal to be considered “qualified,” it must be conducted in accordance with regulations and other guidance and with “generally accepted appraisal standards.”¹⁰⁰ To explain these standards, the IRS has issued regulations providing that an appraisal “consistent with substance and principles of the *Uniform Standards of Professional Appraisal Practice* (‘USPAP’), as developed by the Appraisal Standards Board of The Appraisal Foundation” will be treated as conducted in accordance with generally accepted appraisal standards.¹⁰¹

USPAP was written three decades ago by a consortium of professional appraisal societies.¹⁰² In 1989, Congress authorized the Appraisal Standards Board to promulgate these standards for real property appraisers in federally related transactions.¹⁰³ As a result, compliance with USPAP is now required for real property appraisers.¹⁰⁴ According to the

¹⁰⁰ I.R.C. § 170(f)(11)(E)(i) provides: “The term ‘qualified appraisal’ means, with respect to any property, an appraisal of such property which—

- (I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and
- (II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).”

This statutory language, enacted as part of the American Jobs Creation Act of 2004 (Pub. L. No. 108-357, § 883(a)), and amended by the Pension Protection Act of 2006 (Pub. L. No. 109-280, § 1219(c)(1)), is similar to language previously found in applicable Treasury regulations.

¹⁰¹ Notice of Proposed Rulemaking Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions, and Internal Revenue Bulletin, REG-140029-07 (Oct. 6, 2008); Notice 2006-96, Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions (Nov. 13, 2006).

¹⁰² The original Uniform Standards of Professional Appraisal Practice were developed in 1986–1987 by the Ad Hoc Committee on Uniform Standards and copyrighted in 1987 by the Appraisal Foundation.

¹⁰³ The Financial Institutions Examination Council is established under 12 U.S.C. § 3303 to prescribe uniform principles and standards for the federal examination of financial institutions. It is composed of the Comptroller of the Currency, the Chairman of the FDIC, a member of the Board of Governors of the Federal Reserve System, the Director of the Consumer Financial Protection Bureau, the Chairman of the National Credit Union Administration Board, and the Chairman of the State Liaison Committee. 12 U.S.C. § 3310 creates the Appraisal Subcommittee of the Council, which is authorized by 12 U.S.C. § 3331, *et seq.*, to “monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.” The Appraisal Foundation’s Appraisal Standards Board is responsible for promulgating the USPAP. Updated regularly, the USPAP reflects the current standards of the appraisal profession and establishes requirements for appraisers in order to promote and maintain a high level of public trust in appraisal practice.

¹⁰⁴ <https://www.asc.gov/State-Appraiser-Regulatory-Programs/StateContactInformation.aspx>.

Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC):

USPAP contains the recognized standards of practice for real estate, personal property and business appraisal. Title XI requires that real estate appraisals used in conjunction with federally related transactions are performed in accordance with USPAP. State certified and licensed real property appraisers are currently required to adhere to USPAP by their respective State appraiser regulatory agencies. Many appraisers are also bound to comply with USPAP through affiliations with professional appraisal organizations.¹⁰⁵

USPAP contains a series of competence, conflict of interest, and due diligence standards for appraisers analogous to those in Circular 230 pertaining to tax practitioners.¹⁰⁶ It also requires appraisers to use recognized methods and techniques to develop independent, impartial, and objective opinions of value that are supported by evidence and logic.¹⁰⁷

USPAP is regularly updated by the Appraisal Standards Board and encompasses real property, appraisal review, mass appraisal, personal property, and business appraisals. The standards have been widely adopted by professional appraisal societies and, according to business valuation expert Shannon Pratt and Tax Court Judge David Laro, “USPAP

¹⁰⁵ <https://www.asc.gov/About-the-ASC/ASCHistory.aspx>.

¹⁰⁶ For example, compare Circular 230, § 10.35 (Competence) with the USPAP Competency Rule; Circular 230, § 10.29 (Conflicting Interests) with the Ethics Rule and required disclosures in the USPAP Certification; and Circular 230, § 10.29 (Diligence as to Accuracy) with the USPAP Standards Rule 1-1(b and c) for real property and with parallel requirements for the other appraisal disciplines in Standards Rules 3-1, 5-1, 7-1, and 9-1.

¹⁰⁷ USPAP does not prescribe specific methodology. As specified in Standards Rule 1-1 (a), “the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient”

makes good appraisal sense, is widely respected, and is frequently referred to by courts and regulatory agencies.”¹⁰⁸

One of the most significant references to USPAP in the U.S. Tax Court occurred in *Kohler v. Commissioner*, T.C. Memo. 2006-152. The dispute in this case involved two divergent opinions of fair market value for Kohler company stock owned by the estate. The taxpayer and IRS appraisals differed by about \$100 million. In accepting the taxpayer appraisal, the court wrote that the IRS appraiser’s report also was not submitted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) . . . [and] . . . did not provide the customary USPAP certification, which assures readers that the appraiser has no bias regarding the parties, no other persons besides those listed provided professional assistance, and that the conclusions in the report were developed in conformity with USPAP.” The court’s explanation for why the IRS appraiser’s report was disregarded detailed a number of concerns, and twice the court mentioned the failure to conform to USPAP standards.

Kohler has been widely cited to underline potential legal consequences of failure to comply with appraisal standards. For example, in a 2008 article in *The CPA Journal*, Martin J. Lieberman and David Anderson state:

In addition to the authority bestowed by federal law and IRS implementation guidance, the USPAP business valuation standards have been recognized in federal courts, and increasingly in state courts as well, as prerequisite to the qualification of a business valuation report.¹⁰⁹

¹⁰⁸ Laro, David, & Shannon P. Pratt, *Business valuation and taxes: procedure, law and perspective* 400 (2011).

¹⁰⁹ Martin J. Lieberman & David Anderson, *Will the Real Business Valuation Standards Please Stand Up?*, *The CPA Journal* (January 2008), available at <http://archives.cpajournal.com/2008/108/essentials/p22.htm>.

Taxpayers

The appraisals that taxpayers submit to the IRS for charitable contribution purposes must be “conducted by a qualified appraiser in accordance with generally accepted appraisal standards.”¹¹⁰ To enforce this requirement, IRS has issued guidance to its employee examiners and appraisers for reviewing taxpayer appraisals that refers directly to compliance with USPAP.

One example is the 2012 IRS *Conservation Easement Audit Techniques Guide*, which states:

Examiners and IRS appraisers must consider whether the appraisal is consistent with the substance and principles of USPAP and, if not, whether the appraisal satisfies the generally accepted appraisal standard requirement.¹¹¹

Another example is found in *Internal Revenue Manual (I.R.M.): Part 20, Penalty and Interest, Exhibit 20.1.12-2, IRC 6695A - Job Aid (IRC Sections 6695A, 6700 & 6701 Valuation Penalty Job Aid)*, which encourages IRS auditors to ask:

Does the appraisal comply with the USPAP (Uniform Standards of Professional Appraisal Practice) standards?

If no, describe the most significant errors or omissions in the appraisal.

This advice for IRS reviewers and auditors suggests that it may be difficult for a taxpayer’s appraisal (even if not for charitable contribution) to withstand IRS scrutiny if it

¹¹⁰ Treas. Reg. § 1.170A-13. A qualified appraisal by a qualified appraiser as defined in under section 170(f)(11) and Treas. Reg. § 1.170A-13(c) is also required in some cases to support claims against a decedent’s estate. *See* Treas Reg. § 20.2053-4 and Ronald Aucutt, *Final Regulations on Deduction of Claims*, American College of Estate and Gift Counsel Capital Letter No.20 (Oct. 28, 2009), *available at* <http://www.actec.org/resources/capital-letter-no-20/>.

¹¹¹ Conservation Easement Audit Techniques Guide Revision Date—January 3, 2012, at 38-39, *available at* https://www.irs.gov/pub/irs-utl/conservation_easement.pdf.

does not comply with USPAP. It also confirms that the IRS looks to USPAP as the gold standard.

Appraisers

Compliance with USPAP is required for state-licensed and state-certified real property appraisers, and the obligation of real property appraisers to comply with USPAP is enforced by state regulators who are monitored by the Appraisal Subcommittee of FFIEC. Some business appraisers (depending upon their professional designation) and most personal property appraisers are also obliged to comply with USPAP as a condition of their accreditation or certification. In addition, appraisers may well be negatively reviewed by the IRS and in Tax Court if they do not comply with USPAP.¹¹² Further, if an appraiser makes a substantial or gross understatement or overstatement, the appraiser may be subject to penalties under section 6695A or discipline by the Office of Professional Responsibility.¹¹³

IRS Valuation Guidelines in the Internal Revenue Manual

The IRSAC understands that most IRS staff appraisers (including engineers, business valuers, and art appraisers) are familiar with and generally comply with USPAP. The Valuation Guidelines in the Internal Revenue Manual (IRM), for example, generally mirror USPAP with some language repeated verbatim.¹¹⁴ (*See* Appendix for one example.) Nevertheless, the IRM Valuation Guidelines contain no express reference to USPAP and no requirement to comply with generally accepted appraisal standards.

¹¹² *Kohler v. Commissioner*, T.C. Memo. 2006-152.

¹¹³ I.R.C. § 6695A, as added by § 1219 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006).

¹¹⁴ *See* IRM: Tangible Personal Property (4.48.3.4.3 (07-01-2006)); Business Valuation (4.48.4.4.3 (07-01-2006)); Intangible Property (4.48.5.4.3 (07-01-2006)); Real Property (4.48.6.4.3 (07-01-2006)).

In addition, the IRM is not kept up to date with changes in appraisal standards. Thus, by January 2018, there will have been six editions of USPAP since the IRM Valuation Guidelines were last revised. (Some discrepancies are shown in the Appendix.) The procedure for updating the IRM Valuation Guidelines may be more cumbersome since the IRS National Valuation Policy Council (VPC) has been disbanded and replaced by a council of all field specialists.¹¹⁵

IRS Third-Party Experts

IRM guidelines for *Gathering Information from Third Parties* in valuation cases do not consider whether the proposed expert needs to follow the principles of USPAP when evaluating the competency of potential outside contractors.

Art Advisory Panel

The Art Advisory Panel, which was formed in 1968, is described in the IRM as “nationally prominent art museum directors, curators, scholars, art dealers, auction representatives, and appraisers.”¹¹⁶ The most recent annual report (2016) lists 2 curators, 2 scholars, and 13 art dealers whose collective role is to help “the IRS review and evaluate the acceptability of tangible personal property appraisals taxpayers submit to support the fair market value claimed on the wide range of works of art involved in income, estate, and gift tax returns.”¹¹⁷

The process outlined in the IRM is, as follows:

The Panel members, after reviewing photographs or color transparencies, along with relevant documentation provided by the taxpayers and research by the staff appraisers, make recommendations on the acceptability of the claimed values. If

¹¹⁵ Fishman, Jay, Shannon Pratt & James Hitchner, 2015. PPC’s guide to business valuations (25th ed.) (Fort Worth: Thomson/PPC).

¹¹⁶ IRM 4.48.2.1.1.1 (10-01-2012).

¹¹⁷ https://www.irs.gov/pub/irs-utl/art_adv_panel_annual_summary_report_fy15.pdf.

unacceptable, the Panelists make alternate value recommendations. Such recommendations are advisory only; however, after review by AAS [the Art Appraisal Services unit in the IRS Office of Appeals], these recommendations become the position of the Service.¹¹⁸

As the table below shows, in the recent past Art Appraisal Services has overwhelmingly adopted the recommendations of the Art Advisory Panel.¹¹⁹

Fiscal Year	Percent of Art Advisory Panel Recommendations Adopted by IRS
2016	70.0%
2015	74.0%
2014	90.0%
2013	95.0%
2012	96.5%
2011	93.0%

The Art Advisory Panel was created to serve a unique valuation role and to provide “insider” expertise with respect to the art market. It was not created to follow widely recognized appraisal standards. At the same time, we understand that the AAS appraisers and examiners are familiar with and follow widely recognized appraisal standards and impose them on AAP recommendations.

Recommendations

1. Consider Whether Following USPAP Guidelines Would be Beneficial

USPAP is a longstanding and carefully developed set of appraisal standards familiar to the appraisal community that has been adopted by the IRS and other federal agencies in various contexts. To align IRS appraisal procedures and standards with those required of taxpayers, and to ensure that the IRS remains up-to-date with respect to

¹¹⁸ IRM 4.48.2.1.1.3 (10-01-2012).

¹¹⁹ See https://www.irs.gov/pub/irs-utl/art_adv_panel_annual_summary_report_fy15.pdf; <https://www.irs.gov/pub/irs-utl/annrep2014.pdf>; <https://www.irs.gov/pub/irs-utl/annrep2013.pdf>; <https://www.irs.gov/pub/irs-utl/annrep2012.pdf>; <https://www.irs.gov/pub/irs-utl/annrep2011.pdf>.

industrywide appraisal standards, we recommend that the IRS examine all of its appraisal procedures to determine whether they meet the standards reflected in USPAP.

Furthermore, to the extent existing IRS procedures do not meet the standards reflected in USPAP, we recommend that the IRS consider modifying its procedures so that those procedures equal or exceed the standards and principles contained in USPAP. Finally, where IRS appraisal procedures do not currently comply with USPAP standards, and the IRS decides not to bring them in compliance with USPAP after conducting the recommended evaluation described above, we recommend that the IRS announce where and why its appraisal practices and procedures deviate from USPAP.

2. The IRS Should Consider Whether Compliance with USPAP Would Be Helpful in Identifying Expert Witnesses

To be consistent and to help avoid unnecessary challenges, the IRS should consider whether outside valuation experts comply with USPAP.

3. Art Advisory Panel

For the past two years, the IRSAC has delved into the development and reporting of valuation opinions by the Art Advisory Panel (AAP). To advance this process, we have identified the following questions and suggestions.

Questions

1. Do the Art Advisory Panel recommendations constitute appraisals? If so, should generally accepted appraisal standards apply?
2. While AAP panelists' knowledge of private sales is no doubt helpful in valuing works of art, we believe greater transparency into the panel's work would be beneficial.¹²⁰

¹²⁰ Rhodes, Anne-Marie, *Valuing Art in an Estate: New Concerns*, 31 *Cardozo Arts & Entertainment L.J.* 45 (2012-2013).

3. Does the high acceptance rate of AAP evaluations by Art Appraisal Services indicate that the process is working well and that the AAP recommendations are well-supported determinations of value? Alternatively, does the high acceptance rate of AAP recommendations by the IRS indicate that the AAP—which, again, does not necessarily follow industry-recognized appraisal standards in making determinations of value—exerts too much influence over IRS valuations of artwork?
4. Is the need that prompted the establishment of the Art Advisory Panel half a century ago—*i.e.*, providing unique knowledge of the art market and of current art valuation—still relevant and helpful to IRS administration today?¹²¹
5. Given today’s communications technology, is it still necessary to wait for a biannual meeting to seek input from experts?

Suggestion

The IRSAC suggests that it would be beneficial to consider restructuring and revising the operating procedures for the Art Advisory Panel. For example, rather than waiting for biannual AAP meetings, should the process be streamlined to allow IRS staff art appraisers within AAS to consult directly with individual panel members, as needed, on questions related to a panelist’s particular area of expertise?¹²² Seeking expert opinion about, for example, a particular condition issue or marketability question is common practice in the appraisal profession and permitted by USPAP as long as any significant appraisal assistance is disclosed.

The streamlined process could lead to resource savings. While Art Advisory Panel members serve without compensation, the current biannual meeting process for gathering their opinions involves administrative costs, including: preparing, compiling, redacting,

¹²¹ Today online listings enable an appraiser to identify where an artist’s works are being offered for sale, and diligent research at galleries and art fairs yields information about relevant retail prices and the state of the market. Prices realized at auction are readily available in online databases, and extensive commentary about public and private sales is available in trade publications, including blogs and social media.

¹²² While individual members of the Art Advisory Panel are indisputably knowledgeable in their fields, the works of art they are asked to appraise are so varied and disparate that it is impossible for any one member to have competency in all areas. Thus, it is likely that that the Art Advisory Panel consensus opinions are based upon the opinions of only one or two particularly knowledgeable or persuasive Panel members.

and shipping materials for hundreds of items to panel members; travel, per diem and lodging expenses for panel meetings; staff time and expenses to attend and report on panel meetings; and staff time to prepare the annual panel report. Regular, less formal communications (such as conference calls and emails) and continuous availability of materials to panel members could conceivably reduce these costs significantly.

Conclusion

The IRSAC's recommendations, questions, and suggestions relate to the use of "generally accepted appraisal standards" and are intended to help improve the credibility, efficiency, and cost effectiveness of IRS valuations. By setting minimum standards of acceptability by reviewers, staff appraisers, and contractors, the IRS could help streamline a process that is complicated and expensive for everyone.

Appendix

The example below demonstrates how closely one portion of the IRS *Real Property Valuation Guidelines* mirrors the corresponding section of USPAP.¹²³ This is also true for IRM Tangible Personal Property 4.48.3.4.3 (07-01-2006), Business Valuation (4.48.4.4.3 (07-01-2006), and Intangible Property 4.48.5.4.3 (07-01-2006) and the corresponding USPAP Standards Rule 8 (Personal Property) and USPAP Standards Rule 10 (Business Appraisal).

IRM “Statement”	USPAP “Certification”
<p>Each written valuation report should contain a signed statement that is similar in content to the following</p> <p>To the best of my knowledge and belief:</p>	<p>Each written real property appraisal report must contain a signed certification that is similar in content to the following form:</p> <p>I certify that, to the best of my knowledge and belief:</p>
<p>The statements of fact contained in this report are true and correct.</p>	<p>the statements of fact contained in this report are true and correct.</p>
<p>The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions.</p>	<p>the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions</p>
<p>—</p>	<p>and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.</p>
<p>I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.</p>	<p>I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.</p>
<p>—</p>	<p>I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the property that is the subject of this</p>

¹²³ IRS Real Property Valuation Guidelines, IRM 4.48.6.4.3 (07-01-2006) and USPAP (2016-2017 edition), STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING.

IRM “Statement”	USPAP “Certification”
	report within the three-year period immediately preceding acceptance of this assignment.
I have no bias with respect to the subject of this report or to the parties involved with this assignment.	I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
—	My engagement in this assignment was not contingent upon developing or reporting predetermined results.
I have (or have not) made a personal inspection of the property that is the subject of this report.	I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or the use of, this report.	My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the applicable Internal Revenue Service Valuation Guidelines.	My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.



Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

For your reference

Notice name LT16A **Notice date** 11/1/2016
Case reference number 5555555555
Your SSN XXX-XX-5555

12
 SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Please take action on your balance of \$4,134.38 by 11/22/2016.

We are trying to collect unpaid balances from you for the tax periods shown on the next page.

Your account may be subject to enforcement action, which may include seizing assets or wages.

Following the instructions under the "What you need to do" section **may stop** enforcement action.

Please visit irs.gov/LT16A for more information.

What you need to do right now

- **Pay as much of your balance as you can now:** Visit irs.gov/payments to pay online or mail in a check or money order with the payment stub below.
- **If you can't pay in full right now:** You can pay your remaining balance over time if you are current with your filing obligations. Visit irs.gov/OPA to learn more.
- **If you are currently facing financial hardship:** See the next page to learn about options available to you.

Learn more and avoid waiting on the phone by visiting irs.gov/LT16A. If you can't find what you need online, you can call the IRS at 1-877-968-3413. If you believe there is an error in this notice, and cannot resolve the disagreement with us, you may have the right to appeal. Visit irs.gov/appeals to learn more.

Continued on back ➡



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16A
Notice date	11/1/2016
Your SSN	XXX-XX-5555

Payment

- Make your check or money order payable to the United States Treasury.
- Write your Social Security number (XXX-XX-5555) on your payment and any correspondence.

Select your payment amount:

- Pay the full amount due of **\$4,134.38 by 11/22/2016** to avoid future interest and applicable penalties
- Make a partial payment of \$_____ (enter amount)

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

If you are facing financial hardship

Temporarily delay collection

In cases of financial hardship, the IRS may temporarily delay collection until your situation improves. Visit irs.gov/delay to learn more. If you call, have your financial information (including assets, monthly income, and expenses) available.

Settle your tax debt

An Offer In Compromise could allow you to settle your tax debt for less than the full amount you owe. You can use our online pre-qualifier tool at irs.gov/offers to see if you qualify.

Account summary: Below are the tax returns where the full amount due was not paid on time

Tax Period Ending	Form Number	Amount You Owe	Additional Interest	Additional Penalties	Total
12/31/2013	1040	\$1,878.65	\$151.79	\$288.84	\$2,319.28
12/31/2014	1040	\$1,668.36	\$78.02	\$68.72	\$1,815.10

Payments made in the last 21 days may not be reflected above.

When a return is filed with a balance due, interest and applicable penalties may be added to the total amount owed.

Lines with SRP are for the Shared Responsibility Payment and are not subject to filing of notice of federal tax lien, levy or the failure to pay penalty.

This reflects your balance in the Automated Collection System. You may have additional debt not reflected in this notice.

Interest and penalties

We are required by law to charge interest when you don't pay your balance on time. Interest accumulates on principal, penalties, and interest. Interest cannot be reduced due to reasonable cause. Interest accumulates daily; the longer you wait to pay, the more interest gets added to your account. Visit irs.gov/interest for more information.

We are also required by law to charge applicable penalties. However, in select situations, we may be able to reduce penalties. Visit irs.gov/penalties for more information.



SAM MALONE
CHEERS, 112 BEACON STREET
BOSTON MA 55555-5555

Notice	LT16A
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

Contact information

If your address has changed, please call 1-877-968-3413 or visit irs.gov.

Please check here if you've included any correspondence. Write your Social Security number (XXX-XX-5555) on any correspondence.

a.m.
 p.m.

Primary phone Best time to call

a.m.
 p.m.

Secondary phone Best time to call

Internal Revenue Service
ACS Support Stop 5050
P.O. Box 219236
Kansas City, MO 64121



Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

For your reference

Notice name LT16B **Notice date** 11/1/2016
Case reference number 5555555555
Your SSN XXX-XX-5555

12
 SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

⚠ Please take action on your balance of \$4,134.38 by 11/22/2016.

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This reflects your balance in the Automated Collection System. You may have additional debt not reflected in this notice.

What you need to do right now



Pay your balance online directly from your bank account, credit card, or debit card

Pay as much as you can now by visiting irs.gov/payments online or on your mobile device. Making a secure electronic payment is easy and only takes a few minutes.



Pay your balance by check

If you can't pay online, you can mail in a check or money order with the payment stub included on the last page of this notice.

If you can't pay your balance in full at this time



Enter an agreement online to pay over time

You can pay your remaining balance over time if you are current with your filing obligations. Visit irs.gov/OPA to set up an online payment agreement if you qualify.

Online payment agreements save you time and money, and most taxpayers who apply online get their agreement approved right away.

Continued on back

Learn more and avoid waiting on the phone by visiting irs.gov/LT16B. If you can't find what you need online, you can call the IRS at 1-877-968-3413. If you believe there is an error in this notice, and cannot resolve the disagreement with us, you may have the right to appeal. Visit irs.gov/appeals to learn more.

If you are currently facing financial hardship



If you are facing financial or economic hardship, the following options are available to you:

Temporarily delay collection

In cases of financial hardship, the IRS may temporarily delay collection until your situation improves. Visit irs.gov/delay to learn more. If you call, have your financial information (assets, monthly income, and expenses) available.

Settle your tax debt

An Offer In Compromise could allow you to settle your tax debt for less than the full amount you owe. You can use our online pre-qualifier tool at irs.gov/offers to see if you qualify and learn more.

Additional information



Interest and penalties

We are required by law to charge interest when you don't pay your balance on time. Interest accumulates on principal, penalties, and interest. Interest cannot be reduced due to reasonable cause. Interest accumulates daily; the longer you wait to pay, the more interest gets added to your account. Visit irs.gov/interest for more information.

We are also required by law to charge applicable penalties. However, in select situations, we may be able to reduce penalties. Visit irs.gov/penalties for more information.



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16B
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

Payment

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

- Make your check or money order payable to the United States Treasury.
- Write your Social Security number (XXX-XX-5555) on your payment and any correspondence.

Select your payment amount:

- Pay the full amount due of **\$4,134.38 by 11/22/2016** to avoid future interest and applicable penalties
- Make a partial payment of \$_____ (enter amount)



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16B
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

Contact information

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

If your address has changed, please call 1-877-968-3413 or visit irs.gov.

- Please check here if you've included any correspondence. Write your Social Security number (XXX-XX-5555) on any correspondence.

a.m.
 p.m.

Primary phone

Best time to call

a.m.
 p.m.

Secondary phone

Best time to call



Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

For your reference	
Notice name	LT16C
Notice date	11/1/2016
Case reference number	5555555555
Your SSN	XXX-XX-5555

12
 SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

URGENT NOTICE – You need to take action immediately.
 Take action on your balance of \$4,134.38 by 11/22/2016 to avoid enforcement action.

Following the instructions under the “What you need to do” section **may stop** enforcement action such as:

- Seizure of your assets or wages
- Federal tax liens, which may affect your credit score
- Additional interest and applicable penalties

Please visit irs.gov/LT16C for more information.

What you need to do right now

- **Pay as much of your balance as you can now:** Visit irs.gov/payments to pay online or mail in a check or money order with the payment stub below.
- **If you can’t pay in full right now:** Pay your remaining balance over time if you are current with your filing obligations. Visit irs.gov/OPA to learn more.
- **If you are currently facing financial hardship:** See the next page to learn about options available to you.

Learn more and avoid waiting on the phone by visiting irs.gov/LT16C. If you can’t find what you need online, you can call the IRS at 1-877-968-3413. If you believe there is an error in this notice, and cannot resolve the disagreement with us, you may have the right to appeal. Visit irs.gov/appeals to learn more.

Continued on back



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16C
Notice date	11/1/2016
Your SSN	XXX-XX-5555

Payment

- Make your check or money order payable to the United States Treasury.
- Write your Social Security number (XXX-XX-5555) on your payment and any correspondence.

Select your payment amount:

- Pay the full amount due of **\$4,134.38 by 11/22/2016** to avoid future interest and applicable penalties
- Make a partial payment of \$_____ (enter amount)

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

If you are facing financial hardship

Temporarily delay collection

In cases of financial hardship, the IRS may temporarily delay collection until your situation improves. Visit irs.gov/delay to learn more. If you call, have your financial information (including assets, monthly income, and expenses) available.

Settle your tax debt

An Offer In Compromise could allow you to settle your tax debt for less than the full amount you owe. You can use our online pre-qualifier tool at irs.gov/offers to see if you qualify.

Account summary: Below are the tax returns where the full amount due was not paid on time

Tax Period Ending	Form Number	Amount You Owe	Additional Interest	Additional Penalties	Total
12/31/2013	1040	\$1,878.65	\$151.79	\$288.84	\$2,319.28
12/31/2014	1040	\$1,668.36	\$78.02	\$68.72	\$1,815.10

Payments made in the last 21 days may not be reflected above.

When a return is filed with a balance due, interest and applicable penalties may be added to the total amount owed.

Lines with SRP are for the Shared Responsibility Payment and are not subject to filing of notice of federal tax lien, levy or the failure to pay penalty.

This reflects your balance in the Automated Collection System. You may have additional debt not reflected in this notice.

Interest and penalties

We are required by law to charge interest when you don't pay your balance on time. Interest accumulates on principal, penalties, and interest. Interest cannot be reduced due to reasonable cause. Interest accumulates daily; the longer you wait to pay, the more interest gets added to your account. Visit irs.gov/interest for more information.

We are also required by law to charge applicable penalties. However, in select situations, we may be able to reduce penalties. Visit irs.gov/penalties for more information.



Contact information

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16C
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

If your address has changed, please call 1-877-968-3413 or visit irs.gov.

Please check here if you've included any correspondence. Write your Social Security number (XXX-XX-5555) on any correspondence.

a.m.
 p.m.

Primary phone Best time to call

a.m.
 p.m.

Secondary phone Best time to call



Internal Revenue Service
ACS Support Stop 5050
P.O. Box 219236
Kansas City, MO 64121

For your reference

Notice name LT16D **Notice date** 11/1/2016
Case reference number 555555555
Your SSN XXX-XX-5555

12
SAM MALONE
CHEERS, 112 BEACON STREET
BOSTON MA 55555-5555

⚠ Please take action on your balance of \$4,134.38 by 11/22/2016.

- We are trying to collect unpaid balances from you for the tax periods shown on the next page.
- You may be subject to enforcement action, which may include seizing assets or wages.
- Choosing one of the options below **may stop** enforcement action on your account:

Pay your balance over time

Set up a streamlined installment agreement
with a monthly payment as low as:

\$57.42

(over approximately 72 months)

- Interest and applicable penalties will continue to accrue on your balance over the life of the agreement. See next page for details.
- Larger monthly payments will decrease the time until you pay off your balance, reducing interest and applicable penalty charges
- You must stay current with your payments and future filings to avoid enforcement action
- Find out about other options for paying your balance over time at irs.gov/installmentagreements

Visit irs.gov/OPA

Pay your balance in full

Make a one-time payment of:

\$4,134.38

- Paying your balance in full, if you can afford it, is your best option because:
 - It will stop all enforcement action on your account
 - Interest and applicable penalties will stop accruing
- If you can't pay your full balance, pay what you can to avoid as much penalties and interest as possible

Visit irs.gov/payments

Learn more and avoid waiting on the phone by visiting irs.gov/LT16D. If you can't find what you need online, you can call the IRS at 1-877-968-3413. If you believe there is an error in this notice, and cannot resolve the disagreement with us, you may have the right to appeal. Visit irs.gov/appeals to learn more.

Continued on back

Account summary: Below are the tax returns where the full amount due was not paid on time

Tax Period Ending	Form Number	Amount You Owe	Additional Interest	Additional Penalties	Total
12/31/2013	1040	\$1,878.65	\$151.79	\$288.84	\$2,319.28
12/31/2014	1040	\$1,668.36	\$78.02	\$68.72	\$1,815.10

Payments made in the last 21 days may not be reflected above.

When a return is filed with a balance due, interest and applicable penalties may be added to the total amount owed.

Lines with SRP are for the Shared Responsibility Payment and are not subject to filing of notice of federal tax lien, levy or the failure to pay penalty.

This reflects your balance in the Automated Collection System. You may have additional debt not reflected in this notice.

If you are currently facing financial hardship



If you are facing financial or economic hardship, the following options may be available to you:

Temporarily delay collection

In cases of financial hardship, the IRS may temporarily delay collection until your situation improves. Visit irs.gov/delay to learn more. If you call, have your financial information (assets, monthly income, and expenses) available.

Settle your tax debt

An Offer In Compromise could allow you to settle your tax debt for less than the full amount you owe. You can use our online pre-qualifier tool at irs.gov/offers to see if you qualify and learn more.

Additional information



Interest and penalties

We are required by law to charge interest when you don't pay your balance on time. Interest accumulates on principal, penalties, and interest. Interest cannot be reduced due to reasonable cause. Interest accumulates daily; the longer you wait to pay, the more interest gets added to your account. Visit irs.gov/interest for more information.

We are also required by law to charge applicable penalties. However, in select situations, we may be able to reduce penalties. Visit irs.gov/penalties for more information.

If you enter an installment agreement, interest and applicable penalties will continue to accrue on the remaining balance during the life of the agreement. Each payment will reduce the amount of additional penalties and interest.

Your taxpayer rights

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

Assistance can be obtained from individuals and organizations that are independent from the IRS. IRS Publication 4134 provides a listing of Low Income Taxpayer Clinics (LITCs) and is available at www.irs.gov. Also, see the LITC page at www.taxpayeradvocate.irs.gov/litcmap. Assistance may also be available from a referral system operated by a state bar association, a state or local society of accountants or enrolled agents or another nonprofit tax professional organization. The decision to obtain assistance from any of these individuals and organizations will not result in the IRS giving preferential treatment in the handling of the issue, dispute or problem. You don't need to seek assistance to contact us. We will be pleased to deal with you directly and help you resolve your situation.



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16D
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

Payment

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

- Make your check or money order payable to the United States Treasury.
- Write your Social Security number (XXX-XX-5555) on your payment and any correspondence.

Select your payment amount:

- Pay the full amount due of **\$4,134.38 by 11/22/2016** to avoid future interest and applicable penalties
- Make a partial payment of \$_____ (enter amount)



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16D
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

Contact information

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

If your address has changed, please call 1-877-968-3413 or visit irs.gov.

- Please check here if you've included any correspondence. Write your Social Security number (XXX-XX-5555) on any correspondence.

a.m.
 p.m.

Primary phone

Best time to call

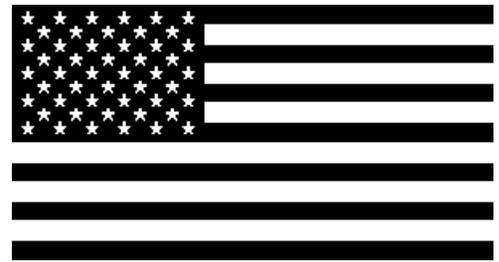
a.m.
 p.m.

Secondary phone

Best time to call



Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121



For your reference

Notice name LT16E **Notice date** 11/1/2016
Case reference number 5555555555
Your SSN XXX-XX-5555

12
 SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Please join the majority of your fellow Americans in paying your taxes: take action on your balance of \$4,134.38 by 11/22/2016.

Your tax dollars fund critical programs such as Medicare and National Defense. If you can't pay your entire balance, make a partial payment - every dollar helps.

We are trying to collect unpaid balances from you for the tax periods shown on the next page.

Your account may be subject to enforcement action, which may include seizing assets or wages.

Following the instructions under the "What you need to do" section **may stop** enforcement action.

Please visit irs.gov/LT16E for more information.

What you need to do right now

- **Pay as much of your balance as you can now:** Visit irs.gov/payments to pay online or mail in a check or money order with the payment stub below.
- **If you can't pay in full right now:** You can pay your remaining balance over time if you are current with your filing obligations. Visit irs.gov/OPA to learn more.
- **If you are currently facing financial hardship:** See the next page to learn about options available to you.

Learn more and avoid waiting on the phone by visiting irs.gov/LT16E. If you can't find what you need online, you can call the IRS at 1-877-968-3413. If you believe there is an error in this notice, and cannot resolve the disagreement with us, you may have the right to appeal. Visit irs.gov/appeals to learn more.

Continued on back ➔



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16E
Notice date	11/1/2016
Your SSN	XXX-XX-5555

Payment

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Select your payment amount:

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- Make a partial payment of \$_____ (enter amount)

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

If you are facing financial hardship

Temporarily delay collection

In cases of financial hardship, the IRS may temporarily delay collection until your situation improves. Visit irs.gov/delay to learn more. If you call, have your financial information (including assets, monthly income, and expenses) available.

Settle your tax debt

An Offer In Compromise could allow you to settle your tax debt for less than the full amount you owe. You can use our online pre-qualifier tool at irs.gov/offers to see if you qualify.

Account summary: Below are the tax returns where the full amount due was not paid on time

Tax period ending	Form number	Amount you owe	Additional Interest	Additional Penalties	Total
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12/31/2014	1040	\$1,668.36	\$78.02	\$68.72	\$1,815.10

Payments made in the last 21 days may not be reflected above.

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We are also required by law to charge applicable penalties. However, in select situations, we may be able to reduce penalties. Visit irs.gov/penalties for more information.



SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Notice	LT16E
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

Contact information

Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

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Please check here if you've included any correspondence. Write your Social Security number (XXX-XX-5555) on any correspondence.

a.m.
 p.m.

Primary phone Best time to call

a.m.
 p.m.

Secondary phone Best time to call



Internal Revenue Service
 ACS Support Stop 5050
 P.O. Box 219236
 Kansas City, MO 64121

For your reference

Notice name LT16G **Notice date** 11/1/2016
Case reference number 5555555555
Your SSN XXX-XX-5555

12
 SAM MALONE
 CHEERS, 112 BEACON STREET
 BOSTON MA 55555-5555

Please take action on your balance of \$4,134.38 by 11/22/2016.

We are trying to collect unpaid balances from you for the tax periods shown on the next page.

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Please visit irs.gov/LT16G for more information.

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Continued on back ➡



SAM MALONE
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Notice	LT16G
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SAM MALONE
CHEERS, 112 BEACON STREET
BOSTON MA 55555-5555

Notice	LT16G
Notice date	11/1/2016
Taxpayer ID number	XXX-XX-5555

Contact information

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Please check here if you've included any correspondence. Write your Social Security number (XXX-XX-5555) on any correspondence.

a.m.
 p.m.

Primary phone Best time to call

a.m.
 p.m.

Secondary phone Best time to call

Internal Revenue Service
ACS Support Stop 5050
P.O. Box 219236
Kansas City, MO 64121

IRSAC 2017 Member Biographies

Patricia H. Atwood

Ms. Atwood, ASA, is an accredited personal property appraiser and the owner of Timely Antique Appraisals, LLC, in Rockford, IL. Her firm provides valuations for insurance coverage, damage/loss claims, equitable property division, estate tax and planning and charitable contributions. A current member of the Appraisal Standards Board of The Appraisal Foundation, she also teaches Principles of Valuation courses for the American Society of Appraisers (ASA) where she is an Accredited Senior Appraiser. Ms. Atwood served previously on the ASA International Personal Property Committee and was president of the ASA Chicago Chapter. Ms. Atwood holds a B.A. from Cornell University, an M.A. from Columbia University and an M.A. from Princeton University. **(OPR Subgroup)**

Brenda M. Bianculli

Ms. Bianculli has worked in the tax field for more than 25 years and is the owner of Brenda M. Bianculli, CPA, LLC, in Charlton, MA. Her firm handles complex tax and business issues for a variety of clients and specializes in the real estate and service industries. Several of her clients are owners of small to mid-size businesses and she works closely with them on various tax preparation and planning issues. She has experience with issues relating to multi-state tax reporting, business sales and acquisitions, stock redemptions, incentive stock options, and estate, gift and trust taxes. Her firm also prepares financial statements and represents clients to resolve income and sales tax matters with the IRS and various state agencies. Ms. Bianculli is currently on the Board of Advisors for Nichols College and serves as the Treasurer of Woman in Business, Inc. She is a member of the American Institute of Certified Public Accountants and the Massachusetts Society of Certified Public Accountants. Ms. Bianculli holds a B.S. in Business Administration (Accounting) from Nichols College in Dudley, MA, and a Master of Science in Taxation (M.S.T.) from Bentley College in Waltham, MA. **(Digital Services Subgroup)**

Eunhyong Choi

Ms. Choi, J.D., LL.M., is the New York City Taxpayer Advocate in New York, NY. She is a business-oriented attorney with diverse experience in developing and delivering complex tax planning strategies. Prior to joining city government, she served as a lecturer in law and supervising attorney for the Washington University School of Law Low Income Taxpayer Clinic where she represented low income taxpayers in state and federal administrative and proceeding including the IRS and the U.S. Tax Court. Prior to that, she served as the Program Director and Supervising Attorney for the Nevada Legal Services Low Income Taxpayer Program. In addition to her advocacy on behalf of low income taxpayers, Ms. Choi has served in numerous tax leadership and mentorship roles. Ms. Choi is also a co-founder and member of the Asian American Advocacy Clinic

(AAAC) in Las Vegas, NV, the first and only Asian and Pacific Islander legal aid organization. AAAC was founded in 2012 with the goal of providing access to justice to members of the Nevada Asian and Pacific Islander community. Ms. Choi holds an LL.M. in Taxation and a J.D. from Washington University School of Law School in St. Louis, MO. **(SBSE/W&I Subgroup)**

Thomas A. Cullinan

Mr. Cullinan, J.D., is a partner with Eversheds Sutherland in Atlanta, GA. Mr. Cullinan is a member of the firm's Tax Practice Group and focuses his practice on tax controversies against the Internal Revenue Service. He has represented a large number of corporations, partnerships, and high net-worth individuals in all phases of tax controversy, including IRS audits, appeals, and tax litigation. Mr. Cullinan has extensive experience settling tax cases and is well-versed in tax litigation when the parties cannot agree to an administrative resolution. He has worked on cases involving the research tax credit, the foreign tax credit, corporate-owned life insurance, "tax shelters" and "listed" transactions and transactions alleged to lack economic substance, among many others. In addition, he has extensive experience in TEFRA (i.e., partnership) audits and litigation and in defending against the imposition of accuracy-related penalties. He has practiced in front of several U.S. district courts, the U.S. Tax Court, the Court of Federal Claims, and several appellate courts, and he is a frequent speaker on tax-related topics. Mr. Cullinan is an active participant on three different committees of the Section of Taxation of the American Bar Association. He is also a fellow of the American College of Tax Counsel and a member of the American Association of Attorney-CPAs. Mr. Cullinan holds a B.S. from State University of New York at Geneseo, an M.S. from State University of New York at Albany, and a J.D. from Vanderbilt University Law School. **(LB&I Subgroup Chair)**

Estarre (Star) Fischer

Ms. Fischer, CPA, is a partner with Moss Adams LLP, in Seattle, WA. Ms. Fischer has over 15 years of experience in taxation as a CPA. Her primary responsibility is to provide clients with tax consulting services regarding the tax treatment of R&D expenditures. Ms. Fischer's specialties include R&D tax credit (IRC 41), R&D expenditures (IRS 174), general business credits (IRC 38 & 39) and various state examination defense regarding R&D credits and expenditures. Her client base is predominately comprised of middle-market companies. Although she has been involved in R&D tax credit analyses for all entity types and sizes, the focus on middle-market companies has allowed her to gain experience in the complexities of S-corporations and partnerships claiming the R&D credits. She partners with the IRS examination and Appeals functions to help resolve complex cases. Ms. Fischer is a member of the American Institute of Certified Public Accountants and the Washington Society of Certified Public Accountants. Ms. Fischer holds a B.S. (Accounting) from Central Washington University. **(LB&I Subgroup)**

Neil H. Fishman

Neil H. Fishman, CPA, CFE, FCPA, CAMS, is Vice President/co-owner of Fishman Associates, CPAs, PA, in Boynton Beach, FL. Mr. Fishman has over 25 years of experience in taxation, specializing in the preparation of federal, state and local corporate, partnership, fiduciary, gift, estate, not-for-profit and personal income tax returns. Mr. Fishman's firm also prepares business and personal financial statements, in addition to representing clients before taxing authorities. Mr. Fishman has been a presenter at various tax seminars and has written several articles on occupational fraud having appeared in various CPA journals. He is a licensed CPA in both New York and Florida, a Certified Fraud Examiner, a Forensic Certified Public Accountant and a Certified Anti-Money Laundering Specialist. Mr. Fishman is a member of the National Conference of CPA Practitioners (NCCPAP), and has served in many capacities on its board since 2004, including chair of the Tax Policy Committee from 2008-2011. Currently, he serves as Executive Vice President of NCCPAP. Mr. Fishman holds a B.A. from the State University of New York College at Oneonta. **(SBSE/W&I Subgroup)**

Sharyn M. Fisk

Ms. Fisk is Assistant Professor of Accounting at California State Polytechnic University – Pomona, where she specializes in taxation. She is actively engaged in the campus' VITA program and is in the process of developing a low-income tax clinic to be staffed by students. She has participated in the American Bar Association's Adopt-A-Base program, wherein she provided training to military VITA volunteers at a naval base in San Diego. As a professor, she has researched and drafted several in-depth articles on taxation subjects, including tax identity theft, the Tax Court's standing, and the deductibility of medical expenses. In 2009 on behalf of the California Bar Section of Taxation, she drafted a detailed paper to the IRS regarding the implementation and proposed regulations for IRC section 6676. In 2004 on behalf of the ABA Section of Taxation, she was involved in drafting comments to Treasury and IRS on the National Taxpayer Advocate's Preparer Licensing Proposal. She has been a Certified Specialist in Taxation Law by the State Bar of California Board of Legal Specialization since 2004. Prior to her academic career, she clerked for the Honorable Maurice B. Foley, Judge, U.S. Tax Court in Washington, D.C., followed by both associate and principal positions at Hochman, Salkin, Rettig, Toscher & Perez, PC in Beverly Hills, CA. As a practitioner, she represented individuals and closely-held entities with respect to federal and state tax controversies throughout the U.S. She was involved in tax, business, charitable and estate planning matters for individuals. She served as tax counsel in many civil tax controversies in the California state courts, U.S. Tax Court, U.S. district courts in California and the Ninth Circuit Court of Appeals. Ms. Fisk is a member of the State Bar of California, where she served as chair of the Tax Policy & Legislation Committee, and as a vice chair of the Executive Committee – Taxation Section. She is also a member the ABA's Standards of Tax Practice Committee – Taxation Section, and she is the immediate past Chair of the Los Angeles County Bar Association's Executive Committee – Taxation Section. Ms. Fisk holds a B.A. (Journalism) from San Diego State University,

a J.D. from Rutgers University and an LL.M. from New York University School of Law.
(SBSE/W&I Subgroup)

Kathy R. Hettick

Ms. Hettick, EA, ABA, ATP is the owner of Hettick Accounting & Tax, LLC in Enumclaw, WA, where she has provided accounting and tax services to small businesses and individuals for almost 30 years. She has first-hand experience in addressing the tax needs of clients, working with the IRS to resolve issues, and constantly adapting her practice to account for tax changes. She has held numerous leadership roles at the local, state and national levels of organizations, including the National Society of Accountants (NSA), the National Association of Enrolled Agents, the Washington Association of Accountants and the Washington Association of Enrolled Agents. She is the immediate past president of NSA. Other NSA positions she has held include 1st and 2nd Vice President, Administrative Chair and State Director for Washington. Ms. Hettick also served as President of the Washington Association of Accountants. She has a solid understanding of Circular 230 issues and has instructed in this area. This has allowed her to better communicate to other practitioners the importance of ethics and due diligence. Since 2004, she has routinely instructed in-person and online courses on ethics. For the past six years, Ms. Hettick has presented seminars at the IRS Nationwide Tax Forums on behalf of NSA. She served several years on the OPR Ethics panels at the tax forums. She served as Chair of the IRS Working Together Symposium in Washington State, where she coordinated with several other tax and accounting organizations, including the local IRS liaison team, to produce annual events. **(OPR Subgroup)**

Stuart M. Hurwitz

Mr. Hurwitz, J.D., LL.M, operates his own tax law practice, Stuart M. Hurwitz, APC dba CPA & Law Offices, in San Diego, CA. He has over 45 years of experience in business and taxation. His legal and tax practice serves a wide breadth of U.S. citizens and persons and entities of various nationalities from those with a high net worth to many of more modest means who are involved in or want to enter the United States business environment or who have foreign bank accounts, foreign business investments, real estate, estate and gift, employment and income-related issues. He has authored numerous articles and papers which have appeared in national law journals and which he has presented to officials at the IRS, U.S. Treasury, Judges of the U.S. Tax Court and to the staffs of the Senate and House tax writing committees. Mr. Hurwitz's diverse and disparate work experience (in addition to that of a tax attorney) include that of a U.S. Army prosecutor and contracting officer, land developer and home builder, and president of a non-profit. His tax practice prepares tax returns of every type at both the Federal and State levels including individual, partnership, corporate, estate, gift, trust, pension, non-profit, sales and use, and payroll. In addition, he and his staff are continually involved in tax audits, tax appeals, and tax litigation for his clients. He has served on numerous occasions as an expert witness for tax and accounting issues in both Federal and State courts. As a result of his education and work experience, he is familiar with a very wide range of business and tax-related issues. Mr. Hurwitz is certified by the State Bar of

California as a Tax Specialist and is a Chair Emeritus of the 3,200-plus member Taxation Section of the State Bar of California. He has been repeatedly honored as a *Super Lawyer*, one of *San Diego's Best Attorneys* (by the Union Tribune), and a *5 Star Wealth Manager*. His education includes a B.S. in (Accounting) from the Ohio State University, a J.D. from the University of Nebraska, School of Law, and an LL.M. in Taxation from the University of San Diego, School of Law. **(LB&I Subgroup)**

Sheldon M. Kay

Mr. Kay has 35 years of experience as a CPA and an attorney. He is currently Partner for Crowe Horwath LLP, CPA, in Atlanta, GA, where he represents clients before all divisions of the IRS and coordinates the Washington National Tax Office. Prior to this, he was partner at KPMG and at Sutherland Asbill & Brennan. Mr. Kay began his legal career with the Chief Counsel. He served as both attorney and manager, and he routinely litigated cases in Tax Court. Between 2011 and 2013, he served IRS as the Chief and Deputy Chief, Appeals. He was personally involved with multiple Appeals initiatives, including Appeals Judicial Approach and Culture, Ex Parte Rev. Proc. 2012-18 and coordination of the review of the alternative dispute resolution procedures by Harvard University's Negotiation and Mediation Clinical Program. Mr. Kay has taught the following tax courses at the university level: Tax Practice and Procedure, Basic Income Taxes, Corporate Income Taxes and Tax Accounting Methods. He is also a frequent speaker before the Tax Executives Institute, various bar associations and state CPA societies. He is a member of the Georgia, Missouri, Illinois, Wisconsin and DC Bar Associations. He is a CPA in the state of Georgia and is a fellow of the American College of Tax Counsel. Mr. Kay received his undergraduate degree (Accounting) from Northern Illinois University and holds a J.D. from John Marshall Law School. **(OPR Subgroup)**

Phyllis Jo Kubey

Ms. Kubey has over 30 years of experience in taxation. She is the owner of Phyllis Jo Kubey, EA CFP ATA ATP Tax Preparation & Consultation in New York, NY – offering tax preparation, planning, and representation services to a diverse population of clients. She is actively involved with professional associations at the local, state and national levels. She is a member of the National Association of Enrolled Agents (NAEA) and the New York State Society of Enrolled Agents (NYSSEA). She served as moderator for NYSSEA's Tax Questions Google Group, an online tax-related discussion forum. She is the Chair of NAEA PAC Steering Committee and regularly attends NAEA's national conferences and board meetings. She recently completed her second term as an NYSSEA Board Member at Large, and currently serves on its Membership, Government Relations and IRS Continuing Education Reporting Committees. She is also NYSSEA's liaison to the New York State Department of Taxation. As the liaison, she actively builds relationships with and further opens lines of communication between the tax professional community and the State of NY. Ms. Kubey is a member of the National Association of Tax Professionals, the National Society of Accountants, the National Society of Tax Professionals, the Financial Planning Association and is a non-attorney member of the American Bar Association. Ms. Kubey is a professionally-trained vocalist and is a

certified teacher of the Alexander Technique. Ms. Kubey holds a Bachelor of Fine Arts from Carnegie-Mellon University and a Master of Music (Voice) from The Juilliard School. **(SBSE/W&I Subgroup)**

Charles “Sandy” Macfarlane

Mr. Macfarlane has 36 years of experience in corporate tax. He is Vice President and General Tax Counsel for Chevron Corporation in San Ramon, CA, where he is responsible for Chevron and its subsidiaries' worldwide tax affairs. He manages the Corporate Tax Department of 140 professionals and serves as functional tax leader for tax professionals in Chevron's foreign subsidiaries. Employed with Chevron for the past 30 years, his previous positions included Assistant General Tax Counsel and Tax Compliance Manager. He led the team that designed and implemented transfer pricing documentation. When FIN 48 was issued, he led the group that established Chevron's process to ensure accurate financial reporting for uncertain tax positions. He managed Chevron's Tax Compliance group through a major overhaul of its U.S. income tax compliance process, adopting new software, streamlining processes and moving from the September 15 return filing to early July filing. He and his staff are currently preparing for BEPS reporting. He is a member of Chevron's Management Committee and the Finance Leadership Committee. Mr. Macfarlane served as Chair of the Tax Legislative Committee for the American Petroleum Institute for 11 years, and he represented Chevron on the tax committees of National Foreign Trade Council, U.S. Council for International Business, American Chemistry Council and Business Round Table. Mr. Macfarlane is the immediate past international president of the Tax Executives Institute (TEI), where he has been a member for 20 years. He led TEI's delegations to liaison meetings with the IRS and Department of the Treasury Office of Tax Policy. He has held other roles in TEI's senior leadership cadre, including Senior VP and member of TEI's Executive Committee. He is also a member of the American Bar Association Section of Taxation. Mr. Macfarlane holds an A.B. (History) from Brown University, a J.D. from Boston College Law School and an LL.M. (Taxation) from the Boston University School of Law. **(LB&I Subgroup)**

Timothy J. McCormally

Mr. McCormally, J.D., is the Director in the Washington National Tax practice of KPMG, LLP, in Washington, DC. He has 40 years of experience as a tax attorney. Before joining KPMG, he spent 30 years on the staff of TEI, first as General Counsel and then as Executive Director. At TEI, his responsibilities included the overall administration of the professional association of 7,000 in-house tax professionals from around the world. During his TEI tenure, *Tax Business* magazine named him one of the top 10 most influential people in the sphere of global taxation three years in a row. Mr. McCormally has written and spoken extensively on myriad tax topics, including Treasury Circular 230 and tax ethics generally, tax whistleblowing, FBAR reporting, and IRS efforts to risk-assess taxpayers. He is a member of the ABA Section of Taxation (Administrative Practice and Employment Tax Committees) and the American College of Tax Counsel. Mr. McCormally holds a J.D. from Georgetown University Law Center and

a B.A. from the University of Iowa. **(IRSAC Chair and LB&I Subgroup)**

John F. McDermott

Mr. McDermott, J.D., LL.M., is an attorney/partner with Taylor, Porter, Brooks & Philips, LLP, in Baton Rouge, LA. He has 35 years of experience in taxation. His primary area of practice is tax planning and advice, including business and individual income tax, gift and estate tax, and state and local taxes. He has represented individuals, business entities, trusts and estates with controversies before the IRS at the examination and appeal levels, in tax court, U.S. District Court, and U.S. Court of Appeals. He has assisted clients in collections and with preparation and presentation of offers in compromise, installment payment arrangements, tax liens and levies. He has assisted tax-exempt organizations obtain, and maintain status under IRC section 501(c). He has also applied for and obtained PLRs. In addition to his primary practice of taxation, Mr. McDermott handles succession, probate, and estate administration matters. Mr. McDermott has been a CPA since 1985. He is a member of the Baton Rouge and Louisiana State Bar Associations, Baton Rouge Estate and Business Planning Council, and The Society of Louisiana Certified Public Accountants. Mr. McDermott holds a B.S. in Business Administration and a J.D. from Louisiana State University and an LL.M. from Georgetown University. **(SBSE/W&I Subgroup)**

Shawn R. O'Brien

Mr. O'Brien is a tax partner with Mayer Brown, LLP, in Houston, Texas. His tax practice includes representing clients in all types of tax disputes with taxing authorities on international, federal and state levels. Mr. O'Brien routinely advises clients on various tax issues during tax examinations, in administrative appeals and as an advocate in trial and appellate litigation before the U.S. Tax Court, U.S. District Courts and U.S. Court of Federal Claims. Mr. O'Brien's tax controversy and litigation experience spans a broad range of areas, including transfer pricing controversies, debt v. equity issues, international withholdings, advance pricing agreements, "tax shelter" disallowances, research and development tax credits, excise taxes, and changes in accounting methods. Mr. O'Brien also advises foreign and domestic corporations, partnerships, MLPs, and LLCs seeking corporate and tax advice in connection with various types of foreign and domestic transactions, including 1031 exchanges, mergers and acquisitions, restructurings, divestitures, leveraged buyouts, structured financings, and oil and gas transactions. He is a CPA licensed in Louisiana. In addition, he is particularly focused on a variety of tax issues facing the energy industry including tax controversy, joint ventures, restructuring acquisitions and disposition of energy assets. Mr. O'Brien has written numerous tax articles and regularly presents to tax groups around the country. Mr. O'Brien is a member of the Tax Section of American Bar Association, Houston Bar Association Tax Section, International Tax Roundtable, and Federal Tax Procedure Group. Mr. O'Brien holds a B.B. A. in Accounting from Millsaps College in Jackson, Mississippi, a J.D. from Loyola University School of Law in New Orleans, LA, and an LL.M, Taxation, from New York University School of Law in New York, New York. **(LB&I Subgroup)**

Walter Pagano

Mr. Pagano, CPA, has worked in the tax field for more than 35 years and is a Tax Partner with EisnerAmper LLP, Accountants and Advisors in New York, NY. Mr. Pagano concentrates his practice in tax controversy examinations and investigations, commercial and civil litigation, accounting investigations, internal investigations, financial statement omissions, misrepresentations and fraud, with an emphasis on civil and criminal tax controversy, white collar defense, corruption, professional conduct and tax standards, accounting errors and irregularities, post-closing adjustments, management and employee fraud, and third party asset misappropriation. Mr. Pagano has successfully negotiated agreed upon civil closings in federal and state civil and criminal tax controversies, assisted attorneys in a wide variety of white-collar financial and accounting investigations, commercial litigation, public corruption, IRS practice and procedure, corrupt practices, GAAP and accounting representations and warranties cases. He has been associated for a number of years with the Forensic & Valuation Services section of the AICPA as well as the Tax Section of the ABA's annual Criminal Tax and Tax Controversy Institute, Georgia Southern University's Fraud and Forensic Accounting Conference and EisnerAmper University's Tax College as a speaker of tax ethics and professional standards governing CPAs. A common denominator shared by these diverse organizations with respect to tax ethics and professional standards is their concern and commitment for each tax professional's obligation to follow the authoritative guidance for practitioners found in Treasury Circular 230, Internal Revenue Code sections 6694, 6713, 7216, and the AICPA's Statements on Standards for Tax Services. Mr. Pagano holds a B.S. (Accounting) from St. Joseph's University in Philadelphia, PA, and a Master of Public Administration (MPA) from New York University in New York, NY. **(OPR Subgroup)**

Donald H. Read

Mr. Read, J.D., LL.M., is an attorney and is certified as a taxation law specialist by the Board of Legal Specialization of the State Bar of California. He has worked in the tax field for more than 40 years. A former Attorney-Adviser in the Treasury Department's Office of Tax Legislative Counsel, he has been a tax partner in law firms in Honolulu, San Diego and San Francisco. He is currently the owner of the Law Office of Donald H. Read, in Berkeley, CA, and tax counsel to both Lakin-Spears in Palo Alto and Severson & Werson in San Francisco. His recent practice focuses on advising family law attorneys on tax issues related to divorce and the tax problems of same-sex couples. In 2010, he obtained a landmark private letter ruling in which the IRS first recognized community property rights of registered domestic partners. Mr. Read also advises clients on general individual and business tax matters and has obtained private letter rulings for his clients in areas as diverse as partnerships, S corporations, stock redemptions, like-kind exchanges, stock options, deferred compensation and community property income of registered domestic partners. He is a former adjunct professor at the USF School of Law, former chair of the Taxation Committee of Family Law Section of the American Bar Association, and former vice-chair of the Domestic Relations Committee of the ABA's

Taxation Section. He is a member of the East Bay Tax Club and QDRONES. A graduate of Deep Springs College (of which he was later a member of the Board of Trustees), Mr. Read holds a B.A. from the University of California at Berkeley; a J.D. *cum laude*, from Columbia University and an LL.M. (in taxation) from New York University. **(OPR Subgroup)**

Kevin A. Richards

Mr. Richards, of Springfield, IL, is the manager of the Account Processing Program Area at the Illinois Department of Revenue. Mr. Richards, who is in his 28th year at the department, had previously managed the Electronic Commerce Division for the last 18 years. In April 2016 he was promoted to the Program Administrator position and is now over the Account Processing Program Area for the agency. The Account Processing Administration (APA) consists of two bureaus, the Returns and Deposit Operations Bureau and the Central Processing Bureau. APA is responsible for processing 76 different state and local taxes. APA employs 420 of IDOR's 1,670 total employees with an annual budget of approximately \$31.4 million (Fiscal Year 2015). In fiscal year 2016, Account Processing oversaw the processing of more than 20 million returns and payments totaling over \$38 billion in deposits. Mr. Richards earned a B.S. in Finance from Eastern Illinois University and an MBA from the University of Illinois-Springfield. Mr. Richards is also the president of the local chapter of the Association of Government Accountants. **(Digital Services Subgroup)**

Stephanie Salavejus

Ms. Salavejus is vice president with Peninsula Software (PenSoft) in Newport News, VA. She is responsible for software solutions and product requirements for clients. She has 28 years of experience in electronic filing of tax reports and software development. Ms. Salavejus earned a B.S. in Accounting from Christopher Newport University in Newport News, Virginia and regularly speaks on tax administration topics related to payroll. She is a member of the American Payroll Association, obtaining her CPP designation in 2000 and, also a member of the National Association of Computerized Tax Processors. **(Digital Services Subgroup Chair)**

Dr. Dave Thompson, Jr

Dr. Thompson has over 38 years of experience in taxation. He currently serves as the Director/Master of Accounting and Chair of the Accounting and Finance Department for Alabama State University in Montgomery, Alabama. Dr. Thompson has been in the education profession for over 15 years. He teaches the Masters of Accountancy Program where he prepares students for professional careers in public accounting and management and government. This program helps students to achieve professional certifications in accounting, such as Certified Public Accountant (CPA), Certified Internal Auditor (CIA), and Certified Management Accountant (CMA); and to pursue terminal or Ph.D. degrees. He is also serving as an AICPA Academic Champion. Dr. Thompson has had the opportunity to work with such CPA firms as KPMG, Ernst and Young and Arthur

Andersen. In addition, he worked as a private lawyer in the law firm of Thompson & Searight, P.C., where he worked with small business clients on corporate tax issues. He was also authorized to practice before the tax courts. Prior to owning his own business, he was a corporate vice president, where he helped to develop many strategic management plans which resulted in savings of millions of dollars for the company. Dr. Thompson has helped to coordinate partnership efforts for many colleges as one of the leaders who formed the “Path To Financial Independence” group. This group provided partnerships between over 20 different “Historical Black Colleges” and corporations to bring financial literacy education to thousands all over the United States. In addition, he helped put together partnerships with banks, financial institutions and philanthropic organizations to provide tax services and financial education. He has been chosen as an Albert Nelson Marquis Who's Who Lifetime Achievement inductee. Dr. Thompson holds a B.S. (Accounting) from Birmingham-Southern College, an MBA (MA concentration in Management/Accounting) from Samford University in Birmingham, AL, a J.D. from Birmingham School of Law and a Ph.D., from Jackson State University in Jackson, MS. **(LB&I Subgroup)**

Dr. Dennis J. Ventry, Jr

Dr. Ventry has worked in the tax field for over 20 years and is a Professor of Law at UC Davis School of Law in Davis, CA. Dr. Ventry’s areas of specialization include Standards of Tax Practice, Tax Administration and Compliance, Tax Expenditure Analysis, Tax Policy, Legal & Professional Ethics, Whistleblower Law, Family Taxation, and U.S. Economic, Legal, and Tax History. He has published dozens of articles, contributed chapters to books, authored edited volumes, and is co-author of a federal income tax casebook whose original author was legendary Harvard law professor Stanley Surrey. Dr. Ventry participates in federal and state tax debates over tax reform, administration, and policy through public testimony and amici curiae briefs, face-to-face meetings with tax officials, legislators, and legislative staff, and as a member of tax commissions, workgroups, and committees. In addition, Dr. Ventry serves as an expert consulting/testifying witness in matters involving the standard of care for tax practitioners, and he also teaches CLE/CPE classes on standards of tax practice. Dr. Ventry is a member of the American Bar Association, the Association of American Law Schools, the Law and Society Association, and the National Tax Association. Dr. Ventry holds a J.D. from New York University School of Law, a Ph.D. in History (U.S. Economic & Legal) from the University of California, Santa Barbara, an M.A. in History from the University of California, Santa Barbara, and a B.A. in History with a specialization in Business Administration from the University of California, Los Angeles. **(IRSAC Vice Chair and OPR Subgroup)**