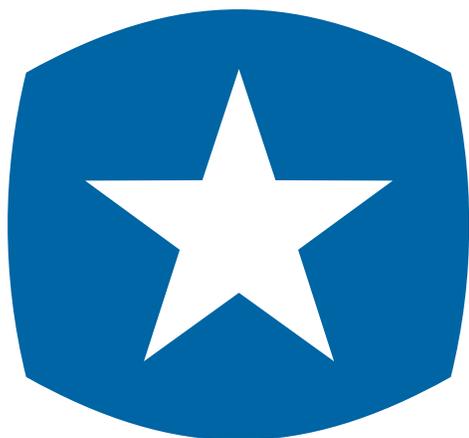




Internal Revenue Service Advisory Council

PUBLIC REPORT



November 2020



INTERNAL REVENUE SERVICE ADVISORY COUNCIL

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See Appendix A for member biographies

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General Report
of the
2020 Internal Revenue Service Advisory Council

Organization of the IRSAC

The predecessor to the Internal Revenue Service Advisory Council (IRSAC)—originally termed the Commissioner’s Advisory Group—was established in 1953, a year prior to 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 make their advice available to the public.

As a Federal Advisory Committee, the IRSAC’s purpose is to serve as an advisory body to the Commissioner of the Internal Revenue Service. According to its charter, the IRSAC provides an organized public forum between IRS officials and representatives of the public for discussing tax administration issues. 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 to ensure transparency in the work of government agencies to keep Congress and the public informed of the activities of various advisory bodies in accordance with the FACA.

In 2019, there was a consolidation of the three FACA advisory groups that report to the Commissioner: the IRSAC, the Information Reporting Program Advisory Committee (IRPAC), and the Advisory Committee on Tax Exempt and Government Entities (ACT) into a single group under a larger and reconstituted IRSAC. The new IRSAC includes four subgroups reflecting the four business operating divisions (sometimes referred to below as BODs) of the IRS: Large Business and International (LB&I), Small Business/Self-Employed (SB/SE), Tax Exempt & Government Entities (TE/GE), and Wage & Investment (W&I). Aligning IRSAC’s subgroups with the BODs had several beneficial effects, including facilitating efficient flow of information

between the IRSAC and the BODs, elevating more issues to the BODs, as well as holding the BODs more accountable for assisting the IRSAC in developing IRSAC's issues and reporting back on the implementation status of the issues. The current IRSAC members have recommended that an Information Reporting Subgroup be added insofar as information reporting often involves multiple BODs and unique expertise.

Membership of the IRSAC

The IRSAC membership is balanced to include representation from multiple stakeholders, including the taxpaying public, the tax professional community, small and large businesses, academia, the non-profit community, tax-exempt organizations, state and local tax administration, and the payroll community. This year, the IRSAC consisted of 34 members with substantial experience and diverse backgrounds (including rural, urban and tribal representatives), many active in professional organizations and 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 are generally necessary to help members advance the IRSAC's mission.

Collectively, the IRSAC members represent the agency's major stakeholders, customer segments and a broad cross-section of the taxpaying public. The IRSAC members interact with all operating divisions of the IRS, the Independent Office of Appeals, the Office of the National Taxpayer Advocate, the Office of Chief Counsel, as well as with taxpayers of all sizes and types—from low-income individuals, families, trust and estates and small business to multinational corporations, pass-through entities and nonprofit organizations.

The members of the IRSAC are volunteers, 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. The subgroup chairs lead the subgroups and work with the Chair and the Vice-Chair to ensure that the IRSAC

is as constructive and effective as possible and that all members have an opportunity to be fully engaged.

Operations of the IRSAC

Working with the IRS leadership, the IRSAC reviews existing practices and procedures, provides real-time feedback 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. As a group, the IRSAC adheres to a consensus model of decision-making.

The IRSAC members appreciate the assistance and support provided by personnel from the IRS Office of National Public Liaison (NPL), Communications and Liaison and the operating divisions. We express particular gratitude to Terry Lemons, Chief, Communications and Liaison; Melvin Hardy, Director, Office of NPL; John Lipold, Chief, Tax Pro Partnerships & Advisory Groups, NPL; Anna Brown, NPL Program Manager; Stephanie Burch LB&I Subgroup Liaison (who also assumed some of Anna Brown's responsibilities during Anna's 2020 leave); Maria Jaramillo, W&I Subgroup Liaison; Brian Ward, TE/GE Subgroup Liaison; Tanya Barbosa, SB/SE Subgroup Liaison; Johnnie Beale, W&I IRSAC Contact; Shawn Hooks, LB&I IRSAC Contact; Mark O'Donnell, TE/GE IRSAC Contact; and Erin Swartwood, SB/SE IRSAC Contact.

The IRSAC is also extremely grateful for the ongoing support provided throughout the year by IRS leadership (including Deputy Commissioners Sunita Lough and Jeff Tribiano and the operating division Commissioners and Deputy Commissioners), operating division personnel, and other IRS representatives. Particularly given the unique challenges of 2020, the IRSAC sincerely appreciates the time and effort devoted by them to maintain forward progress on the issues addressed in this report.

Finally, the IRSAC thanks Commissioner Charles Rettig for his support and leadership. We appreciate his understanding of the value of the IRSAC, on which he served as a prior member and chair. We share and embrace his enduring commitment to civility, diversity, and inclusion as well as to serve and to improve tax administration for all Americans. Commissioner Rettig's respect for the value of the IRSAC's independence and constructive criticism encourages its members to offer multiple perspectives and recommendations and encourages IRS subject matter experts to fully collaborate with the public members.

The 2020 Report of the IRSAC

This Report, including the appendices, summarizes the IRSAC's work during 2020 by presenting some of our real-time feedback and offering our recommendations to the Commissioner and other IRS leaders. The year brought new challenges for the IRSAC as it did for most people and institutions. All but one of our meetings was either by teleconference or by video conference, not an ideal situation for a collaborative group almost a third of whom were new members. Every member of the IRSAC team (public members and IRS representatives) went above and beyond in their efforts to bring forward these recommendations and meaningful discussion for the success of the IRS and tax administration.

All recommendations of the IRSAC are made by the full IRSAC and not by any individual subgroup. However, the subgroups work with the operating divisions and prepare reports and recommendations, which are the subject of discussion within the subgroup and amongst all the IRSAC members during the course of the year.

This year, the subgroups and the full IRSAC all provided substantial real-time guidance to the IRS, both at the request of the IRS and on our own initiative, sometimes in written form. Further, several of the IRSAC members made substantial contributions to subgroup reports other than those prepared by the subgroups of which they were members. Each year's IRSAC builds on the prior years' efforts, which we acknowledge and appreciate.

The LB&I subgroup, chaired by Sandy Macfarlane, developed proposals (i) for an “ Early Exam Program” to provide earlier exams for complex taxpayers unable to avail themselves of the Compliance Assurance Process (CAP); (ii) to provide an online summary of the various dispute resolution programs available to LB&I taxpayers; and (iii) for improved information reporting, including topics where additional regulations or other guidance is needed.

The SB/SE subgroup, chaired by Patricia Thompson, provided real-time feedback on SB/SE identified issues and identified other issues of importance to improve the taxpayer experience and to reduce the tax gap. The subgroup was primarily responsible for drafting the IRSAC’s comments on tax capital reporting (Appendix C) and provided requested feedback relating to excessive withholding (Appendix E). This report includes recommendations relating to (i) the Practitioner Priority Service Line; (ii) Engaging the practitioner community to help improve tax compliance; (iii) Developing the Form 1099 portal website content; (iv) Expanding federal-state data sharing; and (v) Educating SB/SE taxpayers that are victims of identity theft.

The TE/GE subgroup, chaired by Mike Engle, developed multiple timely recommendations, including (i) Establishing Comprehensive Resources for Native American Taxpayers and Federally Recognized Tribes; (ii) Establishing a CAP for Indian Tribal Governments (ITGs) to Address Ambiguous Issues; (iii) Private Foundation Education to Encourage Compliance; (iv) Guidance for Cooperatives Seeking to Terminate Tax Exempt Status; (v) and Relief for Employee Plans in times of National Emergency Issues.

The W&I subgroup, chaired by Phyllis Jo Kubey worked collaboratively with W&I BOD representatives, offering real-time feedback on the Family First Coronavirus Response Act (FFCRA) and Coronavirus Aid, Relief, and Economic Security (CARES) Act employer tax credits (Appendix E) and also prepared recommendations in this report relating to (i) Digital Communication; (ii) Taxpayer Burden and the Paperwork Reduction Act; (iii) Business Identity Theft; (iv) Reducing Undeliverable Mail; and (v) Employer Tax Forms/Information Reporting.

These recommendations are closely linked to those addressed by the general report, discussed below.

Issues addressed in the IRSAC's General Report typically represent topics identified by members as broad and Service-wide and that do not fall under the purview of any subgroup. This year, the IRSAC identified three issues as general report issues and provided real-time guidance in the form of feedback on several issues. Our three general report issues are thematically interconnected to each other and to issues addressed in recent reports of the IRSAC. The three recommendations relate to (1) The need for adequate funding for the IRS over a sustained period in order to effectively staff the agency, provide adequate enforcement of federal tax laws and regulations, and successfully modernize its information technology systems and taxpayer service; (2) The Expectation that the Taxpayer First Act Should Inform IRS Operations; and (3) The Opportunities to Expand the E-Filing and Online Application Process. Some of the real-time feedback the IRSAC provided is reflected in Appendices to this report. During the course of the year, the IRSAC (1) Wrote two letters to Commissioner Rettig relating to COVID-19 relief, (Appendices B1 and B2); (2) Wrote Comments regarding Notice 2020-43, Tax Capital Reporting (Appendix C and Draft Form 1065 Instruction issued October 21, 2020 relate to this issue); and (3) Wrote to OPR Director Fisk regarding updating Circular 230 (Appendix D).

This year's report begins with a summary of some of the 2019 recommendations (and two 2018 recommendations) made by the IRSAC that have been implemented by the IRS or are currently being actively considered by the IRS. The IRSAC hopes that highlighting its achievements from the prior year will help publicize the IRSAC's valuable contributions to effective tax administration and encourage various stakeholders—including professional organizations—to continue to engage with the IRSAC in connection with their own efforts to improve tax administration.

PROGRESS ON THE IRSAC'S 2019 RECOMMENDATIONS
(and two 2018 Recommendations)

The IRSAC made multiple recommendations and sub-recommendations in its 2019 annual report. As of October 2020, the IRS had implemented, or was implementing, many of the IRSAC's recommendations from 2019. Included among the fully and partially implemented recommendations are:

- Enabling e-signatures on key forms such as Form 8821 (Tax Information Authorization) and Form 2848 (Power of Attorney and Declaration of Representative) is actively being considered.
- Continuing refinement of the application of First Time Penalty Abatement when abatement due to reasonable cause may also be available is occurring.
- Reevaluating short and long-term goals, objectives and performance metrics for the Free File Program is underway.
- Clarification of the rules and procedures for federal income tax withholding in 2020.
- Clarifying guidance related to section 199A Qualified Business Income was provided in Frequently Asked Questions on IRS.gov, links relating section 199A have been added to several Small Business Tax Center pages as well as to the Gig Economy tax center that launched in December 2019, and there is a dedicated page on the IRS website relating to section 199A.
- Extending "good faith efforts" penalty relief for reporting of incorrect or incomplete information on Forms 1095-B and Forms 1095-B and 1095-C.
- Providing guidance on issues relating to on-demand pay.
- Enabling electronic filing of Form 1040-X (Amended U.S. Individual Income Tax Return).
- Improving marketing, promotion of and participation in Volunteer Income Tax Assistance (VITA), Tax Counseling for the Elderly (TCE) and related programs offering taxpayer assistance.

- Increasing transparency and improving operational compliance for pre-approved retirement plans.
- Facilitating electronic filing of Forms 990 by tax-exempt organizations and improving the accuracy of Forms 990.
- Providing guidance for Foreign Account Tax Compliance Act (FATCA) and Qualified Intermediary (QI) portals.
- Expanding availability of voluntary corrections for TE/GE taxpayers.
- Implementing an Issue-based Compliance Assurance Process.
- Establishing Safe harbors by accepting “book” treatment or otherwise relying on independent third parties.
- Providing guidance relating to transfer pricing best practices was a recommendation in the 2018 IRSAC Report and guidance was provided in the form of Frequently Asked Questions in April 2020.
- Publishing information on actions taken as a result of OPR’s investigations, recommended in the 2018 IRSAC Report resumed in October 2020.

ISSUE ONE: Inadequate Funding of the IRS is a Fundamental Risk to Tax Administration in the United States

Executive Summary

The IRS requires adequate funding over a sustained period in order to effectively staff the agency, provide adequate enforcement of federal tax laws and regulations, and successfully modernize its information technology systems and taxpayer service. A tax system rooted in voluntary compliance requires appropriate levels of customer service and enforcement, both of which depend upon adequate and consistent funding.

Congressional appropriations provide the vast share of operating funds for the IRS to administer the nation's tax system, collect over \$3.1 trillion in net revenue to fund critical defense and general program requirements, process over 253 million tax returns and other forms filed, meet demands from hundreds of millions of taxpayers, issue more than \$452 billion in tax refunds and outlays, protect billions of taxpayers records, and strengthen tax compliance.¹ In turn, in fiscal year 2019, over 80% of federal government spending was funded by federal taxes collected by the IRS.²

Adequate and consistent funding is critical to protecting the integrity of the tax system by balancing modern taxpayer services with appropriate enforcement of federal tax laws and regulations. Congress recognized the importance of appropriate levels of service and enforcement when it enacted the Taxpayer First Act (TFA) of 2019, and adequate funding is paramount to enabling the IRS to implement the largest changes to federal tax administration in decades as well as the directives set forth by the administration and Congress.

¹ IRS Data Book 2019. Net revenue is gross collections (including penalties and interest in addition to taxes) less refunds (including overpayment refunds, refunds resulting from examination activity, refundable tax credits, other refunds required by law, and \$2.1 billion in interest, and excluding refunds credited to taxpayer accounts for tax liability in a subsequent year). The 253,035,393 tax returns and other forms filed in FY 2019 do not include information returns, tax-exempt bond returns, or employee retirement benefit plan returns.

² Congressional Budget Office, Monthly Budget Review: Summary for Fiscal Year 2019, indicating that 2019 revenues amounted to \$3.5 trillion and net spending by the government was \$4.4 trillion.

While estimates of the return-on-investment (ROI) vary, there is broad consensus that each dollar appropriated to the IRS yields far more in revenues collected. Despite this, the IRS has operated in an extremely challenging, resource-constrained environment over the past several years. Reduced funding and staffing levels and increased workloads, including those associated with several unfunded legislative mandates and the implementation of the Tax Cuts and Jobs Act of 2017 (TCJA), have limited the IRS's ability to replace departing employees, delayed needed technology upgrades, and postponed the development of new services. The IRSAC has addressed the critical need to provide the IRS with adequate and reliable funds as its number one issue for the prior four reports, and the 2020 IRSAC believes that current funding levels are \$1 to \$2 billion dollars below the level adequate to achieve the goals necessary to protect the integrity of the tax system.

Background

The IRS estimates that every dollar invested in the budget produces \$4 in revenue.³ The Congressional Budget Office offers a more nuanced estimate, projecting that the return on investment of a single dollar would be \$1.20 in year one and would rise to \$5.20 in the third year of investment as initiatives are implemented through newly trained staff and updated computer programs.⁴ The Taxpayer Advocate has indicated that each dollar appropriated to the IRS generates an average ROI of \$255.⁵ While estimates vary, there is general consensus that each dollar invested in the budget yields far more in revenue for the United States.

³ Prepared Remarks of John A. Koskinen, Commissioner, IRS, Before The Urban-Brookings Tax Policy Center, Washington, D.C. (April 8, 2015) available at <https://www.irs.gov/newsroom/commissioner-koskinen-remarks-to-the-tax-policy-center>.

⁴ Congressional Budget Office, Options for Reducing the Deficit: 2019 to 2028, Increase Appropriations for the Internal Revenue Service's Enforcement Initiatives, available at <https://www.cbo.gov/budget-options/2018/54826>.

⁵ National Taxpayer Advocate, 2013 Annual Report to Congress, Most Serious Problem #2, IRS BUDGET: The IRS Desperately Needs More Funding to Serve Taxpayers and Increase Voluntary Compliance, at 20.

Despite this consensus, overall funding for the IRS has decreased roughly 20 percent on an inflation-adjusted basis since FY 2010 including the effects of across-the-board rescissions and reductions required by sequestration and other adjustments. Adjusting for inflation, the IRS's \$12.1 billion budget in FY 2010 would equal \$14.3 billion in 2020, nearly \$3 billion higher than the enacted budget of \$11.5 billion for FY 2020.⁶ With the exception of FY 2016 and FY2020, appropriations to the IRS have consistently been less than the previous year over the past decade. On top of decreased funding, inconsistent timing and uncertainty generated by Congress through the appropriations process has disruptive effects on the management and operation of the agency. Delays to enacting the federal budgets in the form of Continuing Resolutions, or worse, lapses in appropriations, result in the IRS not knowing its full-year operating budget until well into the fiscal year. This creates a chilling effect on budget allocations that directly impact staffing decisions and disrupt multi-year technology modernization projects.

Labor costs account for about 70 percent of the IRS's budget and generally increase year-over-year due to inflationary and additional costs for existing personnel, including pay raises, employee promotions, and employee retirement contributions.⁷ As appropriations declined between FY 2010 and FY2019, the IRS was forced to take measures to reduce its workforce, including a hiring freeze instituted in 2011, offering a buyout for retirement in 2012, limited attrition replacement, and seasonal workforce adjustments across many operational areas. Due to various budgeting techniques employed by the Office of Management and Budget (OMB), such as failing to pay for these inflationary costs, the IRS is often required to absorb them. In other words, the IRS must reduce expenditures in other areas to cover known increases in labor costs, so a flat appropriation year over year requires cutting other parts of the budget by several hundred million dollars, projected net increases year-over-year fail to materialize in part or in full,

⁶ U.S. Department of the Treasury FY 2011 Budget in Brief; U.S. Department of the Treasury FY2021 Budget in Brief. Inflation calculation compares September 2009 to September 2019 based on the U.S. Bureau of Labor Statistics.

⁷ Fiscal Year 2021, Department of the Treasury, Internal Revenue Service, Congressional Budget Justification and Annual Performance Report and Plan (CJ), at IRS-13-14. For FY 2021, IRS budgeted \$452 million dollars to maintain current levels for existing personnel.

and reduced appropriations are in fact several hundred million dollars worse than they appear.

Each year, the IRS includes a Program Integrity Cap (PIC) adjustment in the President's Budget Request, proposing a set of initiatives to fund additional enforcement activities that would require funding beyond the normal funding available in the IRS's appropriations bill. This request would require an adjustment to the appropriations bill's funding cap, justified on the basis that these initiatives would save the government more money than they cost. Enactment of the IRS PIC requires inclusion of language in the President's Budget Request, in Budget Resolutions or bills and the subsequent Budget Conference Report, and in the Financial Services and General Government (FSGG) appropriations bill that is enacted into law.⁸ FY 2010 was the last time the IRS PIC was enacted. While funding available outside the caps would benefit the IRS's enforcement efforts, adequate funding within the caps is still critical to ensuring adequate enforcement.

The result of these budget reductions since FY 2010 is a 22 percent decline in the number of employees at the agency and a 30 percent decline in the number of employees working in enforcement roles.⁹ While the IRS saw an increase in hiring in FY 2019 and expects to make approximately 7,000 external hires between FY 2019 and FY 2020, this increase only slightly addresses the high rates of attrition in recent years. In FY 2019, the IRS employed about 78,004 employees, including temporary and seasonal staff, equating to about 73,554 full-time equivalent positions. This reflects a decrease of 21,217 full-time positions between FY 2010 and FY 2019.¹⁰ The loss of historical knowledge and experience (which benefit both taxpayers and incoming IRS staff) has been significant and is expected to worsen, with 39% of full-time permanent IRS employees eligible to retire by 2022.¹¹

⁸ For a more thorough overview of the appropriations process, see <http://www.crb.org/papers/appropriations-101>.

⁹ Congressional Budget Office, Trends in the Internal Revenue Service's Funding and Enforcement, July 2020.

¹⁰ IRS Data Book 2019, *supra* note 1.

¹¹ IRS Human Capital Office.

In addition to personnel, many of the IRS's Information Technology (IT) systems are retirement eligible. Several of the IRS's major IT systems are from the Kennedy era, written in programming code that was outdated before the turn of the century. The legacy computing infrastructure cannot keep pace with the desire and need for instantaneous data, real-time interactions, and other customer-centric services (all of which are anticipated by the TFA as well as by taxpayers and tax professionals), and the cost to operate its current technology ecosystem continues to increase. The cost to operate the IRS technology infrastructure annually now exceeds \$2.2 billion and is expected to exceed \$3 billion by FY2026 if current trends continue.¹²

The IRS's ability to successfully modernize its IT foundation is critical to its ability to deliver the IRS mission in a cost-effective way. In light of the COVID-19 pandemic, with telework-enabled operating models and an acceleration of digital-first customer service delivery expectations, this is more true than ever. The IRS can no longer rely on paper correspondence and on-campus operations to achieve its mission. Thus, it is imperative that the IRS realize its six-year business modernization plan, including the digitalization of high-use and high-burden paper forms.¹³ Not only will these efforts reduce operational and maintenance costs, but they will ensure the IRS can effectively deliver service and enforcement through pandemics, inclement weather, and other unforeseen disasters.

The negative effects of decreases in fiscal and human capital resources and antiquated IT systems are exacerbated by the increase in workload and responsibilities borne by the IRS over the last decade. For example, since FY 2010, the total number of returns filed increased by over nine percent.¹⁴ Concurrently, the IRS is executing the largest tax reforms in 30 years with the TCJA and the TFA, implementing an ambitious modernization plan, and delivering the annual filing season.

¹² IRS Integrated Modernization Business Plan, April 2019, at 5.

¹³ See IRSAC Report Issue Three: Opportunities to Expand the E-filing and Online Application Process.

¹⁴ IRS Data Book 2019. 230,409,000 returns were filed in FY 2010 and 250,321,406 returns were filed in FY 2019.

Due to the accumulated expertise of its large workforce, massive systems and huge data depository, the IRS has been mandated additional duties outside its traditional mission and responsibilities, such as administration of significant portions of the Affordable Care Act (ACA), the Foreign Account Tax Compliance Act (FATCA), the Achieving a Better Life Experience (ABLE) Act, and the Health Coverage Tax Credit. In 2020, the IRS was further called upon to administer, in concert with other agencies, coronavirus-related economic relief for small businesses and to deliver over 160 million Economic Impact Payments to American citizens in a matter of weeks. This was a commendable and selfless effort from a devoted workforce that was itself in the throes of navigating the novel and complex logistical hurdles facing employers as they developed and transitioned to new operational models for the safety of their personnel. Often these legislative mandates, whether directly related to the IRS's mission or not, come with insufficient or no corresponding funding. For example, the IRS spent nearly \$2.7 billion implementing the ACA from FY 2010 to FY 2018, yet Congress appropriated the IRS \$0.5 billion for implementation, resulting in the IRS absorbing the remaining \$2.2 billion cost internally.

As the IRS was forced to reduce staffing to absorb budget cuts, it was concurrently forced to focus resources on the increased workload due to a growing tax base and unfunded mandates. As a result, other areas of the IRS received fewer resources. Notably, enforcement absorbed much of the decline. Examination (audits) and collection declined significantly due to the decrease in total positions and increase in unfilled positions. Revenue agents and revenue officers, who work the most complex examination and collections cases, experienced especially large declines with 35 percent and 48 percent reductions, respectively.¹⁵

In FY 2019, the IRS audited 0.4 percent of all individual returns filed compared to 1.1 percent in FY 2010.¹⁶ Across a similar timeframe, the IRS audited

¹⁵ Congressional Budget Office, Trends in the Internal Revenue Service's Funding and Enforcement, July 2020.

¹⁶ IRS Data Book 2019, Table 17b.

1.6 percent of all business returns (assets greater than \$10 million) filed compared to 5.7 percent in FY 2010.¹⁷ This directly correlates to Examination personnel over a similar time period, which decreased 39 percent from 13,879 revenue agents in FY 2010 to 8,526 revenue agents in FY 2019.¹⁸ Diminished funding has also detrimentally impacted the IRS's non-filer program, which it uses to address taxpayers who have failed to file a return. The IRS's Collection function experienced a 19 percent decline in staff resources from FY 2013 to FY 2018, resulting in fewer delinquency notices and thus, fewer non-filer cases initiated. As a result, the non-filer component, which accounts for approximately \$39 billion (9 percent) of the Tax Gap, continues to grow, with high income taxpayers contributing the most.¹⁹ The decrease in enforcement seen over the last decade has not yet fully materialized into the tax gap, but the Treasury Inspector General for Tax Administration (TIGTA) estimates that the reduction in non-filer investigations results in at least \$3 billion in lost revenue each year.²⁰

The IRS's budgetary issues are compounded by its limited ability to reallocate resources between its four appropriation accounts: Enforcement, Operations Support, Taxpayer Services, and Business Systems Modernization. Increasing examinations and collections is not as simple as moving funds from other accounts to Enforcement, and even when funds can be reallocated, it reduces available resources for other needed work. In addition to these accounts, the IRS supplements its budget through specific collections, such as user fees, which are not appropriated annually but which require submission to OMB of a plan for expenditure.

Given the importance placed on digitizing taxpayer services and equipping the IRS with IT systems in modern programming languages, it should be noted that the IRS appropriation language specifies that Operations Support and

¹⁷ Fiscal Year 2021, Department of the Treasury, Internal Revenue Service, Congressional Budget Justification and Annual Performance Report and Plan (CJ) at IRS-68.

¹⁸ IRS Data Book 2019, at 34.

¹⁹ Treasury Inspector General for Tax Administration, "High-Income Nonfilers Owing Billions of Dollars Are Not Being Worked by the Internal Revenue Service," Ref. No. 2020-30-015 (May 29, 2020).

²⁰ *Id.*

Business Systems Modernization are the only appropriations accounts that the IRS can use for purchasing IT and several other shared services, such as office space. This results in dependencies between appropriations accounts. For example, an increase in audit coverage requires one dollar of Operations Support funding for every two to three dollars of Enforcement.²¹

As the IRS contemplates its reorganization plan as directed by the TFA, careful consideration should be given to how to improve transparency of the budget so that it is clear to Congressional appropriators how to allocate resources to achieve their goals by increasing the ability to reprogram funds between appropriation accounts. This will also help to connect clearly and directly the protracted budget cuts to the IRS's inability to fulfill its core mission and basic regulatory functions. That is, to spotlight the connection between the budget cuts and customer service, timely guidance, systems infrastructure, retention, replacement and training of IRS personnel, enforcement of the nation's tax laws, taxpayer compliance and federal revenues. This will help ensure the IRS budget is appropriately balanced across the needs of service, enforcement, and modernization.

Ultimately, the path to sustainable administration of a voluntary tax system will require reliable, adequate funding for the IRS over many years. Modernization is a prolonged effort that will only become more protracted and decrease in likelihood of success whenever funding is delayed or disrupted. Given that the majority of the IRS budget is comprised of labor costs, adequate resources to allow the IRS to rebuild staff year-over-year in the form of \$1 to \$2 billion over current operating levels are both necessary and urgent to ensure an appropriate balance of service and enforcement and offset the exodus of historical knowledge and skills by overlapping employment of experienced employees with new employees possessing new skills, perspectives, and insights.

²¹ Fiscal Year 2021, Department of the Treasury, Internal Revenue Service, Congressional Budget Justification and Annual Performance Report and Plan (CJ), Table 4.6.

Recommendations

1. Advocate for funding at a level no lower than the FY 2010 aggregate budget benchmark, adjusted for inflation, or \$14.3 billion, or at minimum a level that will provide for a net increase in staffing on a sustained yearly basis.
2. Advocate for consistent or multi-year funding for long-term initiatives including the customer service strategy, training strategy, and business modernization plan.
3. Advocate for the IRS Program Integrity Cap Adjustment for Enhanced IRS Enforcement in addition to adequate appropriations subject to annual caps on non-defense appropriations. Encourage the Budget Committees of the House and Senate to add language to impending budget resolutions or bills that would allow the Financial Services and General Government appropriations subcommittee to increase their designated cap for purposes of IRS Enforcement and associated activities.
4. Prioritize resources to increase digital acceptance and transmission of documents, including electronic filing, and digital communications to accelerate improvement of the taxpayer experience and ensure efficient tax administration.
5. Carefully consider budget account structure in light of the new organizational strategy to promote transparency of spending and ensure a balanced budget.

ISSUE TWO: The Taxpayer First Act Should Inform IRS Operations

Executive Summary

The Taxpayer First Act (the TFA or the Act)²² establishes technical tax changes and tax administrative goals, including goals related to IRS strategy, customer-service focus, organization, technology and modernization. It is, in the view of the IRSAC, a welcome recognition by Congress of the value of the IRS as a bedrock institution and of IRS employees as stewards of the IRS mission to “[p]rovide 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.”²³ The Taxpayer First Act Office (TFAO), a separate, dedicated office the IRS created to achieve the objectives of the TFA, is a tangible commitment by the IRS to provide focus and support as the entire organization works to achieve the goals of the TFA.

The IRSAC appreciates having had the opportunity to meet with and exchange ideas with representatives of the TFAO throughout the year. The IRSAC has been consistently impressed with the efforts of the TFAO, especially its efforts to solicit practitioner and taxpayer feedback and the manner in which it has utilized that feedback to develop its recommendations to Congress.

While developing strategies to meet the goals established by Congress, the TFAO recognized that the goals are interrelated and can be most effectively addressed when viewed together rather than separately, a point that representatives of the TFAO have made during interactions with stakeholders in multiple fora, including at the September 2020 virtual meeting of the IRSAC. At those meetings, representatives of the IRS also acknowledged that the institutional experience gained during the Coronavirus pandemic can be leveraged to improve implementation of the changes required by and prompted by enactment of the TFA.

²² Public Law 116-25 (July 1, 2019).

²³ <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority>

In response to the coronavirus pandemic, the IRS asked for patience from taxpayers and tax professionals as service centers closed, call centers closed, and face-to-face contact was eliminated. The IRS in turn (1) made extraordinary adjustments to enable much of its work force to work both remotely and securely and (2) provided relief to taxpayers and tax professionals by, among other things, (a) extending filing and payment deadlines, (b) increasing access to secure digital communications, and (c) distributing more than 160 million Economic Impact Payments (EIPs), including to persons not required to file tax returns.²⁴ The IRS diligently sought to identify these non-filers with creative and pro-active strategies that included partnering with community organizations (such as homeless shelters) and more traditional trusted partners (such as *pro bono* tax preparation and representation providers). The agency demonstrated its ability to adapt and react to a rapidly changing environment around the EIP and taxpayers that were entitled to receive payments but were traditional non-filers. The agency quickly built tools to assist taxpayers such as the EIP Payment calculator. The agency quickly built upon new partnership opportunities by working with other federal agencies such as the Department of Health and Human Services to assist in reaching many underserved populations that might otherwise be unreachable.

At present, with regard to the Taxpayer Experience Strategy, the TFAO is recommending a 10-year plan described as Six Focus Areas: (1) Proactive Outreach and Education (educating the taxpayer community by proactively providing information in the language, timing, and method that taxpayers need or prefer), (2) Expanded Digital Services (including improving and enhancing online accounts, tax professional online accounts, business online accounts, and payment options), (3) Seamless Experience (guiding taxpayers to the resources and communication channels that will meet their needs), (4) Focused Strategies for Reaching Underserved Communities (including communicating in more languages), (5) Community of Partners (including co-locating government

²⁴ IR-2020-203 (Sept. 8 2020). <https://www.irs.gov/newsroom/irs-to-mail-special-letter-to-estimated-9-million-non-filers-urging-them-to-claim-economic-impact-payment-by-oct-15-at-irsgov>.

services, expanding trusted stakeholder networks, and leveraging outreach best practices), and (6) Enterprise Data Analytics (including an enterprise-wide understanding of the customer experience, emerging needs and expectations, and operational data).²⁵

The IRSAC is and has been particularly focused on providing feedback regarding the IRS's comprehensive customer service strategy which we view as the Act's essential priority. Like the TFAO, the IRSAC views the objectives of the Act as inextricably intertwined, with the organizational redesign and enhanced training meant to facilitate and support customer experience improvement. The IRS's nimble and robust response to the Coronavirus pandemic, particularly the swift adjustments to permit digital communications during a time when in-person interaction was not possible, portends well for the future of IRS interactions with taxpayers and tax professionals and suggests that the goals of the TFA are already being internalized and normalized.

Background

"The IRS touches more Americans than any other entity, public or private."²⁶ Unlike private businesses, with which consumers can generally choose to engage with one rather than another, US taxpayers have no choice but to interact with the IRS. However, as with private businesses, taxpayer confidence and compliance and IRS employee morale are affected by the type of interaction and engagement the entity has with its stakeholders, particularly taxpayers and tax professionals.

With the TFA, Congress seems to have recognized that the US system of voluntary compliance would benefit from treating taxpayers more like consumers. Title I of the Act—Putting Taxpayers First—sets forth goals relating to Improved Service, Sensible Enforcement, and Organizational Modernization. Those goals are closely linked to those set forth in Title II of the Act— 21st Century IRS—the goals of which include Cybersecurity and Identity Protections, Development of

²⁵ <https://www.irs.gov/taxpayer-first-act> .The IRSAC encourages interested readers to visit the IRS's dedicated web page for current information on the progress of the TFAO.

²⁶ IRS 2019 Data Book, Letter from the Commissioner, page v.

Information Technology and Expanded Use of Electronic Systems. Section 1101(a) of the Act (relating to Comprehensive Customer Service Strategy) states, in part that “Not later than the date which is 1 year after the date of the enactment of this Act,²⁷ the Secretary of the Treasury (or the Secretary's delegate) shall submit to Congress a written comprehensive customer service strategy for the Internal Revenue Service.”

The IRSAC believes that taxpayers generally intend to comply with the tax law and attempt to do so in a manner consistent with available IRS guidance. IRS Commissioner Rettig has expressed the same view, stating “The vast majority of the nation’s taxpayers do the right thing.”²⁸ Often, taxpayers (or their representatives) seek resources directly from the IRS to better understand their tax obligations or information regarding the status of their account or refund. During Fiscal Year 2019 taxpayers reached out, and the IRS provided taxpayer assistance, through more than 650 million visits to IRS.gov (with over half of those visits involving inquiries to the “Where’s My Refund” application). Additionally, the IRS served more than 67 million taxpayers through various channels, such as correspondence, toll-free telephone helplines and at Taxpayer Assistance Centers.²⁹ Over 50% of the visits to IRS.gov originated from smartphones,³⁰ which is a trend that is likely to continue to grow.³¹ The IRSAC commends the IRS’s efforts to communicate through multiple channels and to recognize and address changing taxpayer needs.

The IRS recently introduced the *Gig Economy Tax Center*³² on its website, representing the increasingly prevalent “gig” economy. The Federal Reserve

²⁷ Delivery of the report has been delayed until the end of 2020 by disruptions caused by the Coronavirus pandemic. <https://www.irs.gov/newsroom/national-taxpayer-advocate-erin-collins-delivers-her-first-report-to-congress-identifies-covid-19-challenges-cares-act-and-taxpayer-first-act-implementation-as-priority-issues-for-taxpayers>.

²⁸ 2019 IRS Data Book, Letter from the Commissioner, page v.

²⁹ 2019 IRS Data Book, Service to Taxpayers, page 21.

³⁰ 2019 IRS Data Book, Letter from the Commissioner, page vi.

³¹ Pew Research Center, Internet & Technology, Mobile Fact Sheet (2019).

<https://www.pewresearch.org/internet/fact-sheet/mobile/>. According to the report, 81% of Americans and 96% of individuals age 18-29 own a smartphone. Although there are differences in the percentage of ownership by age, income and education, the percentage has consistently been increasing.

³² <https://www.irs.gov/businesses/gig-economy-tax-center>.

estimated that in 2018 at least three in 10 adults engaged in at least one “gig” activity to earn income.³³ Although definitions may vary, the Federal Reserve generally considers gig work to include informal, infrequent paid activities and covers personal service activities, such as child care, house cleaning, or ride-sharing, as well as goods-related activities, such as selling goods online or renting out property. Technological innovations continue to fuel growth of the gig economy through online platforms. For example, Chase reported 38 million payments directed through 128 online platforms to 2.3 million distinct Chase checking accounts between October 2012 and March 2018.³⁴ Compliance for taxpayers in the gig economy can be particularly complex and challenging, so guidance should be updated frequently and be as accessible as possible.

The IRSAC views improved communication with taxpayers and tax professionals as integral to the achievement of the goals of the TFA and of the IRS. Communication with the IRS is among the most frustrating challenges for taxpayers and taxpayer representatives. The National Taxpayer Advocate Annual Report to Congress for 2018 highlighted these challenges:

Taxpayers often have difficulty locating IRS personnel who can provide accurate and responsive information regarding their cases. The IRS emphasizes its main toll-free phone line, which includes difficult-to-interpret options and often leads to extended hold times. Even when taxpayers are provided with a specific phone number, most often it is for a group, rather than an individual employee. These group numbers make it difficult for taxpayers to have a sense of continuity and rapport with the personnel working their cases. Moreover, a lack of ownership by IRS personnel who work these cases can decrease the efficiency

³³ *Report on the Economic Well-Being of U.S. Households in 2018*, Board of Governors of the Federal Reserve System (May 2019). <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>

³⁴ *The Online Platform Economy in 2018: Drivers, Workers, Sellers, and Lessors*, JPMorgan Chase Institute Study by Diana Farrell, Fiona Greig, and Amar Hamoudi (<https://www.jpmporganchase.com/corporate/institute/reportope-2018.htm>)

*and effectiveness of case resolutions and worsen the customer experience.*³⁵

The potential return on investment in improving such communications would seem to make this a clear priority to address first and foremost. This is an area that could be addressed in the short term to dramatically improve taxpayer and tax professional satisfaction, employee morale (by expanding front-line employees' authority), and tax administration generally.

Along with many other stakeholders, the IRSAC provided feedback—both general and specific—during the year, much of which the TFAO already considered and some of which, during the Coronavirus pandemic, the IRS demonstrated can be implemented far more quickly, efficiently and securely than anticipated. Below, and throughout the 2020 IRSAC Report, the IRSAC reiterates some of that feedback and also provides recommendations which we believe will improve customer service, improve IRS employee morale, increase IRS efficiency, increase voluntary compliance, and improve overall tax administration.

The IRSAC recognizes that implementing the objectives of the TFA will require additional, consistent multi-year funding from Congress.³⁶

Recommendations

1. Facilitate methods for taxpayers and tax professionals to more easily obtain the information needed and resolve issues while reducing phone demand and decreasing reliance on paper correspondence.
 - a. Enable new, mobile-friendly digital tools for self-service and assisted channels such as chat (especially authenticated chat) and secure digital upload.
 - b. Ensure that the initial IRS employee addressing a taxpayer concern has authority to address and preferably resolve issues within the scope of their training and expertise and that if the initial employee

³⁵ <https://taxpayeradvocate.irs.gov/reports/2018-annual-report-to-congress/MSP-NTI>.

³⁶ See 2020 IRSAC Report Issue One, Inadequate Funding of the IRS is a Fundamental Risk to Tax Administration in the United States.

cannot provide the appropriate assistance that the employee can smoothly transition the taxpayer to a subject matter expert with the knowledge and authority to provide the type of taxpayer assistance required.

- c. Allow in-house corporate tax departments to utilize the practitioner priority service line to facilitate compliance by the LB&I community of taxpayers.
2. Leverage technology and improved training to enhance existing service channels. Improve customer experience with appointment scheduling, call backs, virtual meetings, and enhanced training for assistors.
 3. Build upon the current effort to improve service to underserved taxpayers, including limited English proficiency (LEP), rural taxpayers, differently abled taxpayers, and international taxpayers by ensuring information and customer service interactions are easily accessible in formats needed to serve the public (language, ADA-compliance, etc.).
 - a. Provide IRS materials in multiple languages (and dialects) to help LEP taxpayers feel invested in voluntary compliance.³⁷ The TFAO should continue its efforts to determine what languages need to be supported immediately, which languages can be supported at later phases, and which “services” (i.e. forms, instructions, websites, outreach material like newsletters, videos, professional organization outreach, call-center representatives, revenue agents, and technical representatives and personnel) can and should be provided in other languages and dialects.
 - b. The IRS should continue developing strategic partnerships with local organizations and trusted networks, including local governments and other organizations already providing other forms of support to underserved communities (such as medical hospitals/clinics that

³⁷ It would seem necessary, although possibly counterproductive, however, to note that the translations cannot be relied upon as a legal matter, notwithstanding that faulty translations, when relied upon, should provide reasonable cause for lack of compliance.

serve rural areas) and organizations that support US taxpayers living outside the US and international taxpayers living in the US, much as occurred in connection with the outreach programs the IRS developed to ensure that as many eligible persons as possible received EIPs.

4. Continue efforts to facilitate compliance for gig economy taxpayers who are required to report often relatively small amounts of income, as measured on a per taxpayer basis.
 - a. Enhance the IRS *Gig Economy Tax Center* website by providing more direct information as well as links to publications.
 - b. Focus attention (including through the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs) on Form 1099 reported income and reported income falling below the information reporting threshold (e.g., \$600), in addition to traditional Form W-2 sourced income focus.
 - c. Target platforms and platform sellers with educational campaigns on the tools available to assist taxpayers with meeting their tax compliance obligations.
 - d. Provide issuers of forms in the 1099 series with a path to report suspected cases of identity theft perpetrated during the submission of taxpayer information (e.g., Form W-9) that is subsequently relied on to assign and report income on Form 1099.
5. Expand taxpayer relief: Consistent with the TFA, as a corollary to the request for taxpayers and tax professionals to be patient in light of the disruptions caused by the Coronavirus pandemic, and consistent with the view that most taxpayers seek to be compliant, the IRSAC suggests the IRS consider the following:
 - a. Expedite consideration of penalty abatement requests.
 - b. Reevaluate what constitutes “reasonable cause” for purposes of penalty abatement to recognize barriers to complete compliance

(including when taxpayers reasonably rely on professionals to electronically file tax returns and/or other forms).

- c. Encourage voluntary disclosures by taxpayers seeking to return to compliance.
6. Leverage feedback from users and internal and external stakeholder partners to prioritize operations and services.
- a. Incorporate mechanisms to obtain user feedback and utilize the data to inform the prioritization of digital services and tools.
 - b. Tap the resources of the IRSAC and its members as well as other stakeholder partners. The IRSAC intends to continue as a resource for the IRS and the TFAO and strongly recommends the IRS and the TFAO continue to review analysis by, and continue to communicate with, professional organizations and other groups to identify those areas where IRS operations function best and where IRS functions could and should be improved.

ISSUE THREE: Opportunities to Expand the E-Filing and Online Application Process

Background

The IRS has been gradually expanding electronic filing of returns, applications and other documents. The most recent addition is electronic filing of Form 1040-X, the form for individual amended returns. While the IRSAC applauds these efforts, the COVID-19 pandemic has clearly demonstrated the need to accelerate this process. Electronic filing has many benefits:

Improves the Taxpayer Experience

- Provides electronic record of filing and receipt
- Reduces the need for phone inquiries on the status of returns
- Reduces time to process requests, inquiries and elections
- Allows taxpayers to file from anywhere they have an internet connection

Makes Tax Administration More Efficient

- Eliminates the need to key in data, substantially reducing data errors
- Facilitates automated handling of data
- Allows 24/7 processing, even when offices are closed due to weather or safety conditions
- Saves money spent on manual processing and correction of input errors
- Provides flexibility to move work where resources are available since processing activities are no longer tied to the location of the paper files
- Reduces the need for paper record storage
- Eliminates risks to IRS personnel of physically handling the mail (e.g., COVID-19)
- Frees up employees handling paper to be redeployed to other areas where more resources are needed

Provides Usable Data to Guide IRS Efforts

- Allows the IRS to identify compliance trends
- Provides better and more complete data, allowing the IRS to apply data analytics to shape its selection of returns to examine

In the COVID-19 pandemic, the IRS stopped processing mail to protect its employees. While this was a necessary step to ensure the health of its workers, the disruption to the system and the time required to recover are huge. This is disruptive and can be costly for both taxpayers and the IRS. If these items were handled electronically the time for recovery would have been shortened and many items might have been handled by IRS employees working remotely.

The IRSAC asks that the IRS provide funding and give priority to expansion of electronic filing. Taxpayers deal with their banks, merchants, employers and others electronically. The IRS should also focus on electronic filing.

In deciding what digital forms to prioritize the number of returns is clearly a factor, but other factors should be considered as well. Impact on taxpayers, effect on tax administration and usefulness of data are all important factors. Businesses pay substantial amounts of tax and the ability to collect electronic data from these businesses would greatly facilitate data analytics. For example, regulated investment companies (RICs) must file the Form 1120-RIC manually. A single fund complex can include hundreds of RICs, each which must file a Form 1120-RIC, including Schedule D, Schedule M, Form 8949, and Form 8621 for each passive foreign investment company (PFIC) or qualified electing fund (QEF) in which the RIC invests. These returns can be thousands of pages and require a hand truck to convey. The IRS must then catalog the returns on receipt which can take several months. An expansion of e-filing would allow the IRS to focus its limited resources where they will have the most impact on taxpayer compliance.

Certificates of residency are necessary to claim reduced withholding taxes on cross-border payments. Now they are filed on paper. The time to process these paper requests for certificates of residency often means foreign taxes are

unnecessarily withheld. If those taxes are claimed as foreign tax credits there is a loss to the US government. The IRS should utilize digital processes via a website modeled after the EIN process to allow for online application and tracking of forms. Taxpayer users could then log on to the system, track status and receive approval/rejection notifications. Users could also contact the IRS via the portal with questions and to identify errors.

Recommendation

All forms should be digitalized. When the IRSAC members were asked what forms should be prioritized the following were suggested.

- Form SS-4, Application for Employer Identification Number (for foreign companies)
- Form W-7, Application for IRS Individual Taxpayer Identification Number
- Form 211, Application for Award for Original Information
- Form 730, Monthly Tax Return for Wagers
- Form 941X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund
- Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies
- Form 1139, Corporation Application for Tentative Refund
- Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- Form 1045, Application for Tentative Refund
- Form 1065X, Amended Partnership Return
- Forms 1120L, U.S. Life Insurance Company Income Tax Return
- Form 1120PC, U.S. Property and Casualty Insurance Company Income Tax Return
- Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts
- Form 1310 (when Part 1 Boxes A and B are present)

- Form 2848, Power of Attorney and Declaration of Representative
- Form 3115, Application for Change in Accounting Method
- Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
- Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax
- Form 4506, Request for Copy of Tax Return
- Form 4563, Exclusion of Income for Bona Fide Residents of American Samoa
- Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes
- Form 5074, Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI)
- Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Currently e-filing is not available for Foreign-owned U.S. Disregarded Entities)
- Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues
- Form 8038-G, Information Return for Tax-Exempt Governmental Bonds
- Form 8275, Disclosure Statement
- Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests
- Form 8328, Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap
- Form 8332, Release of Claim to Exemption for Child by Custodial Parent
- Form 8703, Annual Certification of a Residential Rental Project
- Form 8802, Application for United States Residency Certification
- Form 8809-I, Application for Extension of Time to File FATCA Form 8966
- Form 8821, Tax Information Authorization
- Form 8822, Change of Address

- Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
- Form 8898, Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession
- Form 8918, Material Advisor Disclosure Statement
- Form 12153, Request for a Collection Due Process or Equivalent Hearing
- Form 14039, Identity Theft Affidavit
- Form 14039B, Business Identity Theft Affidavit
- Requests for Chief Counsel Advice
- Form 843, Claim for Refund and Request for Abatement
- Form 8854, Initial and Annual Expatriation Information Statement
- Form 56, Notice Concerning Fiduciary Relationship

As is evident from the length of this list, there are many forms which require paper filing and there is considerable appetite for this capability from tax practitioners and taxpayers. It is worth noting that quite a few additional forms were on this list but removed after it was determined that the forms may in fact be e-filed. It is not clear whether the IRS should more clearly indicate which forms are available for e-filing, if tax filing software does not report the forms, if practitioners should be more attentive to the availability of these forms to be e-filed, or if some combination thereof.

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

Large Business and International Subgroup Report

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INTRODUCTION/EXECUTIVE SUMMARY

The LB&I subgroup appreciated the opportunity to work collaboratively with LB&I Commissioner Doug O'Donnell, Deputy Commissioner Nikole Flax, Executive Lead Holly Paz and the other BOD representatives who "met" with us during the year. We are also particularly appreciative of the assistance of Stephanie Burch LB&I Subgroup Liaison.

Recommendations prepared by the LB&I subgroup include a proposal for an "Early Exam Program" to provide earlier exams for complex taxpayers unable to avail themselves of the Compliance Assurance Process (CAP) program. There is a recommendation to provide an online summary of the various dispute resolution programs available to taxpayers. The subgroup also provides recommendations for improved information reporting, including topics where additional regulations or other guidance is needed.

ISSUE ONE: Additional IRS Efficiencies Through a Newly Proposed Early Exam Program (“EEP”)

Executive Summary

LB&I should consider adapting the current Compliance Assurance Process (CAP) program to allow more complex multinational taxpayers to qualify under the program rules. Some multinational taxpayers and their IRS teams (despite earnest attempts to collaborate) struggle to resolve issues via interim disclosures as required by the current CAP program. This adapted CAP program (referred to as the Early Exam Program or “EEP”) would eliminate the interim reporting feature of the current CAP program, and instead, require that (1) a taxpayer provide disclosures based on actual information after the relevant tax year has closed and (2) a taxpayer and its IRS team agree on the scope and timing of such disclosures before a taxpayer is accepted into the EEP program. The EEP would aim to ensure that emerging tax issues are sourced from a sufficiently complex taxpayer group and improve the efficiency of the audit process for both the taxpayer and the IRS.

Background

The CAP program was created to help in identifying and resolving tax issues for selected taxpayers utilizing open, cooperative and transparent interaction between LB&I and the taxpayers.³⁸ The CAP program began as a pilot program in 2005³⁹ and was made permanent in 2011.⁴⁰ The goals of the CAP program include:

- Improve tax compliance by enhancing the efficiency and effectiveness of the issue identification, development, and resolution processes and procedures;
- Increase transparency and cooperation between the IRS and taxpayers; and
- Reduce burden of tax administration and compliance.⁴¹

³⁸ IRM 4.51.8.2.2

³⁹ Announcement 2005-87, 2005-50 IRB 1144

⁴⁰ News Release IR 2011-32 (March 31, 2011)

⁴¹ IRM 4.51.8.1.3 (04-16-2020)

In recent years, LB&I has noted that change is needed to the program to ensure that IRS resources are used efficiently.⁴² Specifically, the IRS has sought to ensure that taxpayers are transparent and cooperative during the exam. Taxpayers that have failed to exhibit this type of behavior may be deemed not suitable for (and removed from) the program. Examples of failures include:

- Not adhering to IDR response times or providing incomplete responses to IDRs;
- Not engaging in meaningful or good faith issue resolution discussions;
- Failing to thoroughly disclose a material item in a timely manner;
- Failing to disclose a tax shelter or listed transaction;
- Failing to disclose an investigation or litigation that limits IRS access to current corporate records;
- Frequently filing claims or failure to resolve issues in pre- and post-filing; and
- Not adhering to any other commitment in the relevant MOU.⁴³

The current CAP program requires that a taxpayer provide at each quarter during the year an estimate of its tax profile, details of discrete transactions, and other material information that is viewed as necessary to fully evaluate the tax owed by a taxpayer for a given year. To aid in the review of interim financial information, IRS agents may ask for SEC tax accounting information, detail of internal processes used to develop estimates, information to gain an understanding of internal controls, and other items. Following the closing of the books for a given tax year, the taxpayer is asked to consolidate and summarize a draft tax return filing with the goal to agree on all tax positions, methods, and amounts before the tax return is actually filed.

Complex taxpayers (especially those with material international operations) may have difficulty providing meaningful tax estimates before the end of a taxable

⁴² Compliance Assurance Process (CAP) Recalibration Discussion Document, Slide 2), September 28, 2018

⁴³ Id at Slide 6

year. For example, a taxable loss in the fourth quarter of a Controlled Foreign Corporation's (CFC's) year may erode a taxable event in the first quarter of the same CFC's year. Such an impact could impact the IRC Sections 951A, 163(j), 861, 59A, 250, and 904 calculations and a host of downstream attribute utilization issues. Accordingly, the tax profile, calculations, and issues disclosed in the first quarter may be moot (or at a minimum look substantially different) than in the fourth quarter. Simply stated, it is very often inefficient for an IRS examiner to understand, triage, and review transactions that occur during the interim periods of complex taxpayers. This inefficiency may lead to confusion and seem to the IRS that a taxpayer has not adequately disclosed its positions to the IRS, that a taxpayer is not cooperative nor transparent, and even that such a taxpayer is not suitable for the CAP program. However, such conclusions would be short-sighted because the IRS can harvest the largest benefits (both in terms of resource efficiency and issue development) by continued collaboration with these types of taxpayers. Specifically, recent statutory and regulatory changes to international tax rules have increased the complexity that makes CAP challenging for international taxpayers; however, the IRS has the most to gain from an early view of the reporting positions related to these changes.

The IRSAC believes a modified CAP program for complex taxpayers would be desirable—i.e. the EEP. Under this program, the general CAP process would be retained, however modifications to the disclosure process and timelines would be incorporated. The IRSAC notes that, while this proposal contains very specific suggestions regarding timelines and process, other viable options exist to accommodate the general recommendations.

First, the disclosure timeline would be moved to start after the taxpayer's books are closed but before the tax return is filed. This timeline would target a completion date of 14 months after the filing of the tax return, i.e., before the end of the calendar year after the filing. Under this approach, the IRS would receive less periodic information regarding taxpayer positions, however the information received would be better quality (based on actuals as opposed to estimates). The IRS field agents would discard efforts to understand quarterly provision

information, internal processes to build estimates, etc. as they would be presented with actual financial information. Additionally, field agents should expect more complete, accurate, and contextualized disclosures.

The EEP would render a more efficient use of IRS resources whether compared to the traditional CAP program or a regular LB&I audit. As stated, EEP would drive more efficiencies than traditional CAP as interim disclosures are less useful for complex taxpayers. Further, EEP would likely drive more efficiencies than a typical LB&I audit as the IRS would reap the benefits of enhanced taxpayer collaboration similar to the CAP environment.

Second, to ensure the most robust and timely collaboration by taxpayers and as a condition of acceptance into the program, taxpayers would be required to agree during the enrollment period to a list of the disclosures intended to be provided and a calendar of submission dates for those disclosures. Taxpayers would be incentivized to provide a complete and substantial list of disclosures and an efficient calendar to improve their chances of being selected. Enrollment applications would be submitted via a two-stage process: first, an initial application to enroll would be submitted during the first quarter of the applicable tax year, and second, taxpayers would present their proposed disclosures within 60 days after the end of the relevant tax year. The IRS could deny a taxpayer application at the first stage (e.g. as a result of a deficient taxpayer application, history of bad taxpayer behavior, internal resource allocations issues, etc.) or at the second stage (e.g. if the taxpayer proposed disclosures and calendar are not viewed as sufficient). If the IRS accepts the application and disclosure proposal, the IRS would provide such acceptance within 60 days and the taxpayer would be required to provide the promised information no later than 60 days after the notice of acceptance.

This process of setting expectations on the collaboration level and calendar for the case should provide the IRS a meaningful tool in creating further efficiencies for its workforce. Additionally, the IRS would not be required to allocate staff to a case until after substantial taxpayer disclosures based on actual information are provided. Such a process should reduce the number of times that IRS staff “pick-

up and put-down” taxpayer information resulting in greater efficiency to the IRS (relative to the normal LB&I process or even the current CAP process).

Finally, the IRSAC would be pleased to continue working with LB&I regarding implementation issues such as structuring a pilot program, structuring multi-cycle EEP periods, determining how to best qualify taxpayer candidates for the program, providing remedies for a failed enrollment process, managing transition periods, and addressing issues arising from the management of both CAP and EEP.

Recommendation

Adopt an Early Exam Program as described above for complex taxpayers unable to utilize CAP.

ISSUE TWO: Online Guide to IRS Dispute Resolution Programs

Background

There are multiple IRS programs available to LB&I taxpayers to agree on issues before filing. In addition, there are multiple paths for dispute resolution. These include Private Letter Rulings, Determination Letters, Pre-Filing Agreements, Advanced Pricing Agreements, Compliance Assurance Process, Industry Issue Resolution, Accelerated Issue Resolution, Traditional Appeals, Fast Track Mediation, Early Referral to Appeals and Rapid Appeals. Use of these programs can improve a taxpayer's experience while at the same time ensuring efficient use of IRS resources. However, taxpayers may not be aware of these programs or may not understand which programs may be available to them. LB&I has developed a matrix at the suggestion of and with input from the IRSAC which provides basic information on the programs and links to obtain more detailed information. The matrix should enable taxpayers to easily identify and pursue IRS programs which may fit their circumstances and to effectively and efficiently resolve tax issues.

Recommendation

Post a matrix akin to the following on www.irs.gov to provide basic information on the various dispute resolution alternatives:

Dispute Resolution for Large Business and International Taxpayers

Do you disagree with a decision made by the IRS, or would you like to take steps to prevent a dispute before one occurs? Our agency offers several options for taxpayers to resolve issues. The best option for your issue or case will depend on whether you or your business have filed the return in question and whether it is currently under audit. Consult the following chart for information to help you select the best option. Note that the options described below may not be available for all taxpayers, and that the descriptions are tailored for taxpayers under the jurisdiction of the IRS Large Business and International (LB&I) division, meaning those business taxpayers with assets of \$10 million or more. The timeframes for resolution will vary significantly (and could range from weeks to years) depending on your situation.

<u>Pre-filing or Pre-Audit</u>			
Resolution Type	Consider if...	User Fee	Learn More
Private Letter Ruling (PLR) from National Office of Chief Counsel	Prior to filing a tax return, you want the Office of Chief Counsel (Chief Counsel) to determine the tax treatment of your specific situation. The issue(s) cannot be under audit or in litigation and must not be clearly or adequately addressed by statute, regulations, court decisions or authority published in the Internal Revenue Bulletin.	<p>The current user fee is \$30,000, payable in advance, refundable only if the Associate Chief Counsel Office declines to issue a ruling. User fees may change and are generally published each January in the first revenue procedure of the year. All the user fees described in this chart must be paid electronically at www.pay.gov.</p> <p>Certain letter ruling requests have lower fees, including those for accounting periods and methods</p>	<p>Rev. Proc. 2020-1 (information on requesting a PLR).</p> <p>How to request a PLR</p> <p>Rev. Proc 2020-29, temporary allowance of electronic submission of PLRs</p>

<u>Pre-filing or Pre-Audit</u>			
Resolution Type	Consider if...	User Fee	Learn More
		changes and requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 . In addition, certain extensions of time for other regulatory elections are addressed in various guidance, which generally do not have a user fee.	
Determination Letter	Prior to filing a tax return, you want an IRS Director (not Chief Counsel) to determine the tax treatment of your specific situation and provide you with a written determination to attach to your filed return. The letter represents an agreement on treatment of the transaction but has less authority and finality than a private letter ruling. The letter applies the principles and precedents previously announced by the IRS to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in a statute, a tax treaty, the regulations, a conclusion in a revenue ruling, or an opinion or court decision that represents the position of the IRS.	Currently \$275 for a letter from a director. Exceptions, refunds and other user fee information is discussed in Rev. Proc. 2020-1, Part III, Section 15	Rev. Proc. 2020-1 (information on requesting a determination letter) Internal Revenue Bulletin 2020-1 (information on requesting a determination letter) Rev. Proc 2020-29 , temporary allowance of electronic submission of determination letters
Pre-Filing Agreement (PFA)	Prior to filing a tax return, you seek an agreement on issues likely to be disputed in post-filing audits. PFAs are for factual issues that fall under well-settled principles of tax law, and which can be resolved by the return filing date plus extensions. The PFA can be in the form of a closing	Currently \$181,500 for taxpayers selected to participate. Each separate and distinct issue will require a separate user fee. The orientation meeting or first substantive meeting	Rev. Proc. 2016-30 . Requests must be made to the LB&I Team Manager for taxpayers currently under examination and to

<u>Pre-filing or Pre-Audit</u>			
Resolution Type	Consider if...	User Fee	Learn More
	agreement for the year of application or a non-statutory agreement (a binding contract with the IRS that is subject to any future legislative enactment) for up to four future years. Taxpayers should attach the agreement to the tax return when filed. Either party (IRS or taxpayer) may withdraw from the agreement.	to discuss the PFA will not take place until after the fee is received.	the PFA Program Manager in Washington, D.C. for those not currently under examination. There are other exclusions and requirements (as those for international issues) on the PFA webpage on IRS.gov.
Advance Pricing Agreement (APA)	Prior to filing a return, you seek tax certainty and the avoidance of a transfer pricing dispute with the IRS and one or more treaty partner administrations by securing an agreement on a transfer pricing methodology. In an APA, the IRS and one or more foreign tax administrations come to an agreement with the taxpayer on: (1) the factual nature of the inter-company transaction to which the APA applies; (2) an appropriate transfer pricing method (“TPM”) to be applied to any allocation of income, deductions, credits or allowances among two or more controlled organizations; and (3) an expected range of results from applying the TPM to the transactions. This program is designed to promptly and fairly resolve APA requests based on principled and cooperative negotiations between the IRS, treaty partner tax administrations, and the taxpayer.	<p>\$60,000 for most requests;</p> <p>\$35,000 for an APA renewal request (in cases where the subject matter is substantially the same as in a previous APA request by the taxpayer)</p> <p>\$12,500 to amend a current unilateral, bilateral or multilateral APA, including coverage of additional issues, material changes to a proposed covered method, and any other material additions or changes to the terms and conditions of the APA.</p>	<p>Rev. Proc. 2015-41.</p> <p>Advance Pricing and Mutual Agreement Program webpage on IRS.gov</p>
Compliance Assurance Process (CAP)	You are a large corporate taxpayer seeking tax certainty through real-time resolution tools and techniques employed before filing. In CAP, the	There is no user fee for CAP.	CAP homepage on IRS.gov

Pre-filing or Pre-Audit

Resolution Type	Consider if...	User Fee	Learn More
	<p>IRS and the taxpayer work together to achieve tax compliance by resolving issues prior to the filing of the tax return. The assurance provided is mutual and can substantially shorten the length of the post-filing examination. The IRS and the taxpayer enjoy resources and time savings using the process. Note that CAP is not suitable or available for every large corporate taxpayer, and applications are only accepted during open periods that the IRS determines. Visit the site linked in the last column to the right for more details.</p>		<p>CAP Frequently Asked Questions</p>
<p>Industry Issue Resolution Program (IIR)</p>	<p>You are affected by a burdensome tax issue with uncertain tax treatment, and the issue affects a significant number of business taxpayers. The uncertainty of the issue results in frequent, often repetitive examinations. You and others (in your industry or even across industry lines) would benefit from having a team of IRS professionals review the issue and provide guidance. The IRS would benefit from studying the facts and industry practices to determine proper tax treatment.</p>	<p>There is no user fee for an IIR. The program helps taxpayers and the IRS avoid the financial and time costs of having issues resolved on a case-by-case basis during tax examinations.</p>	<p>Request an IIR by preparing written documents and submitting them by email IIR@irs.gov. Before doing so, read this IIR fact sheet and general IIR information on irs.gov.</p>

Post-Filing Issue and Case Resolution

Resolution Type	Consider if...	Fees	Learn More
Accelerated Issue Resolution (AIR Agreement)	You are a large corporate taxpayer under audit and would like assurance that resolved issues in the current audit cycle will be extended to all years for which returns have been filed. An AIR agreement is a closing agreement between the IRS and taxpayers under the Large Corporate Compliance program related to one or more specific issues arising from an audit for taxable periods ending prior to the date of the agreement.	There is no user fee for an AIR agreement.	Requests for AIR agreements are made through and subject to the discretion of the LB&I Team Manager over your open case. Learn more in the Internal Revenue Manual section for AIR agreements .
Traditional Appeals Process	You received a letter from the IRS explaining your right to appeal the agency's decision; you do not agree with the decision because you think it is incorrect or that the IRS misunderstood the facts; and you refuse to sign the agreement form. The Independent Office of Appeals is a quasi-judicial forum with a mission to resolve IRS tax controversies without litigation, on a basis that is fair and impartial to both the government and the taxpayer, and in a manner that will enhance voluntary compliance and your confidence in the tax system. A Traditional Appeal may be best for you if the items on this What to Expect from Appeals webpage are in line with your expectations, and the other Appeals options listed below are not appropriate or applicable to your case.	There is no user fee to initiate a traditional appeal.	Office of Appeals homepage on IRS.gov
Fast Track Settlement	You have an unresolved issue or disagree with an IRS decision or action (on a case where an IRS agent has completed their work and made a determination), and you wish to have an Appeals officer trained in mediation techniques work fairly and impartially with	There is no user fee associated with Fast Track options. Using this program may result in lower overall costs to resolve	Fast Track Settlement Program webpage on IRS.gov

Post-Filing Issue and Case Resolution

Resolution Type	Consider if...	Fees	Learn More
	<p>you and the IRS employee assigned to your case. During FTS, your case remains under the jurisdiction of the IRS rather than the Independent Office of Appeals. This option is good for taxpayers who want to resolve disputes at the earliest stage of the audit, don't have many disputed issues, and have provided information to the IRS officer to support the taxpayer's position. Fast Track is voluntary and, with a target resolution of within 120 days, is faster than a traditional appeal. The trained Appeals mediator will facilitate settlement discussions and may offer settlement proposals. The program is voluntary, and you will not be unduly persuaded to accept a proposed agreement. You will still have the right to request a traditional Appeal or conference with an IRS manager if you do not accept the outcome of the Fast Track mediation.</p>	<p>your issues, in addition to faster case resolution.</p>	<p>See the "Large Business or businesses with international interests" section under "Which Fast Track Program may be right for you..."</p> <p>Publication 4539 "Fast Track Settlement: A Process for Prompt Resolution of Large Business and International Tax Issue"</p>
Early Referral to Appeals	<p>Your case is under examination or in collection with a key issue that the IRS examiner or collection officer has fully developed. You disagree with the issue and are seeking resolution as the IRS continues to develop the other issues in your case. You expect that having Appeals review the issue before the examination or collection case is complete will help you and the IRS resolve the other issues in the case.</p>	<p>There is no user fee associated with Early Referral to Appeals. Using this program may result in lower overall costs to resolve your issues, in addition to faster case resolution.</p>	<p>Revenue Procedure 99-28 describes the process for early referral for cases in Examination and Collection.</p> <p>Requests must be submitted in writing by the taxpayer to the case or group manager, who will approve or deny the request.</p>

Post-Filing Issue and Case Resolution

Resolution Type	Consider if...	Fees	Learn More
Rapid Appeals Process (RAP)	You have been audited by the IRS and have filed a Traditional Appeal. RAP is a voluntary process designed to be completed in one conference that allows an Appeals Team Case Leader to convert the pre-conference meeting between you and the IRS examiners into a mediation session where Appeals will help resolve unagreed issues. You will still have the right to continue the Traditional Appeal if you do not accept the outcome of the mediation.	There is no user fee associated with RAP. Using this program may result in lower overall costs to resolve your issues, in addition to faster case resolution.	RAP in the Internal Revenue Manual.
Post-Appeals Mediation (PAM)	You have gone through Traditional Appeals but disagree with the proposed settlement offered by the Appeals Officer. PAM is a voluntary process that allows an independent appeals employee to mediate a settlement between the taxpayer and Appeals. PAM may not be available for all taxpayers. For example, if you entered Fast Track, you could not enter into PAM.	There is no user fee associated with PAM. Using this program may result in lower overall costs to resolve your issues, such as avoiding having to go to court.	Revenue Procedure 2014-63 PAM on IRS.gov

ISSUE THREE: Incorporate Alternative Withholding Statement Language into Form W-8IMY Certifications

Executive Summary

The IRS should consider incorporating the representation language required under Treas. Reg. Section 1.1441-1(e)(3)(iv)(C)(3)(D) for alternative withholding statements into the *Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*.

Background

Under Treas. Reg. Section 1.1441-1(e)(3)(iv)(C)(3), a withholding agent may accept from a nonqualified intermediary (NQI) an alternative withholding statement to accompany the Form W-8IMY to document the status of the NQI and its underlying payees. Unlike a traditional withholding statement, an alternative withholding statement does not need to contain all the information required under Treas. Reg. Sections 1.1441-1 (e)(3)(iv)(C)(1) and (2) that is also included on a withholding certificate (e.g. TIN, Chapter 4 status, GIIN), nor does it need to specify the rate of withholding that each foreign payee is subject to so long as the withholding agent is able to determine the withholding rate based on the information contained within the withholding certificate.

However, while the alternative withholding statement streamlines the information required to be provided on the withholding statement by the NQI, it requires that the NQI include a representation “that the information on the withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for the beneficial owners for determining the rate of withholding with respect to each payee.” If this representation is omitted, the alternative withholding certificate is not valid and cannot be accepted by the withholding agent.

NQIs which submit these alternative withholding statements often omit the representation language which results in the withholding statement being invalid.

Practically, this can be operationally burdensome for both the withholding agent and the NQI as it necessitates additional follow-up for a corrected withholding statement or may result in over withholding.

Recommendation

Integrate the representation language required on an alternative withholding statement as per Treas. Reg. Section 1.1441-1(e)(3)(iv)(C)(3)(D) by modifying the regulation to allow for inclusion into the Form W-8IMY, specifically within the certifications of *Part IV - Nonqualified Intermediary* and *Part VIII – Nonwithholding Foreign Partnership, Simple Trust, or Grantor Trust* as an additional checkbox that the NQI or WP/WT can check off as applicable.

ISSUE FOUR: QI/WP/WT Agreement Updates

Executive Summary

As updates are anticipated to be made by the IRS with respect to the Qualified Intermediary (QI) and Withholding Foreign Partnership/Withholding Foreign Trust (WP/WT) Agreements in light of IRC Section 1446, we respectfully request the IRS broaden the scope of its anticipated updates.

Background

The IRS is anticipated to make updates to the QI and WP/WT Agreements to reflect updates related to IRC Section 1446 under the Tax Cuts and Jobs Act, and we request the IRS consider making the following updates:

1. QI/WP FAQs: Since the publication of Rev. Proc. 2017-15, *Qualified Agreement* and Rev. Proc. 2017-21, *Updated Withholding Foreign Partnership Agreement and Withholding Foreign Trust Agreement*, the IRS has published FAQs with additional guidance to clarify questions which arose as a result of the updated agreements. The IRSAC would like to thank the IRS for publishing these FAQs as it has been beneficial to QI/WP/WTs in providing guidance beyond the Agreements. As this guidance has been beneficial to QI/WP/WTs but is separate from the Agreements, the IRSAC recommends that the guidance provided under the FAQs be incorporated by the IRS into the respective Agreements as additional updates related to IRC Section 1446 are being made. This will streamline the guidance and will help to ensure that QI/WP/WTs are applying the appropriate standards to comply as reflected in the Agreements.
2. Post-Cure Error Projection: The LB&I Process Unit published on January 13, 2020 that projections of under withholding should be performed on a post-cure basis allowing for curative documentation obtained to be considered prior to extrapolation. However, the current QI or WP/WT Agreements do not reflect this standard. While we appreciate that the IRS

has shared this application at various conferences, for avoidance of doubt, the IRSAC recommends that the Agreements reflect this standard as set forth by the Process Unit.

Recommendation

Consider incorporating these items into the expected update for the QI Agreement and WP/WT Agreement respectively. This will ensure that guidance that has been shared by the IRS publicly at conferences or through other mediums is consolidated into the agreements to promote their consistent application to meet compliance requirements.

ISSUE FIVE: Proposed Lag Method Regulations - Form 1042-S Filing Deadlines

Executive Summary

The modified lag method regulations as proposed require partnerships that withhold upon Fixed, Determinable, Annual or Periodic (FDAP) income between January 1st and March 15th in the year after the income is earned to file a Form 1042-S by March 15th, while FDAP income withheld upon between March 16th and September 15th is to be reported on a Form 1042-S filed by September 15th.⁴⁴ While the modified lag method does not impact the timing of when the amounts withheld are required to be deposited, the proposed rules impact the due date for when a partnership is required to file its year-end Forms 1042-S. Operationally this raises a challenge for many partnerships that are required under the modified lag method to file by March 15th, as it is common for the information needed to determine withholding amounts and partnership allocations to not be available to the partnership until after March 15th.

Background

Proposed regulations would modify Treas. Reg. Sections 1.1461-1(a)(1) and (c)(1)(i) to incorporate the modified lag method reporting rules into the regulations, departing from the historical lag method where if the income is earned in Year 1 but not distributed until Year 2 by the partnership, the income would be reported on a Schedule K-1 for Year 1 but reported on a Form 1042 and 1042-S for Year 2.

If FDAP income is earned by the partnership in Year 1, but not distributed to its partners during Year 1, the income is required to be withheld upon on the earliest of the following dates:

- When the income is distributed;
- When the partnership issues a Schedule K-1 to the partner for the tax year in which the income is earned; or

⁴⁴ Treas. Reg. Sections 1.1461-1(a)(1) and (c)(1)(i).

- The deadline for filing the Schedule K-1 for the income year, including any extension.

The deadline to file a Schedule K-1 for a calendar year partnership is generally March 15th following the income year, but the deadline can be automatically extended for six months until September 15th. Due to the Schedule K-1 extension, withholding on the undistributed income earned in Year 1 could occur as late as September 15th when the Schedule K-1 is filed. Additionally, under the historical lag method the undistributed income earned in Year 1 but paid in Year 2 would be reported by the partnership on a corresponding Form 1042 and Form 1042-S for Year 2, which are filed in Year 3.

Consider this example using the historical lag method. If a partner earned \$100 of undistributed income in Year 1, the Schedule K-1 filed for Year 1 would reflect this income. However, if the distribution and withholding of the income did not occur until Year 2, the \$100 of undistributed income earned in Year 1 would be reported on the Form 1042 and Form 1042-S for Year 2 that are filed in Year 3, two years after such FDAP income was earned. Foreign partners who file US returns face difficulty getting credit on a Year 1 Form 1120-F or 1040NR for the withholding that appears on a Year 2 Form 1042-S.

The modified lag method departs from the historical lag method as the undistributed income will now be reported on Forms 1042 and 1042-S for Year 1, the same year the income was earned by the partnership and reported on the Schedule K-1 even though the income was distributed and withheld upon in Year 2. Thus, if a partner earned \$100 of undistributed income in Year 1, but it was not withheld upon until Year 2, the reporting of the income is synched and reported on both the Schedule K-1 and the Forms 1042/1042-S for Year 1. Note, the amounts withheld and deposited with the IRS occurs in Year 2, which remains the same in both methods.

Under the updated instructions for Form 1042-S, for Year 1 FDAP income that is allocated to a partner between January 1st and March 15th of Year 2, regardless of whether it is subject to withholding, the partnership is required to file the Form 1042-S by March 15th of Year 2. If the allocation of undistributed FDAP

income occurs after March 15th in Year 2, the deadline to file the Form 1042-S is automatically extended to September 15th, so long as the income is subject to withholding. While the instructions to the 2019 Form 1042-S were updated on the IRS website to reflect that the extension to file the Form 1042-S to September 15th will also apply to income allocations made after March 15th that are not subject to withholding (e.g. portfolio interest), the proposed regulations as drafted do not include this language.

The bifurcation in deadlines to file the Form 1042-S based on the date of the allocation of income is operationally a challenge as many partnerships do not have all the information to determine the amount, source and character of the income until Schedule K-1s are received, which generally occurs at the earliest at the end of March and can continue to occur well into August. Even if a partnership requested a 30-day extension to file the Form 1042-S, it still does not provide the partnership with adequate time to digest the information and to file by April 14th. The March 15th deadline would be particularly burdensome for partnerships that receive passthrough payments, such as partnerships that are funds-of-funds, to file the Form 1042-S timely, as they are still awaiting information returns from the lower-tier partnerships to make these determinations.

Recommendation

Revise the proposed regulations for the modified lag method to allow partnerships to be able to file Forms 1042-S by September 15th if the income is not distributed in Year 1, regardless of whether the income is allocated or distributed prior to or after March 15 of Year 2 (or not distributed at all), and regardless of whether the income is subject to withholding. This will allow partnerships adequate time to gather the data needed to report the Forms 1042-S in a timely and accurate manner reducing errors and incorrect withholding.

Table 1: Historical Lag Method versus Modified Lag Method in Proposed Regulations

	Historical Lag Method		Modified Lag Method	
	Current Regulations	Due Dates Under Current Regulations	Proposed Regulations	Due Dates Under Proposed Regulations
Withholding	Withholding in Year 2 on earlier of actual distribution or K-1 filing date/due date (including extensions)	September 15 th of Year 2	Withholding in Year 2 on earlier of actual distribution or K-1 filing date/deadline (no change)	September 15 th of Year 2 (no change)
Deposits	Applied to Year 2	Third business day after end of quarter monthly period for the withholding date (actual or deemed)	Withholding occurs in Year 2, but partnership required to designate (apply) the deposit to Year 1 (fiscal year partnership rules are different)	Third business day after end of quarter monthly period for the withholding date (actual or deemed) (no change)
Reporting	<ul style="list-style-type: none"> • Report income and withholding on Form 1042-S for Year 2 • Tax liability should be reflected on Form 1042 for Year 2 • Schedule K-1 reports income received for Year 1 	<ul style="list-style-type: none"> • Year 2 Form 1042-S: the due date and extended due date for filing the Form 1042-S are March 15th and April 14th of Year 3 • Year 2 Form 1042: The due date and extended due dates for Year 2 are March 15th and September 15th of Year 3 	<ul style="list-style-type: none"> • Report income and withholding on Form 1042-S for Year 1 • Tax liability should be reflected on Form 1042 for Year 1 • Schedule K-1 reports income received for Year 1 • For TY 2019 a partnership can choose to report using the current regulations or the proposed regulations 	<ul style="list-style-type: none"> • The unextended due date for Form 1042-S is March 15th of Year 2 if payment is not subject to withholding (or payment is withheld upon on or before March 15th and September 15th (for all other payments) of Year 2 • For 2019 Forms 1042-S, the deadline is September 15th regardless of whether withholding applies provided the allocation is made after March 15th (the IRS is considering making this permanent) • The due date and extended due date for filing the Form 1042 is March 15th and September 15th, respectively, of the year subsequent to earning the income

ISSUE SIX: Clarifying Guidance Needed for Regulations Impacting Tax Information Reporting

Executive Summary

The Emergency Economic Stabilization Act of 2008 (the “Act”) introduced the tracking of cost basis by brokers and other financial institutions. Section 403 of the Act contained provisions that set forth requirements for tracking basis of securities and then reporting it to account holders on a Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, upon disposition. To this end, the IRS issued Treas. Reg. Sections 1.6045-1, 1.6045A-1 and 1.6045B-1 (the Basis Tracking Regulations) affecting brokers and custodians that make sales or transfer securities on behalf of customers, issuers of securities, and taxpayers that purchase or sell securities. Given the complexity of these new regulations, entirely new systems and programs had to be designed to reflect the varying basis treatments of securities and transactions under the Internal Revenue Code (“IRC” or the “Code”). The Basis Tracking Regulations were phased in from 2011 through 2017, during which time different security types became “covered,” meaning they were now subject to tax information reporting under the Basis Tracking Regulations.

The Basis Tracking Regulations were expected to improve taxpayer compliance and thereby increase revenues into the Treasury. The thought was that if brokers were tracking the basis and reporting it on a Form 1099-B when a sale occurred, the taxpayer, knowing that this information would be reported to the IRS, would rely on the broker’s records for schedule D preparation, thereby increasing compliance. However, since the application of the Basis Tracking Regulations requires brokers to apply various existing regulations affecting payments generated by covered securities and the treatment of proceeds of sales from their disposition, the IRSAC is requesting clarifying guidance in applying certain of those regulations in four situations. By doing so, brokers will be better situated to fulfill their tax information reporting obligations. Such guidance could be in the form of regulations, notices, FAQs, form changes or changes to form instructions. Clarifying the correct treatment of securities and their payments for

reporting under the Basis Tracking Regulations will facilitate uniform reporting and thereby improve tax administration.

Sub Issue 1 -The Market Discount Rules – IRC 1276–1278

When the Market Discount Rules were introduced, references were made in the Code and in the report prepared by the congressional Joint Committee on Taxation⁴⁵ to the issuance of subsequent regulations to address specific areas of these new Code sections. As proposed regulations have yet to be issued, the interplay of the market discount rules with specific types of debt instruments remains unclear in many situations. There are computational challenges with integrating the original issue discount (OID) regulations under IRC Sections 1272 – 1275,⁴⁶ with the market discount rules, which relate to accretion of discount on debt instruments acquired in the aftermarket. Many of these challenges were highlighted during the implementation of the cost basis regulations,⁴⁷ and although firms created their own basis tracking solutions relying on their understanding of how Code sections interacted, IRS guidance was and continues to be needed. This is particularly apparent with variable rate debt instruments (VRDI), which pay interest based on a floating rate subject to certain criteria for which there is no guidance on how the market discount rules affect these securities. And in a recent commentary by an industry expert addressing the new IRS interbank lending rate (IBOR)/secured overnight financing rate (SOFR) rules, she noted that they do not fully resolve calculation challenges for debt, specifically stating one of the challenges arises because “Substantive regulations generally clarifying many important aspects of the market discount rules have never been issued.”⁴⁸

⁴⁵ IRC Sections 1276(d) and 1278(c); General Explanation of the Revenue Provision of the Deficit Reduction Act of 1984 – Page 94

⁴⁶ The OID rules provide for the treatment of amortization of original issue discount on debt instruments. The treatment may vary with the specific type of instrument and the OID rules provide for such.

⁴⁷ Treasury Decision 9616 - Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Reporting for Premium – See the preamble.

⁴⁸ Stevie Conlon - New IRS IBOR/SOFR Rules Do Not Fully Resolve Calculation Challenges for Debt Commentary

<http://www.wolterskluwerfs.com/article/new-IRS-IBOR-SOFR-rules-do-not-fully-resolve-calculation-challenges-for-debt-commentary.aspx>

Until the IRS addresses the application of the market discount rules to facilitate broker basis reporting, it will be the practitioners, and financial institutions providing cost basis information that frame out the actual rules. Doing so, without a foundation or bedrock of IRS regulations, means there is added structural risk in the system and filing of tax returns. Providing guidance on the interplay of the market discount rules with Contingent Payment Debt Instruments, VRDI, OID and other debt securities will provide an enhanced taxpayer experience via greater confidence in basis reported on Form 1099-B when market discount is present.

Recommendation

The IRS should issue guidance clarifying the application and interactions of the Market Discount Rules with complex fixed income securities.

Sub Issue 2 - Final Liquidating Distributions

Code Sections 6042 and 6043 delegate to the Secretary of the Treasury and IRS the manner of reporting dividends and liquidating transactions.⁴⁹ Treas. Reg. Section 1.6042-2 specifies the use of a Form 1099 and it states that an information return on Form 1099 shall be made under section 6042(a). It does not specifically require a Form 1099-DIV, Dividends and Distributions. However, the IRS forms and publications specify use of the 1099-DIV. In particular, the 2020 Form 1099-DIV requires the placement of liquidating distributions in either Box 9 (cash) or 10 (noncash). Publication 550 alerts taxpayers that they will receive liquidating distributions on Forms 1099-DIV and that they should not pay tax on such distributions until they have recovered their basis in the securities. However, the 1099-DIV does not disclose basis information. While the Form 1099-DIV is adequate for reporting distributions whose character has already been determined by a fund company, it is not adequate for liquidating distributions. Without basis being provided to holders for reported liquidating distributions, the purpose of the

⁴⁹ Treas. Reg. Section 1.6043-2 Return of information respecting distributions in liquidation, provides for the use of Form 1099, not a specific one
Treas. Reg. Section 1.6042-2 Returns of information as to dividends paid, provides for the use of Form 1099, not a specific one

cost basis regulations may be thwarted as taxpayer's make inaccurate tax return filings and their taxpayer experience is adversely impacted.

Prior to the introduction of basis reporting, financial institutions generally reported liquidating distributions, including final liquidations, on Forms 1099-DIV. However, since the required implementation of the Basis Tracking Regulations, there has been a strong preference for firms, especially fund companies, to report final liquidating payments on Form 1099-B, as these are generally dispositions of covered securities. Typically, these firms use the Form 1099-DIV for reporting dividends and capital gains distributions as they know the character of these distributions, while liquidating distributions are in essence proceeds waiting to be characterized by the recipient based upon holding period and amount of basis in the security. The basis information from a Form 1099-B for these distributions can be particularly helpful to the taxpayer as basis may have been adjusted, unbeknownst to the taxpayer when earlier liquidating distributions were paid. Additionally, basis may have also been adjusted previously for distributions characterized as "non-dividend" (i.e. return of capital) which also impacts basis. Brokers and fund companies have found that providing the basis information on a Form 1099-B, with the proceeds of disposition, enhances their account holder's experience.

Finally, further guidance on this matter will avoid possible penalty assessments on brokers as the use of a Form 1099-B rather than a Form 1099-DIV could cost \$280.00 per incorrect information return and payee statement under IRC Sections 6721 and 6722, respectively. To avoid this possible outcome on an audit, guidance on whether a broker can use a Form 1099-B for liquidating distributions is sought. We also note that the Investment Company Institute which represents a vast array of fund companies has sought to have this matter elevated on the IRS's Priority Guidance Plan for several years.⁵⁰

⁵⁰ See Investment Company Institute letters to Internal Revenue Service, Assistant Secretary for Tax Policy Chief Counsel, dated May 31, 2016 and June 14, 2018, RE: Guidance Priority List Recommendations

Recommendation

The IRS should authorize the use of Form 1099-B in situations when a liquidating distribution is being made for a covered security.

Sub Issue 3 - Lending Master Limited Partnership (MLP) Interests to Cover Short Selling

Since the issuance of Treasury Decision (TD) 8225 - Partnership Statements and Nominee Reporting of Partnership Information, which set out the rules for nominee reporting of beneficial ownership of MLP units held in street name, questions have remained regarding the reporting of publicly traded MLP interests that are delivered to a third party to satisfy a short sale. The Background section of TD 8225 noted that the IRS was “actively studying issues related to the tax treatment of short sales of partnership interests.” The regulations that were issued 32 years ago were, and remain, temporary: Treas. Reg. Section 1.6031(b)-1T and Treas. Reg. Section 1.6031(c)-1T.

U.S. securities regulations require a broker to deliver securities to a purchaser even if the securities were sold short. Such delivery in a short sale is effected by borrowing stock or using margined stock. IRC Section 1058 establishes rules for the treatment of securities pursuant to stock loan/borrow arrangements. However, this section is applicable to securities as defined under IRC Section 1236(c), which states “the term ‘security’ means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.” It does not define an MLP interest as a security, so it is questionable whether IRC Section 1058 is applicable.

Without the application of IRC Section 1058, the delivery of the shares from a margin or other third-party account would seem to constitute a disposition subject to gain or loss recognition. Additionally, the return of the MLP interests back into the lender’s account could be viewed as a new acquisition. If so, then the nominee should be informing the partnerships of such changes in ownership. This does not appear to be happening in practice. In part, this may be a result of the brokerage

community's application of Treas. Reg. Section 1.6045-2, which establishes a means of allocating shares, which have been loaned out, for dividends in lieu of payments and is applicable to MLP interests. This seems to contemplate the ability to freely borrow and lend MLP securities pursuant to IRC Section 1058, despite the definition of securities in that section. Aligning these two sections could enhance the taxpayer experience by understanding the tax implications of such a transaction in advance of entering into it.

An additional complication in the short selling scenario arises for the partnership when issuing K-1s to its partners. Is there an obligation to issue a negative K-1 to short sellers to offset the additional partnership interest that exists if the lending transaction is not deemed a sale? Without treating the lender as having disposed of the MLP position, the outstanding number of MLP participation interests will be inflated by the amount that has been sold short, thereby impacting all of the reportable items on a K-1. Providing guidance in connection with these two issues will give nominee brokers much needed direction in fulfilling their reporting obligations under Treas. Reg. Section 1.6031(c)-1T and provide partnerships with clarity for K-1 issuance when their MLP interests are sold short. However, the greatest benefit to be achieved by addressing these matters will accrue to the taxpayer's experience as he or she may have confidence that the broker and partnership reporting accurately reflects the tax treatment of their holdings.

Recommendation

The IRS should clarify whether the loaning of partnership units of Master Limited Partnerships (MLPs) is a taxable sale of securities or a loan as contemplated in IRC Section 1058.

Sub Issue 4 -Treatment and Disclosure of Bond Premium in Call Situations

Treas. Reg. Section 1.171-2(a)(4)(i)(C) provides taxpayers the ability to deduct excess bond premium as an itemized deduction not subject to the IRC Section 67 two percent floor on miscellaneous deductions. Treas. Reg. Section 1.171-3(c)(5) specifies how excess premium is calculated upon the call of a taxable debt instrument. In this environment of declining rates, many instruments are more likely to be called before redemption date.

Amortization for taxable instruments is calculated using a yield to best call formula. In general, this is the full yield received based on redemption date and not a shorter call date. When an earlier call occurs there will generally be unamortized premium. The amount of such premium that is in excess of the redemption price, which on a call may be greater than par, is excess bond premium subject to deduction on a tax return. However, unless the taxpayer is alerted that this exists, the deduction is not likely to be identified. While systems can adjust basis to reflect the Treas. Reg. Section 1.171-3(c)(5) premium adjustment, when the call occurs, it may be more common that the entire premium is being folded into basis and reported on a Form 1099-B. This treatment turns the unamortized premium into a capital loss. This was the treatment prior to the changes in regulations that introduced Treas. Reg. Section 1.171-2(a)(4)(i)(C) and the treatment of excess premium as an itemized deduction.

With the tracking of fixed income basis and the ability to adjust for amortization of bond premium, brokers have the ability to calculate excess bond premium after adjusting unamortized bond premium to reflect the call price and any difference from the redemption price. The addition of an Amount Box on the Form 1099-B would facilitate delivering this information to a taxpayer. In the alternative, brokers can simply alert Form 1099-B recipients that a particular disposition has excess premium available for deduction by having a checkbox similar to other boxes already on the form. The recipients could then determine the amount of excess premium to report on their tax returns. A clear excess premium notification system would provide a better taxpayer experience as

taxpayers may not otherwise be aware of the deduction and brokers may be presenting it as a capital loss as part of basis to be netted against proceeds.

Recommendation

Form 1099-B should provide a mechanism for disclosing the existence of excess bond premium subject to deduction if it exists, upon dispositions of fixed income instruments.

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

Small Business/Self-Employed Subgroup Report

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INTRODUCTION/EXECUTIVE SUMMARY

The IRS Small Business/Self-Employed (SB/SE) division's mission is to help small business and self-employed taxpayers understand and meet their tax obligations, while applying the tax law with integrity and fairness to all. The strategic focus for SB/SE is to address the tax gap, improve customer service to its customers, improve business processes and systems, reduce burden, enhance stakeholder relations and develop human capital. The IRSAC's SB/SE subgroup's members are a diverse group of professionals from accounting and law firms, public companies, payroll processors and academic institutions. The IRSAC SB/SE subgroup appreciated the opportunity to provide insight on issues impacting the SB/SE division.

The subgroup provided real-time feedback on SB/SE identified issues and identified other issues of importance to improve the taxpayer experience and to reduce the tax gap. This report provided real-time feedback and makes recommendations on the following issues:

- Improving telephone response times for the Practitioner Service Line
- Engaging the practitioner community to help improve tax compliance
- Developing the Form 1099 portal website content from a practitioner perspective, the small business perspective and which forms should be included on the portal
- Expanding federal-state data sharing
- Educating taxpayers of the resources available when they are victims of identity theft and a business account has been established using their identity
- Reasoning for excessive withholding on Forms 1099 and
- Reporting of tax capital accounts for partnerships to reduce complexity in preparing partnership tax returns

The IRSAC SB/SE subgroup appreciates the time SB/SE devoted to provide information to our subgroup to allow us to provide feedback and recommendations to further the mission of SBSE.

ISSUE ONE: Telephone Call Response Times for the Practitioner Priority Service Line

Executive Summary

Tax practitioners who prepare returns and represent taxpayers before the IRS can call an IRS dedicated phone line and receive answers to questions regarding individual and business accounts. This phone line is called the Practitioner Priority Service (PPS). PPS provides tax practitioners access to IRS employees who may provide information on taxpayer accounts, answers to tax law questions, and assistance to taxpayers under correspondence examinations. For issues outside the scope of PPS, calls are transferred to the appropriate division or the division contact telephone number is provided to the tax practitioner.

Due to the increased complexity of tax return preparation, recent passage of tax legislation affecting taxpayers, and questions regarding collection action, the volume of calls to PPS has increased significantly, which has caused slower response times by the IRS customer service representatives (CSRs) answering the phones. The slower response times existed before COVID-19 and the IRSAC understands the significant disruption to IRS services caused by COVID-19. However, some tax practitioners have reported wait times over two hours before an IRS CSR answers the PPS phone line. In addition, some tax practitioners have experienced calls being disconnected after waiting on hold for long periods of time. Sometimes the PPS phone line has a message that due to high call volume the practitioner must call back and they cannot complete their call. And some tax practitioners have reported being disconnected while speaking to a CSR, thereby requiring the tax practitioner to call PPS and start the process over.

The IRSAC SB/SE subgroup identified issues with the phones and collaborated with the IRS in both the Wage & Investment (W&I) and Small Business/Self Employed (SB/SE) divisions to make recommendations to strive to reduce the volume of telephone calls into the IRS and to expedite account resolution.

Background

The PPS is the first point of contact for the tax practitioner who acts as a conduit between the taxpayer and the IRS. The IRS has 14,000 IRS employees in the W&I division trained to handle taxpayer and practitioner questions through the general phone line as well as the PPS phone line. PPS offers six options which direct calls to IRS CSRs with expertise in certain areas. These six options are:

1. Tax law – general tax law questions
2. Individual accounts management – questions not related to collection or examination
3. Business accounts management – questions not related to collection or examination
4. Automated Collection System (ACS) – questions related to taxpayers whose account is in automated collection system status
5. Under Reporter Notices (AUR) – questions related to taxpayers who have received an automated under reporter notice
6. Examination questions – questions related to taxpayers whose account is under correspondence examination

Calls directed to Options 1–3 are answered by W&I Accounts Management CSRs. Calls directed to Options 4–6 are routed to SB/SE Collection Representatives (CRs). Table 2 below reflects the number of phone calls to the six PPS options over the previous two fiscal years:

Table 2: Phone Calls Made to the Practitioner Priority Service Line in FY 2019 and FY 2020

Option	IRS Operating Division	FY 2019	FY 2020
		through July 13, 2019	through July 11, 2020
1.	W&I	32	87
2.	W&I	1,769,056	2,250,476
3.	W&I	481,331	692,513
4.	SBSE	270,237	244,405
5.	SBSE	23,085	21,392
6.	SBSE	62,348	49,675
	No Response or Invalid Input	583,223	802,356
	Total	3,189,312	4,060,904

Based on data provided by W&I Accounts Management, 14% of the total calls went to SB/SE CRs during fiscal year 2019 and 10% of the calls during fiscal year 2020. The remaining calls were answered by W&I CSRs.

During the first 10 ½ months of fiscal year 2020, when the IRS employees were predominantly teleworking, PPS received 4,060,904 calls. This is a 27% increase over the 3,189,312 calls received during the same period in fiscal year 2019. This heroic effort by the CSRs is remarkable. It also highlights the added stress to both IRS employees and tax practitioners we are seeking to reduce.

Based on SB/SE data received from the IRS employees, the call wait time for SB/SE calls was an average of two minutes. IRSAC members who have called the PPS, particularly recently, have experienced longer wait times.

To reduce the high volume of calls and improve the tax practitioner and taxpayer experience, the IRS is conducting a pilot program using text chat for online payments, and to set up installment agreements in ACS. There are six sites

using this feature with five additional sites being added. There are 15 staff at each site. There is an unauthenticated chat feature (using no taxpayer-specific account information) and an authenticated chat feature (requiring taxpayer authentication/using taxpayer-specific account information). At this time, only taxpayers have access to this pilot program. The IRS anticipates this program will be available for use by tax practitioners soon. Text chat enables interactive conversations between the IRS and taxpayers. Taxpayers using authenticated chat can send attachments through text and chat to answer questions from IRS employees on taxpayer issues.

The IRS is promoting the use of online services to resolve taxpayer account issues. The goals are to reduce the volume of telephone calls to the IRS, reduce the mail sent through the US Postal Service (USPS) and third-party delivery services, and expedite account resolution. By expanding the use of technology and online services, tax practitioners and taxpayers can interact with IRS employees more efficiently, resulting in reduced calls to PPS and other assistance lines, and fewer pieces of hard-copy mail that must be physically handled by IRS employees.

CSRs have experience in certain areas to answer tax practitioner questions. If the question is outside their area of knowledge, the call is transferred. Since there are currently only six options for a tax practitioner to select when calling PPS, the tax practitioner and CSR may be impacted by more delays when the question cannot be answered by the initial CSR.

A tax practitioner may call the IRS to resolve a client matter and request collection action temporarily stop on the account (account on hold) so the taxpayer can respond more fully to the matter. Putting the account on hold allows the taxpayer and the IRS enough time to resolve the matter. IRS CSRs can place taxpayer accounts on hold for 30 days, but often the limited times do not allow for issue resolution before they expire. Significant IRS resources are being consumed by sending notices indicating they have received information but need additional time to respond. Taxpayers receiving the notices express concern and forward the notice to the tax practitioner who then reviews the notice to determine if any

action is required. Due to slower response times, these on hold times are not sufficient, and the tax practitioner must call the IRS again to request additional on hold time on the taxpayer's account.

Recommendations

1. Invest in enhancements to offer text chat to tax practitioners. Expand options to securely transmit documents to the IRS during online text chat sessions other than by "fax". Seek funding to invest in innovative information technology to expand text chat for issues that show heavy call volume.
2. Reallocate resources according to the options most used, with Option 2 receiving more CSRs. Consider removing Option 1 and reallocating those resources entirely to Option 2. See attached chart.
3. Increase the authority of the IRS CSRs to allow them to place accounts on hold for sufficient time while the IRS is reviewing the issue raised and preparing an appropriate response. The amount of time considered sufficient would be based on IRS experience of how long it typically takes the IRS to resolve an issue. During this pandemic, the time should be extended to account for the reduction in IRS employees opening and processing the mail.
4. Accumulate data about the issues covered in a telephone call to determine common issues that could be resolved in a different way and be available to other CSRs. The data could be accumulated by surveying the CSRs and the tax practitioner calling in. For example, at the end of the call, the tax practitioner could be asked to take a survey with specific questions but also a section to allow for additional comments.
5. Accumulate data on the length and outcome of each call to determine if additional training is required for the CSRs.
6. Expand the menu options available on the PPS phone line to minimize tax practitioners' wait time and allow IRS CSRs with experience in that menu topic to answer the questions. The expanded menu options would be added

- based on information obtained from a survey of the CSRs and the tax practitioners. For tax practitioners calling the PPS line for assistance with international, identity theft verification or other areas not handled by PPS, the CSR should have a list of telephone numbers for those areas to provide to the tax practitioner.
7. Publish on the IRS PPS and tax professionals' webpages the best days and times to call and to avoid long wait times.
 8. Add an option for tax practitioners to request a call back. The tax practitioner would provide his/her name, contact number, best time to call, and question to address. This option will reduce the time a tax practitioner is spending on hold, thereby increasing the efficiency of the process. IRS employees will experience less stress as they will be calling during a time that accommodates both the tax practitioner and the IRS employee.
 9. Allow IRS employees to call back a tax practitioner disconnected to eliminate the necessity for a tax practitioner to call back.
 10. Work with outside stakeholders to see what options are being used effectively to improve the tax practitioner and taxpayer experience in the telework environment with the goal of reducing call wait times and length of calls. Consider contacting companies which have demonstrated exceptional expertise in using this type of technology and inquire if they are willing to share their expertise or refer IRS to the outside company that set up their system.
 11. Review the telephone system capability to handle increases in call volume.
 12. Enhance training for new CSRs to improve taxpayer service. A supervisor of the new CSR could listen in on the phone conversation to evaluate if the CSR has the needed training or if additional training is required.

ISSUE TWO: Engaging the Practitioner Community to Help Improve Tax Compliance

Executive Summary

The Small Business/Self-Employed (SB/SE) Division of the IRS requested the IRSAC's feedback on how it can better work with practitioners to improve taxpayer compliance, taxpayer behavior and collection practices. Most taxpayers want to comply with their tax obligations; however, they may be unfamiliar with the rules applicable to them. The IRSAC identified two major issues where practitioners could provide assistance to the IRS to improve taxpayer compliance and collection practices. The first relates to taxpayers in the gig economy and the second concerns taxpayers who have English as a second language (ESL taxpayers) and those who have limited English proficiency (LEP taxpayers).

As the gig economy grows, many more taxpayers are classified as small businesses or self-employed individuals rather than their traditional treatment as an employee. This changing classification creates a host of tax compliance issues these taxpayers are often ill-equipped to manage, due to a lack of awareness of their compliance obligations. The IRS has tried to work more closely with practitioners to improve taxpayer compliance both through educational and case resolution initiatives.

The taxpayer base has expanded significantly over the years to include ESL and LEP taxpayers who are more likely to be unfamiliar with the United States tax system and many have language struggles comprehending their tax obligations when they are presented to them in English instead of their native language.

Background

Because of the increased prevalence of gig economy workers, who are often considered small businesses or self-employed individuals (often without knowing it), there is an increased risk this growing segment of taxpayers will struggle with tax compliance. These tax compliance struggles can manifest themselves in a variety of ways. Some typical examples include: taxpayers not appropriately making estimated tax payments; taxpayers not maintaining

appropriate documentation of business-related income and expenses; taxpayers improperly classifying income as wage income rather than as self-employment income; and, taxpayers being unable to pay their year-end tax liability because of a lack of withholdings and a failure to make estimated tax payments. This lack of awareness or understanding can be especially prevalent in ESL and LEP taxpayer populations.

Some states may classify these workers as employees under state law while they remain classified as independent contractors under federal tax law. This adds additional complexity to the worker's tax return by reporting self-employment income on the federal tax return and wage income on the state tax return. Many of these workers do not receive information reporting forms such as Forms 1099 MISC or Form 1099-K.⁵¹ The lack of third-party information reporting increases the tax gap. In a 2019 report,⁵² TIGTA noted that the gig economy has grown considerably since the IRS last estimated the self-employment portion of the Tax Gap at \$69 billion, or roughly 15% of the overall Tax Gap, and will continue to grow as each year thousands of new taxpayers will be responsible for self-employment taxes for income earned in the gig economy. The information reporting gap for gig economy earners and the direct correlation between information reporting and the IRS's ability to identify and address noncompliance led TIGTA to recommend that the IRS address self-employment tax non-compliance.⁵³

The IRS attempted to improve compliance through educational initiatives such as using social media to provide compliance-related information to both taxpayers and to practitioners and through creating more online resources. Resources, such as the Gig Economy Tax Center, were made available in several different languages to provide improved outreach to ESL and LEP taxpayers.⁵⁴ However, this resource is only useful if taxpayers know about it and know they may have tax compliance issues that relate to their gig economy work. Low-income

⁵¹ See the 2019 IRSAC Annual Report SB/SE Issue Three: Sharing Economy and Impact on the Tax Gap.

⁵² Expansion of the Gig Economy Warrants Focus on Improving Self-Employment Tax Compliance dated February 14, 2019 Reference Number 2019-30-016

⁵³ *Id.*

⁵⁴ <https://www.irs.gov/businesses/gig-economy-tax-center>

taxpayer clinics (LITCs) engage in educational initiatives as part of their mission to help educate as many taxpayers as they can about their compliance responsibilities, but their resources are often strained, which limits their ability to provide larger scale education and outreach to taxpayers. There is an opportunity for the IRS to involve practitioners outside of the low-income taxpayer community in these educational efforts.

Besides educational activities, the IRS also utilizes *Pro Bono* Settlement Days to enhance compliance of underserved taxpayers by bringing practitioners together with unrepresented taxpayers to resolve tax court disputes. In these *Pro Bono* Settlement Days, IRS Counsel and LITCs coordinate to reach out to unrepresented taxpayers with upcoming U.S. Tax Court calendar dates. Through these initiatives, prior to the Tax Court Calendar during which their cases are scheduled to be heard, taxpayers are invited to a location where IRS Counsel attorneys are present and volunteer attorneys (and sometimes student attorneys in academic LITCs) can provide assistance to the taxpayers. Representatives from the Taxpayer Advocate Service (TAS) and the IRS collection division are often present at these events with the goal to resolve as many cases as possible for these taxpayers by providing them with access to legal advice and relevant IRS personnel. In response to the COVID-19 pandemic, IRS Counsel is experimenting with virtual settlement days and has indicated that, given their success, they hope to grow the settlement day program to one in which settlement days, including virtual events, are held routinely throughout the year (in contrast with past practice in which they were in-person, one-off special events held on only a few occasions during the year). While these efforts have been very successful in improving Tax Court case resolution times (and thereby bringing non-compliant taxpayers back into compliance), they have been limited primarily to resolving active Tax Court cases in a handful of cities around the country.⁵⁵

These events have not been utilized to address the many taxpayers who do not have docketed cases in Tax Court and are not in the exam stage but owe tax

⁵⁵ IR 2020-112, June 4, 2020 (available at <https://www.irs.gov/newsroom/irs-chief-counsel-goes-virtual-with-national-settlement-days-helps-dozens-of-taxpayers-settle-their-tax-court-cases>).

liabilities that they cannot afford to pay. As the country emerges from the economic recession caused by the COVID-19 pandemic, this group of taxpayers is likely to increase as more taxpayers experience severe income drops due to unemployment that reduce their capacity to pay past tax liabilities. Some of these taxpayers may be eligible to resolve these liabilities with an offer-in-compromise or other appropriate collection alternatives as a path back into compliance. Many, however, particularly those in vulnerable population groups, are thwarted in their attempts to resolve liabilities due to the actions of some predatory practitioners or significant delays in IRS processing times that cause the taxpayer to disengage from the collection process before completion.

The IRSAC commends the IRS's recent efforts to improve taxpayer compliance through educational outreach to those taxpayers often in most need of assistance in understanding their compliance obligations (i.e., taxpayers who may struggle to afford professional tax advice and ESL/LEP taxpayers). *Hearing All Voices* is an outreach program with IRS panel discussions and webinars on topics to help a small business succeed. In addition, the IRSAC supports IRS Counsel's initiatives to resolve Tax Court cases more quickly and bring unrepresented taxpayers back into compliance through its *Pro Bono* Settlement Days, including the expanded use of virtual settlement days. The IRSAC, however, believes these initiatives could be expanded through greater collaboration with the practitioner community in order to improve taxpayer compliance.

Recommendations

The IRSAC recommends that the IRS:

1. Promote the educational materials on its Gig Economy Tax Center (Tax Center) to businesses and community organizations to provide a consistent message for those organizations to use in their outreach programs. The IRS can leverage the work of LITCs educational outreach efforts by reviewing the educational materials used specifically for the low-income taxpayer community (especially the academic low-income taxpayer community) that it could then add to the Gig Economy Tax Center. These

materials in the Tax Center would enable practitioners to go out into their communities and to leverage their social media presence to provide taxpayer education at high schools, community colleges, civic centers, and other organizations with which the practitioners are involved as part of their civic participation. In addition, these materials could be provided to companies who hire large numbers of gig economy workers to use as educational tools for their independent contractors to help them better understand their tax compliance obligations. These materials could also serve as the basis for creating direct advertising on sites that a high number of gig economy workers might use, or entertainment stations to which they might view or listen. Such advertising could refer taxpayers to online resources where they could obtain additional education about particular tax topics.

2. Expand the use of *Pro Bono* Settlement Days:
 - a. Utilize technology to hold events virtually on a regular basis throughout the year.
 - b. Host collection-focused settlement days. For those taxpayers unable to resolve a liability with an offer in compromise, the settlement day could provide a good opportunity to evaluate whether there are grounds for potential penalty abatement and other collection alternatives. The overarching goal of these events, however, would be to attempt to resolve taxpayer disputes on the day of the event, which has the benefit of assisting taxpayers to return to compliance more quickly and removing cases from the IRS collection queue, and protecting taxpayers from predators.
 - c. Utilize technology to hold Settlement Days for both Tax Court and collections matters that are specifically accessible to ESL and LEP taxpayers. Such events could allow practitioners from around the country who can provide assistance to ESL and LEP taxpayers to help resolve disputes, even for taxpayers who are not physically near the practitioner.

3. Consider how Nationwide Tax Forums could be expanded to leverage practitioner expertise about areas experiencing higher levels of noncompliance and leverage practitioners' assistance to ESL/LEP taxpayers. Expansion could occur in two ways, both of which leverage technology via a virtual forum designed to reduce cost.
 - a. Leverage practitioner expertise about compliance issues: The IRS could hold at least one Nationwide Tax Forum designed to solicit practitioner feedback to the IRS on issues that practitioners perceive as areas of noncompliance.
 - b. Leverage practitioner expertise about ESL/LEP taxpayers: Host a virtual Nationwide Tax Forum specifically designed for practitioners that serve ESL/LEP taxpayers. While it would potentially be cost-prohibitive to conduct an ESL/LEP focused forum at multiple in-person locations throughout the country, hosting one virtually would provide an opportunity for the IRS to connect practitioners who can assist ESL/LEP taxpayers with members of that community as well as provide an opportunity for practitioners who work with ESL/LEP taxpayers to provide feedback to the IRS about what additional resources would assist in addressing their unmet needs. Besides connecting ESL/LEP taxpayers with practitioners who may assist them, such a forum could be recorded and then dubbed in different languages in order to make the information as accessible as possible.
4. Consider how the IRS can incentivize more practitioners to engage in taxpayer educational outreach and in representation for underserved communities, such as through creating a voluntary practitioner speakers bureau. Such a speakers bureau would not impose additional training requirements on practitioners but would rather serve as public recognition for practitioners who engage in educational outreach to the public and take on a certain amount of *pro bono* representation. Such a speakers bureau would allow practitioners to better highlight their commitment to fostering

- tax compliance and would allow the IRS and these publicly minded practitioners to more easily connect with each other for further compliance-enhancing collaboration. The IRSAC acknowledges that to establish additional quality controls for selecting speakers would require detailed planning and the utilization of scarce monetary and human resources but believes that ensuring the utmost in speaker quality is crucial to the IRS's messaging to the practitioner community. The IRSAC sees this as an ongoing project that the IRSAC can assist with in the future. The IRSAC recognizes that this type of bureau would likely be required to impose stringent requirements for inclusion, including but not limited to:
- a. Require a prerequisite amount of education to the public and/or *pro bono* representation.
 - b. Conduct a compliance check of the practitioner before the practitioner could be included in the speakers bureau. The check may be an Office of Professional Responsibility review. For tax preparers required to obtain a PTIN and participating in the speakers bureau, this issuance of a PTIN could include this compliance check.
 - c. Require the practitioner to include a disclaimer at the beginning of the training session informing the participants that he/she is not endorsed by IRS.
 - d. Request letters of recommendation supporting that the practitioner is knowledgeable in the training area.
5. Promote the *Hearing All Voices* IRS panel discussions and webinars with all external stakeholders. Many professional organizations may be interested in disseminating the information to its membership and community leaders.
 6. Expand the *Hearing All Voices* IRS panel discussions and webinars to cover common mistakes made on tax returns including unreported income.
 7. Enhance relations between the IRS and stakeholders by seeking stakeholder feedback during the development process of items to include new initiatives, processes, and procedures.

ISSUE THREE: Internet Platform for Form 1099 Filings

Executive Summary

The Taxpayer First Act (TFA) Section 2102 requires the IRS to develop an internet platform for Form 1099 Filings. The Small Business/Self-Employed (SB/SE) Division of the IRS requested the IRSAC's assistance on which items should be included on the Form 1099 portal website (a) from a practitioner perspective, (b) from the small business perspective, and (c) regarding which forms should be included. The IRSAC SB/SE subgroup collaborated with a team from the IRS to evaluate, recommend and assist upon request.

Background

Section 2102 of the TFA requires the IRS to set up a website or other electronic media whereby taxpayers are to prepare and file Forms 1099, prepare Forms 1099 for distribution to recipients, and maintain a record of completed, filed and distributed Forms 1099. The user interface and functionality of the internet website or other electronic media is to be modeled after the Business Services Online Suite of Services provided by the Social Security Administration.

The legislative language in the TFA also states these services are to be a supplement to and not a replacement for other services provided by the IRS and must comply with security standards and guidelines.

Section 2301 of the TFA seeks to increase electronic filing by authorizing the IRS to reduce the number of returns which can be paper filed before being subject to an electronic filing mandate from the current 250 returns to 100 returns for the calendar year 2021 and then further reducing this to 10 returns for calendar year 2022 and beyond.

Beginning in January 2020, the IRSAC SB/SE subgroup met with SB/SE Exam Subject Matter Experts Mike Maltby, Project Director, and Laurie Tuzynski, Senior Level Advisor to the SB/SE Commissioner, to provide input and review the progress of the Form 1099 portal project (Section 2102 of the TFA). The IRSAC appreciated the invitation to participate in the development of the Form 1099

Platform and has been extremely impressed with the progress made and the systematic and industry standard approach that has been taken on this project.

The IRSAC SB/SE subgroup also met with Jennifer Auchterlonie of the Office of Chief Counsel, and IRS personnel from the Wage & Investment (W&I) division to provide input on Section 2301 of the TFA, which authorizes the IRS to lower the electronic filing requirement of returns from 250 to 100, and then 10 returns. The Office of Chief Counsel informed the subgroup that Section 2301 is not self-executing and requires issuance of proposed regulations for comment, and issuance of final regulations before Section 2301 could be executed.

During the year, the IRSAC SB/SE subgroup provided a prioritized list of requirements for the Form 1099 portal website from both a tax practitioner and small business perspective along with a prioritized list of recommended forms which are included as Attachments 1, 2 and 3 immediately following our recommendations. The IRSAC understands that due to limited resources and funding, the Form 1099 portal website cannot offer all the requested capabilities at the outset.

Recommendations

1. Collaborate with external stakeholders who already have a Form 1099 portal website to determine best practices and learn from them about issues encountered during development and implementation. Based on our recommendation, the IRS contacted several states.
2. Incorporate modernization into the development of the Form 1099 portal website to allow easy expansion of the portal's functionality.
3. Request feedback from taxpayers and tax practitioners on the user experience with the Form 1099 portal website interface before final development.
4. Delay Section 2301 implementation until after the Form 1099 portal website is available. The IRSAC believes this would reduce the burden on small businesses required to file electronically over the next several years. The expected launch date of the Form 1099 portal website is January 1, 2023.

Other sections of this Report encourage more digital access for taxpayers, and our recommendations are also designed to increase options and limit burdens for taxpayers.

- a. If Section 2301 implementation is delayed beyond the January 2021 date specified in the TFA, a public notice should be issued with such information as soon as possible.
- b. If Section 2301 is delayed, it should nonetheless be implemented in a step-down approach as specified in the TFA Section 2301 instead of an immediate reduction to 10 informational returns when the proposed regulations are issued.
- c. Implementation of Section 2301 should be delayed until one year after the Form 1099 portal website is available to allow employers time to learn about the Form 1099 portal website and the related e-filing mandate to ease the filing process.

Attachment 1: Forms to be Included in the Form 1099 Internet Platform

The following is our input from our experience. If the IRS has to limit scope, the high level “must haves” would be those with high paper filing that contribute to the Tax Gap:

- 1099-MISC, Miscellaneous Income
- 1099-NEC, Non-Employee Compensation
- 1099-INT, Interest Income
- 1099-B, Proceeds from Broker and Barter Exchange Transactions
- 1099-S, Proceeds from Real Estate Transactions
- 1098-T, Tuition Statement
- 1099-DIV, Dividends and Distributions
- 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs,
- Insurance Contracts
- 1099-G, Certain Government Payments
- 1099-LTC, Long Term Care and Accelerated Death Benefits
- 1099-OID, Original Issue Discount
- 1099-PATR, Taxable Distributions Received From Cooperatives
- 1099-Q, Payments from Qualified Education Programs (Under Sections 529 and 530)
- 1099-S, Proceeds from Real Estate Transactions
- 1099-SA, Distributions From an HSA, Archer MSA, or Medicare Advantage MSA
- 1098, Mortgage Interest Statement
- 1099-C, Cancellation of Debt
- 1098-E, Student Loan Interest Statement
- 1099-A, Acquisition or Abandonment of Secured Property
- 1042-S, Foreign Person's U.S. Source Income Subject to Withholding
- 3921, Exercise of an Incentive Stock Option Under Section 422(b)
- 3922, Transfer of Stock Acquired Through An Employee Stock Purchase Plan Under Section
- 1099-K, Payment Card and Third-Party Network Transactions

Attachment 2: User Interface Requirements from the Practitioner Perspective

Rank	Column1	Requirement
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to access the site with taxpayer authorization
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability for the tax practitioner to be able to sign electronically.
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Design a system for the future rather than the past to include capacity
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to import forms
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Moves personal information forward YoY
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Verification of data entered
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	TIN Validation in real time
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Electronic delivery of forms to recipients
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Ability to print locally
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Electronic filing
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to check on status of forms
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to file amended forms using the site
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to file prior year forms
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Ability to see forms filed by client with authorization
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to export data in CSV format for state filing
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to leave forms "in progress" until ready for submissions
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Ability to filter and submit in batches
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Ability to truncate TINS
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Client activity report - analysis of returns processed by payer or filer during the current or prior year
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Ability to see acceptance id
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Confirmation date that is sent to taxpayer and/or preparer to show forms were accepted by IRS and proof
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	Portal should transfer information to various states who need copies and participate in the CF/SF program
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	Confirmation that state received copies

Attachment 3: User Interface Requirements from the Small Business Perspective

Rank	Column1	Column2	Requirement
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to file forms electronically
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability for the software to send the Forms 1099 directly
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to save the personal identifying information for the following year
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to file amended forms using the site
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability for taxpayer to sign electronically
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to match identification numbers immediately
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to import data from spreadsheets, CVS files and popular accounting programs like QuickBooks, Xero, etc.
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Easily searchable database to look up recipients or payers by name, address or TIN
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to mask the TINs on mailed copies
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to skip/omit vendors in the database without deleting them so the information doesn't need to be re-entered in a future year if they are used again
<input type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to enter data in a spreadsheet type format that can sort recipients by first name, last name or tax ID
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to retrieve prior years forms
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to file prior year forms
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to check on status of forms filed by me
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to check on status of forms filed by third party filed on my behalf
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to export data in CSV format for state filing
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to print duplicate/replacement forms
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to leave forms "in progress" until ready for submissions
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to filter and submit in batches
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to truncate TINS
<input type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input checked="" type="checkbox"/> Utopia	Warning on entry of duplicate TINs
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Confirmation date that is sent to taxpayer and/or preparer to show forms were accepted by IRS and proof
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Ability to view a list of accepted people who have access to their account on the portal so taxpayer knows who has access and if access to the portal needs to be changed
<input checked="" type="checkbox"/> Must Have	<input type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Portal should transfer information to various states who need copies and participate in the CF/SF program
<input type="checkbox"/> Must Have	<input checked="" type="checkbox"/> Nice to have	<input type="checkbox"/> Utopia	Confirmation that state received copies

ISSUE FOUR: Identity Theft and Form 1099 Filing

Executive Summary

In recent years, commercial data breaches and other criminal acts have compromised taxpayers' personal information. Bad actors have used stolen identities to file fraudulent tax returns that claim refunds using the identity of the victim. To protect taxpayers from additional harm, the IRS recently released online resources dedicated to identity theft (IDT). The website provides taxpayers with the necessary resources for reporting that their identity may be compromised. The IRS's online resources also provide taxpayers with instructions for requesting a special Identity Protection PIN (IP PIN) that can be used to authenticate the taxpayer's identity when filing a return, which can further protect the taxpayer from fraudulent tax returns being filed on their behalf.

The consequences of IDT are not limited to the filing of fraudulent tax returns. Taxpayers can also experience harm when their identity is used to establish fraudulent business accounts through which their identity is used to sell goods or services. Income may be reported to the taxpayer on a Form 1099.

The IRSAC recommends the IRS maximize online resources related to IDT to support taxpayers that learn of a compromised identity from income that is reported to the taxpayer on a Form 1099 as a result of a fraudulent business account.

Background

During the year, the IRSAC SB/SE Subgroup met with representatives from the IRS SB/SE Division, Wage and Investment Division (Forms and Publications), and the Office of Chief Counsel (Procedure and Administration). The IRSAC SB/SE Subgroup commended the IRS's proactive efforts in educating taxpayers on IDT and providing mechanisms to safeguard the taxpayer's tax return and personal information from further harm. Members of the IRSAC SB/SE subgroup highlighted other areas of risk concerning a taxpayer's identity. Specifically, a stolen identity can be used to fraudulently open a marketplace account to sell

goods or services within the gig economy. The stolen identity can include a legitimate taxpayer's name, taxpayer identification number (TIN), mailing address, and other personal information. To the extent that the account results in a reportable payment, the payer may have to furnish a Form 1099 to the bogus account holder, in which case, the recipient of the Form 1099, the legitimate taxpayer, may be the victim of IDT. The payer must use the worker's personal identifying information even though it may be incorrect. The payer has no method to correct the problem and must continue to use the stolen identifying number on Forms 1099.

Recommendations

1. Expand the online IDT resources to include taxpayers that experience IDT when their identity is stolen and used to establish business accounts.
2. Include language in the Form 1099 instructions and the back of the form to provide guidance to a taxpayer who has been a victim of IDT from a business account. Recommended language to include in the Form 1099 instructions is:

Identity Theft. The payer must report income on Form 1099 based on personal identifying information provided to it. If you believe that the income reported to you resulted from identity theft (IDT), refer to the IRS' online resources on IDT at www.irs.gov/identity-theft-central. The payer may not issue a new Form 1099.
3. Include the above recommended language in the instructions to Forms 1099-K, 1099-NEC, 1099-MISC, and 1099-C. The IRSAC believes that stolen identities are most commonly used to establish accounts that may produce activity associated with income that is reported on these Forms.
4. Include the recommendation language in any tax notice from the IRS Automated Underreporting Program. The taxpayer who has been a victim of IDT may not learn about the compromised identity until after filing a tax return and receiving a notice of unreported income.

5. Add a checkbox on the Forms 1099 to indicate the payer has been provided information by the IDT victim to confirm the income reported on Form 1099 belongs to someone else. The victim could complete Form 14039, Identity Theft Affidavit, and provide it to the payer in addition to the IRS, which may lend additional credibility to claims of IDT.
6. Require the payer to obtain the correct identification number and address for the worker/vendor after it has been notified that the information provided to it is inaccurate and after two attempts require back-up withholding from the payments. See next comment.
7. Request legislation to provide for back-up withholding from payments made to known bad actors. The legislation should specify the back-up withholding rate as the maximum individual income tax rate. The IRS will receive the back-up withholding and the IDT victim would receive the benefit of the back-up withholding. Using the highest individual income tax rate could be a deterrent to individuals stealing another individual's identity.

ISSUE FIVE: Federal-State Data Sharing

Executive Summary

The IRSAC SB/SE Subgroup met with IRS subject matter experts from Governmental Liaison, Disclosure and Safeguards Office within the IRS Office of Privacy, Governmental Liaison & Disclosure (PGLD) to discuss the Federal-State data sharing program (Federal/State program) and to identify areas where IRS might strengthen this compliance program's effectiveness. The Federal/State program is focused on data sharing, agency collaboration and supporting IRS business units. The IRSAC commends the PGLD for its efforts in developing a robust and successful data sharing program that is effective in increasing tax compliance. The Federal/State program provides an effective and efficient vehicle for obtaining and sharing data, while collaborating with a wide variety of federal, state and local agencies to improve compliance efforts.

Background

Through the Federal/State program, PGLD works with a wide variety of federal, state and local agencies. At the federal level, the PGLD shares data and collaborates with the Social Security Administration, Department of Labor, Department of State, Department of Justice, Homeland Security, Federal Trade Commission, and others. At the state and local level, the PGLD works with a wide variety of organizations, such as Departments of Revenue, Attorneys General, Departments of Motor Vehicles, Child Support Enforcement, Workforce Agencies for labor and employment, Municipalities, City Income Tax and County Assessors and recorders.

The IRS provides data exchanges and disclosures under statutory authority and under need and use (to the extent necessary) criteria, and under written agreement. IRC Sections 6103(d), 6103(h) and 6103(l) govern sharing of data with other agencies. The level and breadth of PGLD data sharing is significant. PGLD manages a repository of over 1,600 data exchange agreements. Over 10 billion records were disclosed in 2019 under the Governmental Liaison Data

Exchange Program (GLDEP). Thirty extracts of the IRS master file are shared with 103 agencies under the GLDEP. The effort involves 54 state revenue agencies, 37 state workforce agencies, 10 cities and 2 qualified groups of municipalities. The IRS partners with various federal agencies on data sharing programs to improve compliance with federal law and regulations. For example, the IRS Employment Tax Division, partners with the US Department of Labor (US DOL), Wage and Hour Division on a data sharing program related to questionable employment tax practices and worker misclassifications (i.e., employee versus independent contractor). The IRS Criminal Investigation Division partners with the US DOL Office of Inspector General on fraud referrals. These are just two of the federal inter-agency partnerships operating through this program. Data sharing is a two-way street with data extracts being sent from IRS and data coming into IRS from other sources. Most of the IRS' data exchanges with state and local agencies is outgoing.

A relatively new effort with the IRS PGLD data sharing program is a Security Summit initiative that focuses on reducing identity theft (IDT). This is a unique public-private partnership between the IRS, state taxing authorities and the private tax industry. The result is that fewer people are becoming victims of tax-related IDT, although (as indicated in the discussion of Issue 4) fraudsters continue to find new ways to victimize taxpayers.⁵⁶ To ensure a highly secure method to share and exchange information, the IRS Information Sharing and Analysis Center (ISAC) provides an operational platform managed by IRS and operated by the MITRE Corporation. In 2019, the Taxpayer First Act, under Section 2003, provides additional information on data sharing requirements (per IRC Section 6103(k) (14)) to aid in the protection against IDT.

Recommendations

1. Expand efforts in this area and seek ways to increase resources devoted to developing this program further.

⁵⁶ <https://www.irs.gov/newsroom/irs-security-summit-partners-mark-significant-progress-against-identity-theft-key-taxpayer-protection-trends-continue>

2. Use technology and modernization efforts to enable the IRS to develop real-time data exchanges to improve the usefulness of the Federal-State data sharing program. Using data by IRS, other federal agencies, and state and local governments would likely increase if the data exchanges were real-time.
3. Promote the program within IRS operating divisions and stress that disclosures are permitted to the extent authorized by law and necessary for the authorized purpose (need and use). Obtaining data from state and local tax agencies will provide IRS with valuable information to increase taxpayer compliance, including the reduction of unreported income. It will also reduce IRS administrative costs relating to compliance.

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

Tax Exempt and Government Entities Subgroup Report

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Tax Exempt & Government Entities (TE/GE) subgroup is a diverse group of eight members working collaboratively with representatives of TE/GE regarding a broad range of issues, including employee plans, exempt organizations, Indian tribal governments, state and local government entities and tax-advantaged bonds. The subgroup members include attorneys, certified public accountants and financial and benefit advisors. The TE/GE subgroup is grateful for the cooperation we received from members of the Tax Exempt and Government Entities Division of the IRS in producing this report. Our report addresses the following topics, at the request of TE/GE:

- Establish Comprehensive Resources for Native American Taxpayers and Federally Recognized Tribes
- Establish a Compliance Assurance Process (CAP) for Indian Tribal Governments (ITGs) to Address Ambiguous Issues
- Recommend to Treasury the Establishment of a Counterpart to the Office of Indian Tribal Governments
- Private Foundation Education to Encourage Compliance
- Guidance for Cooperatives Seeking to Terminate Tax Exempt Status
- How can the Form 990 Instructions be Improved to Minimize or Eliminate Ambiguities that Exist with Regard to Tax-Favored Cooperative Organizations?
- Relief for Employee Plans in times of National Emergency Issues

ISSUE ONE: Establish Comprehensive Resources for Native American Taxpayers and Federally Recognized Tribes

Executive Summary

The Office of Indian Tribal Governments (the ITG Office) launched the Volunteer Income Tax Assistance (VITA) Resources for Indian Country webpage (“VITA IC webpage”) in January 2020. Based on feedback that the IRSAC has received from users, the introduction of the VITA IC webpage is widely appreciated. The IRSAC applauds the proactive creation of this resource. We recommend that the IRS consider expanding the webpage into a comprehensive resource for Native American taxpayers and tribal governments. In addition, the IRSAC recommends that the IRS continue to involve the Native American community in its expansion, clarify technical terminology where possible, and communicate it more broadly within Indian Country. The expanded webpage would provide helpful, specialized tax information to both taxpayer groups.

Our recommendations strive to achieve the goals of the Taxpayer First Act of 2019 (H.R. 1957), by relieving taxpayer burden and also promoting transparency and accessibility of applicable tax regulations.

Background

Historically speaking, tribes have maintained a mistrust of the Federal Government because of broken treaties and a lack of priority from many federal agencies to honor the trust responsibility that the United States has to tribes as expressly stated in the U.S. Constitution. However, the IRSAC would like to acknowledge the positive strides that have been made over the last decade between the IRS and tribal leaders. Leadership of the ITG Office has attended and participated in some of the annual conferences held by the major Native American nation organizations. Additionally, both parties worked collaboratively to resolve long-standing General Welfare Exclusion (“GWE”) questions that preceded the passage of the Tribal General Welfare Exclusion Act of 2014 (section 139E). This legislation has had a profound impact, allowing tribes to better serve the needs of tribal citizens through empowered tribal and economic sovereignty.

Similar to other taxpayers, the taxation of individual Indians and Indian tribal governments is based on the Internal Revenue Code, regulations, rulings and caselaw. However, unlike other taxpayers, the taxation of individual Indians and Indian tribal governments is also based on treaties entered into between the United States and individual tribes. Indeed, the US Supreme Court has noted that tribal members are subject to federal taxation unless there is a treaty or statutory language to the contrary.⁵⁷

Although treaties serve as one of the cornerstones for interpreting the tax law for Indians and ITGs, the IRS does not have the treaties consolidated in a single public location to access the treaties.

Throughout the 2020 IRSAC season, members of the IRSAC TEGE Subgroup have had several opportunities to confer with the ITG Office personnel. We are appreciative of the positive working relationship that has developed. In addition to discussions about a possible Compliance Assurance Process (CAP) for ITG, we have had productive discourse about the content and format of the new VITA for Indian Country webpage and the newly released Income Tax Guide for Native American Individuals and Sole Proprietors. The IRSAC encourages continued efforts by the IRS to build upon the positive foundation that has been laid with tribal leaders and Indian Country and offers these recommendations as a way to foster this objective.

Recommendations

1. Expand and enhance the VITA IC webpage to provide comprehensive content for Native American taxpayers and tribal governments. An expanded webpage would serve as a resource to relieve taxpayer burden, offering easily accessible and relevant tax information.
2. Seek periodic and ongoing feedback from the major Native American nation organizations such as: Native American Finance Officers Association (NAFOA), National Congress of American Indians (NCAI), and others. The

⁵⁷ Choteau v. Burnet, 283 U.S. 691, 694 (1931).

ITG Office should continue to maintain good working relationships with these organizations.

3. Rename the webpage to better describe the expanded content. The website could be renamed Federal Tax Resources for Native American Taxpayers and Tribal Governments. Using the VITA reference in the current name limits a broader scope.
4. Separate the webpage content into two distinct sections and sub-sections: one for the individual taxpayer, and another for tribes, tribal organizations and tribal businesses.
5. Include links to the new Income Tax Guide for Native American Individuals and Sole Proprietors and other similar publications within the webpage. If and when a database of treaties with federally recognized tribes is created, we recommend that a link to the database be included.
6. Improve access, increase understanding, and increase the use of the IRS self-correction programs already available to tribes by providing descriptions and links to these programs from the webpage.
7. Collect and create a database with all the treaties for federally recognized ITGs in conjunction with other governmental stakeholders.⁵⁸ This database could be indexed and searchable so IRS agents seeking to enforce a tax provision applicable to a tribal member or the ITG can look-up the treaty or treaties for that tribe for any exceptions or limitations.
8. Include in the database executive orders that supplement or modify treaties.

⁵⁸ In addition to the IRS, the creation of such a database would be useful for Treasury, the Department of Interior, the Bureau of Indian Affairs, and many States. The design, development, funding, and use of such a database could be used by all these stakeholders.

ISSUE TWO: Establish a Compliance Assurance Process (CAP) for Indian Tribal Governments (ITGs) to Address Ambiguous Issues

Executive Summary

The IRSAC recommends that the IRS establish for Indian Tribal Governments (ITGs) a Compliance Assurance Process (CAP) based on the program used by LB&I for its customer base. An ITG CAP program would allow ITGs to submit issues to the IRS in advance of or contemporaneous with the submission of its tax return. The IRS and the ITG could then evaluate the law and the facts, and work toward a result that is acceptable to both parties.

Our recommendations strive to achieve the goals of the Taxpayer First Act of 2019 (H.R. 1957), of relieving burdens on both taxpayers and the IRS.⁵⁹ Initially, the IRSAC recommends that the ITG CAP be limited to the following areas: Tribal General Welfare Exclusion Act of 2014 (IRC Section 139E), Essential Government Function Test, bond issuances, qualified retirement plan issues, and employee versus independent contractor status issues. As the IRS and ITGs gain experience with the program and new areas are identified, it can be expanded.

Background

As provided by the IRC in certain instances, the IRS generally views ITGs as entities that are similar to States for purposes of taxation (e.g., IRC 7871). For example, the Governor of a State is treated as an employee of the State and the State withholds taxes from the Governor's pay. The IRS has extrapolated this rule to ITGs, so members of the Tribal Council (or other governing body) are treated like employees. Tribes, however, are organized in a variety of different ways. In some cases, it may be appropriate for the tribe's governing body to be treated like the Governor of a State, and thus treated like employees. In other cases, however, a governing body within the tribe may be more like a board of directors for a corporation, where the individual outside directors are independent contractors and not employees. One rule does not necessarily fit all tribes.

⁵⁹ See Revenue Procedure 2019-19, 2019-19 I.R.B. 1086.

The matter is further complicated by the fact that there are over 500 Federally recognized tribes that have different histories, cultures, organizational and governance structures, and unique goals and relationships with their citizens/members. Each of these tribes have a separate treaty or treaties with the United States. The treaties serve as one of the key sources of law governing the relationship between the United States and the tribe, and the terms of treaties vary from tribe to tribe. Because of the differences between the tribes and the existence of unique treaties for each tribe, it is difficult to extrapolate uniform rules that can apply to all tribes.

Based on discussions with various tribal leaders and tribal tax representatives, there appear to be five primary areas where uncertainty, ambiguity, or dispute may exist. These areas are:

- General Welfare Exclusion Act of 2014 issues (section 139E)
- Essential Government Function Test (section 7871)
- Bond issuances
- Qualified retirement plan issues and
- Employee versus independent contractor status issues

Several brief examples will illustrate some of the uncertainty surrounding these areas.

- General Welfare Exclusion Act of 2014 – A safe harbor provision of the General Welfare Exclusion benefit includes cultural expenses.⁶⁰ However, cultural practices vary by tribes. For example, some of the Northeastern tribes practice the cultural tradition of using sweat lodges. A tribal member may want to use a portion of their General Welfare Exclusion benefit to build a traditional sweat lodge. A CAP for tribes would allow tribal representatives to discuss the use of General Welfare Exclusion benefits for cultural purposes with the IRS to ensure compliance.

⁶⁰ See Rev. Proc. 2014-35.

- Essential Government Function Test – Tribally owned vehicles can be used for a variety of purposes. Some vehicles are used exclusively for public works purposes and are exempt from the fuel excise tax on purchases of gasoline. Other vehicles are used for tribal gaming purposes, such as shuttling patrons, and they usually do not receive this tax exemption. In some cases, the underlying purpose is not always known in advance, there can be overlap between the two purposes, and there can be questions related to recordkeeping and documentation. A CAP for tribes would allow formal dialogue between tribes and the IRS when questions arise, and exceptions should be considered.
- Bond Issuances – Tribes typically aren't permitted to use tax exempt bonds for tribal gaming related improvements (such as buildings and golf courses). Contrast this to how states use tax exempt bonds for state run lottery buildings and golf courses. V Again, having a CAP for tribes would give tribal representatives a voice to highlight situations where exceptions should be allowed. For example, should tax exempt bonds be allowed where the building is used for tribal meetings and business, or where the golf course is open to tribal members and others for recreation, similar to the use by a state.
- Qualified Retirement Plan Issues – In addition to serving as a governmental body, tribes often are involved in non-governmental activities (based on the IRS interpretation), such as running casinos or other revenue generating enterprises. Because of the tribe's dual function, some of the qualified retirement plan rules can become confusing. Specifically, issues related to the application of the controlled group rules (IRC Section 414(b) and (c)), discrimination testing, filings of Forms 5500, and whether separate plans for governmental and non-governmental activities often arise. Because of this confusion, some tribes are making multiple Form 5500 filings for the same retirement plan. Having qualified retirement plan issues covered under a CAP should add to efficiency and reduce unnecessary administrative tax burdens.

- Employee versus Independent Contractor Issues – There are circumstances when a tribe views the work performed by an individual as that by an independent contractor rather than an employee. In those situations, the tribe provides a Form 1099 to report income rather than a Form W-2. There are instances when the tribe’s views potentially do not correspond to the view of the IRS.⁶¹ Having a CAP would facilitate a helpful exchange between tribes and the IRS to address the treatment of income in ambiguous circumstances.

Other than a formal request for a Private Letter Ruling, there isn’t an avenue that allows tribes to elevate an ambiguous issue to the IRS to have the law, treaties, rulings and unique facts reviewed and discussed.⁶² The LB&I Division of the IRS does, however, currently have a program that allows a taxpayer to:

*work together to achieve tax compliance by resolving issues prior to the filing of the tax return. Successful conclusion of CAP allows the IRS to achieve an acceptable level of assurance regarding the accuracy of the taxpayer’s filed tax return and to substantially shorten the length of the post filing examination.*⁶³

A business is eligible for the LB&I CAP program if it is a U.S. publicly held corporation, has assets of \$10 million or more, and is not under investigation or in litigation with the IRS or other governmental agency that would restrict access to its tax records. The same eligibility requirements can be established for ITGs with one exception. The requirement that the entity be a U.S. publicly held corporation would be replaced with a requirement that the entity be a federally recognized ITG.

⁶¹ For example, the IRS treats elected state officials as employees, and it carries that designation over to the treatment of tribal members who serve as directors on tribal boards. Each tribe needs to be examined separately. For some tribes, the tribal members’ role may be more in the form of an independent governing board of directors, which are typically treated as independent contractors.

⁶² Tribes may request a tribal consultation on a tax issue with the IRS, but the feedback from the IRS is considered informal and is not binding on the IRS. <https://www.irs.gov/government-entities/indian-tribal-governments/consultation-procedures>

⁶³IRM 4.51.8.

Recommendation

Establish a Compliance Assurance Process for ITGs following the structure used by the LB&I business operating division. Initially, the IRSAC recommends that the process be limited to the following areas with the possibility of being expanded to include additional areas in the future:

- General Welfare Exclusion Act of 2014 issues (section 139E)
- Essential Government Function Test
- Bond issuances
- Qualified retirement plan issues and
- Employee versus independent contractor status issues

ISSUE THREE: Recommend to Treasury the Establishment of a Counterpart to the Office of Indian Tribal Governments

Executive Summary

The IRSAC observes that the Office of Indian Tribal Governments (the ITG Office) was established to serve as the primary point of contact in the IRS for federally recognized Indian tribes. The ITG Office combines compliance and enforcement initiatives with outreach and educational activities to respectfully and cooperatively meet the needs of both the Federal and Indian tribal governments, and to simplify the tax administration process.

Given the varied nature of how tribal governments are structured, there are tax regulations that don't necessarily or "neatly" apply to all tribes. Hence, there is an ongoing need for tax guidance on new and pending legislation which could be best provided by a Treasury Office of Tribal Affairs.

Background

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") funding is a good example of legislation that urgently requires more detailed guidance for tribes. The funding must be used quickly by tribes (currently by December 31, 2020) or returned to the federal government. Many tribes remain frustrated with having access to funds that are needed for citizen-based programs and services, or to keep tribal businesses solvent, but are unsure of how the funds can be lawfully applied under certain circumstances. Understandably, it's not the role of ITG to provide guidance to tribes regarding the CARES Act funding, however, it would be the role of a Treasury Office of Tribal Affairs.

Recommendation

Work with Treasury to create an Office of Tribal Affairs for the purpose of conducting ongoing, effective tribal consultations, reviewing the impacts of pending and new legislation on tribes, and establishing Treasury related policy that honors the trust responsibility the Federal Government has to tribes as set forth in the U.S. Constitution. Such an Office would complement the roles that the ITG

Office provides. Finally, it is crucial that such an Office be appropriately empowered to fully discharge the duties stated herein.

ISSUE FOUR: Private Foundation Education to Encourage Compliance

Executive Summary

To provide easily accessible resources to assist private foundation compliance, we recommend that the IRS build upon the private foundation webpage in irs.gov by including information about common issues applicable to private foundations in easily understood and accessible formats. We recommend that key correspondence sent by the IRS and instructions for information return filings contain references to the webpage.

Background

Private foundations are organizations organized and operated as described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), that are not “public charities” within the meaning of section 509 of the Code. Private foundations generally do not have broad public support, are typically funded by an individual, family or corporation, and generally make grants to other charitable organizations. Private foundations are subject to complex special restrictions, the violation of which can give rise to taxes and penalties. Problems that can occur with respect to private foundations include violating certain “self-dealing,” “mandatory payout,” “excess business holding,” “investment,” and “expenditure” restrictions and improperly filing information returns.⁶⁴

The IRS has helpful information on irs.gov relating to private foundations.⁶⁵ The IRS has requested that the IRSAC provide recommendations relating to ways compliance by private foundations can be facilitated.

Recommendations

1. To heighten awareness of the complex private foundation restrictions, we recommend that the IRS develop and refer to a page on the irs.gov website that includes information, in easily understood formats, regarding

⁶⁴ See Code sections 4940 through 4945.

⁶⁵ See irs.gov/charities-non-profits/private-foundations.

descriptions of common pitfalls faced by private foundations. The IRS might consider building upon the helpful information in irs.gov/charities-non-profits/private-foundations to provide a more comprehensive and easily accessible resource for private foundations. Posting videos and podcasts relating to private foundation restrictions and common pitfalls would be helpful to ensure easy access to information. To facilitate smaller entities' awareness of the resources available, we suggest that reference to the webpage be included in each private foundation determination letter, in the Form 1023 instructions, and the Form 990-PF instructions.

2. Provide outreach to tax return preparers regarding the private foundation information on the website, such as at seminars or on the tax return preparer portion of irs.gov.

ISSUE FIVE: Guidance for Cooperatives Seeking to Terminate Tax Exempt Status

Executive Summary

The IRS previously issued private letter rulings (PLRs) and confirmations via the filing of Form 8940, "Request for Miscellaneous Determinations" to cooperatives seeking to terminate their tax-exempt status under section 501(c)(12) which gave cooperatives certainty as to their tax status. Since the IRS has ceased issuing such PLRs, the IRS should consider adding procedures and or processes in which cooperatives can obtain certainty with their tax status.

Background

Section 501(c)(12) of the Code exempts from Federal income taxes certain mutual or cooperative organizations. To qualify for exemption under section 501(c)(12), 85 percent or more of the income of the cooperative must consist of amounts collected from members.

Generally, pursuant to Regulation section 1.501(a)-1(a)(2), every organization seeking exemption from Federal income tax must file an application with the IRS confirming such status. Thus, under the regulation, a cooperative seeking tax-exempt status under section 501(c)(12) must file an application (Form 1024, "Application for Recognition of Exemption") for tax-exempt status with the IRS and obtain a letter from the IRS confirming such status to be tax-exempt under section 501(c)(12) for Federal income tax purposes. However, despite the regulation, the Code only imposes an obligation on a Section 501(c)(3) entity to seek and receive a determination of tax-exempt status.

The IRS has ruled⁶⁶ that the determination of whether a cooperative meets the 85 percent member income requirement for tax-exempt status under section 501(c)(12) is determined annually. If the cooperative fails the 85 percent test in a given year, the cooperative is taxable for that year and must file a corporation income tax return (Form 1120, U.S. Corporation Income Tax Return) and pay taxes

⁶⁶ Rev. Rul. 65-99, 1965 CB 242, IRC Sec

thereon. Whether the cooperative is taxable or tax-exempt in the following year depends on whether the cooperative meets the 85 percent income test in that year. Thus, according to the Code such cooperative must determine each year whether it is tax-exempt under section 501(c)(12). Therefore, a cooperative that filed a tax-exempt application and received a determination from the IRS that it constitutes a section 501(c)(12) entity could nonetheless flip between tax-exempt and taxable status on a year-by-year basis, depending on whether it meets the 85 percent member income requirements of section 501(c)(12).

Because a cooperative's tax-exempt or taxable status could change from year to year depending on the level of member and nonmember income, it is difficult for a cooperative to comply with and the IRS to effectively administer the Federal income tax laws. For example, different Code sections are applicable to taxable versus tax-exempt cooperatives, which makes it difficult for both the cooperatives and the Service to ensure compliance with the Code, such as deferred compensation rules which would result in conflicting treatment for the cooperative and employee depending upon taxable status determination.

Thus, once a cooperative becomes a taxable entity, it is vital that it have the ability to confirm that it will remain a taxable entity and terminate its tax-exempt status in a manner that is binding on both the cooperative and the IRS. In addition, certain cooperatives may anticipate not meeting such income requirements in future years or otherwise need to operate as a taxable cooperative and need a means to confirm taxable status.

In the past, the IRS issued private letter rulings to cooperatives seeking to terminate their tax-exempt status under section 501(c)(12). Upon termination of its tax-exempt status under section 501(c)(12), the cooperative would remain taxable until it (1) met the requirements of section 501(c)(12) and (2) the cooperative filed another application with the IRS confirming tax-exempt status under section 501(c)(12). Private letter rulings are generally binding against the IRS with respect to the taxpayer to whom the ruling is issued.

The IRSAC understands that when the IRS stopped issuing private letter rulings, cooperatives began to file Form 8940, "Request for Miscellaneous

Determination" to request a confirmation of the relinquishment of their tax-exempt status under section 501(c)(12). While the IRS issued several confirmations of taxable status to cooperatives in response to the filing of a Form 8940, the IRS has stopped issuing confirmations in response to a Form 8940 on the basis that it constitutes a circumstance when the IRS will not issue a determination letter under Revenue Procedure 2019-5 Section 3.02. Such revenue procedure generally provides that the IRS will not issue a determination letter with respect to a request by an organization currently recognized as exempt under section 501(c) to relinquish its tax-exempt status. However, because a cooperative is not seeking a determination from the IRS as to the termination of its exempt status but rather merely confirmation that its tax-exempt status has been terminated, such revenue procedure should not apply to prohibit such determination.

The IRS has verbally advised that tax-exempt cooperatives seeking to terminate their tax-exempt status should file a Form 990, "Return of Organization Exempt from Income Tax," and check the box indicating that the entity has been "Terminated," which, according to the IRS, would indicate that the entity is taxable. However, that guidance is that it is not consistent with the described purpose of such box and the instructions to the Form 990 because the cooperative is not actually terminating its operations but only its tax-exempt status. In addition, such procedures provide no assurance that the IRS will respect the cooperative's taxable status going forward.

Because of the importance to cooperatives and the IRS to obtain certainty as to their tax- exempt or taxable status under section 501(c)(12), it is imperative that the IRS provide a mechanism by which a cooperative that has applied for and received confirmation of tax-exempt status under section 501(c)(12) can terminate such status in a given year and all subsequent years in a manner that is binding on both the cooperative and the IRS.

Recommendations

The IRS should consider the following recommendations to allow cooperatives certainty as to their tax status:

1. Start issuing private letter rulings again to cooperatives to give cooperatives certainty regarding their tax status or
2. Update the instructions to Form 990, 'Return of Organization Exempt from Income Tax' regarding the box indicating the entity has been "Terminated."

An example of how the instructions could be updated is as follows:

If the return is final, the organization must check the "Final return/terminated" box in Item B of the Heading on the page 1 of the form, and complete Schedule N (Form 990 or 990-EZ), Liquidation, Termination, Dissolution, or Significant Disposition of Assets. In addition, if the taxpayer is a 50(c)(12) organization terminating its tax-exempt status under 501(c)(12) the organization must check the "Final return/terminated" box in Item B of the Heading on Page 1 of the form.

ISSUE SIX: How Can the Form 990 Instructions be Improved to Minimize or Eliminate Ambiguities that Exist with Regard to Tax-Favored Cooperative Organizations?

Executive Summary

Tax professionals who work with cooperative organizations increasingly find themselves interpreting the Form 990 instructions in an effort to accurately report. To ensure correct and accurate returns, clarification is required in areas where varying interpretations can result in differing responses. We recommend that the IRS review the 990 instructions and clarify instructions in the areas of ambiguity noted below.

Background

1. Form 990 Part IV, line 28 c refers to “certain interested persons” and then recommends a careful review of the instructions for Schedule L. The “Specific Instructions” section of the Schedule L Instructions defines “Interested Persons” differently, depending on which part of the Form is being completed. Clarity as to exactly what definition is intended for Form 990 is essential in order to correctly report director independency.
2. Form 990, Part I, Line 14 and Part IX, Line 4 requires reporting of “Benefits Paid to Members” which specifically includes patronage dividends paid by 501(c)(12) cooperatives to their members. No guidance is provided on how to treat payments to members to retire their patronage capital and how to report these items. Clear instructions on how to report patronage capital retirement payments should bring consistency in reporting among cooperatives.
3. Clarification on how a patronage sourced loss from a prior year is recovered in the current year. Many tax professionals are of the view that the only option for recovery is to report the actual patronage allocation and then explain the loss or net income reported on Part I, Line 19 in Schedule O. If this is the case, the Form 990 instructions should so specify.

4. Form 990, Part IX – Clarification on what system is acceptable to complete the Statement of Functional Expenses. The Instructions' current guidance is "Use the organization's normal accounting method to complete this section. If the organization's accounting system doesn't allocate expenses, the organization can use any reasonable method of allocation." Unfortunately, this does not address expenses that must be reclassified in order to report expenses in the proper categories of lines 1–23. Guidance should be provided as to whether the IRS prefers that preparers: (1) re-create records to fit into each line item, (2) use current accounting classifications then reclassify director compensation, wages, benefits and payroll taxes and report remaining amounts on line 24, or (3) use current accounting classifications and reclassify only compensation and benefits for directors, officers and key employees, then explain A&G expenses on Schedule O. If all such methods are acceptable, the instructions should so state.

5. Form 990, Part VII on reporting of compensation for officers, directors, key employees, etc. does not provide clarity on the reporting of 457(f) deferred compensation benefits. Guidance could specify that reporting should follow Schedule J, Part II, Column F, and further provide a mechanism to avoid double reporting. Although the 990 instructions do provide a "Where to Report" chart beginning on page 34 which references Schedule J, there is no specific reference to Schedule J, Part II, Column F, which states that the preparer should "Enter in column (F) any payment reported in this year's column (B) to the extent such payment was already reported as deferred compensation to the listed person in a prior Form 990, 990-EZ, or 990-PF."

6. With respect to multi-employer plans, some clarification on reporting methods would be helpful. Specifically, with multi-employer plans, the employer could report the annual contribution made for the individual's benefit. For financial accounting purposes, multi-employer plans use cash basis reporting based on actual payment to the plan during the year. The actuarial value of benefits earned

are not recorded. The IRSAC recommends that the instructions provide that following the financial accounting requirements for multi-employer plans is an acceptable reporting method. This guidance would simplify reporting and facilitate greater understanding of these amounts by the general public.

Recommendation

Review the foregoing issues and develop updates to the Form 990 Instructions – to promote uniformity and eliminate ambiguities present when cooperatives complete Form 990 - in order to ameliorate confusion and assist tax preparers in the preparation of clear, concise and accurate returns.

ISSUE SEVEN: Relief for Employee Plans in times of National Emergency

Executive Summary

We recommend that the IRS update Section 8. of Rev. Proc. 2018-58 (the Revenue Procedure) to provide automatic relief from certain required time-sensitive acts and ancillary compliance concerns to employee plan sponsors in a Presidentially Declared disaster Qualified Disaster Area or National Emergency. We recommend that actions taken by the IRS in this regard be communicated to employee benefits practitioners through a variety of channels, including formal publication of the updated notice, outreach via seminars, and on the retirement plans home page at irs.gov.

Background

A Qualified Disaster Area is “any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.”⁶⁷ A Qualified Disaster Area is typically a geographic area declared a major disaster area by the President. Affected taxpayers including employee plan sponsors located in a specified disaster area, those whose tax records are located in the disaster area, and relief workers generally qualify for specific tax relief with respect to a Qualified Disaster Area. Section 8 of the Revenue Procedure includes a list of 44 time-sensitive acts applicable to employee plans, the performance of which are permitted to be postponed under the Internal Revenue Code in connection with Qualified Disaster Areas. In order for taxpayers to be entitled to a postponement of any act listed in the Revenue Procedure, the IRS generally will publish a Notice or issue other guidance (including an IRS News Release) providing relief with respect to a specific area. Rev. Proc. 2018-58 specifies that it will be updated as deemed appropriate by the IRS to either include additional acts or remove specific acts from the delineated list.

⁶⁷ IRC Section 165(i)(5).

The Revenue Procedure relief includes an extension to file certain tax returns or make tax payments that have an original or extended due date falling within a specified period (known as the “Extension Period”), and abatement of interest and late filing or late payment penalties that would apply during these dates to returns or payments subject to these extensions when the IRS publishes a notice or issues other guidance providing relief pursuant to the Revenue Procedure. Affected taxpayers are also provided with a postponement of the obligation to file Form 5500 series returns.

After President Trump issued a Declaration of National Emergency related to the Coronavirus outbreak (commonly referred to as “COVID-19”), IRS employees took on a herculean task of issuing significant guidance with respect to employee plans. Guidance was issued either by the agency acting alone, or in conjunction with the Department of Labor and Department of Health and Human Services. The new guidance included multiple notices providing welcome relief to employee plan sponsors and plan participants adversely impacted by COVID-19. Examples of guidance issued included, but are not limited to:

- Notice 2020-15 (permitting qualified high deductible health plans to cover certain testing and treatment of COVID-19 before the participant’s payment of the applicable minimum deductible);
- Notice 2020-29 (providing increased flexibility for cafeteria plans, health plans, health FSAs and dependent care FSAs);
- Notice 2020-33 (modifying the permissive carryover rule for health FSAs, and clarifying reimbursement of premiums by individual coverage health reimbursement arrangements);
- Notice 2020-42 (temporarily waiving physical presence requirement for participant elections required to be witnessed by a plan representative or a notary public);
- Notice 2020-50 (providing guidance pursuant to the Coronavirus Aid, Relief, and Economic Security Act “CARES Act”) permitting Qualified Individuals affected by COVID-19 to withdraw up to \$100,000 from eligible retirement

- plans, including IRAs between January 1 and December 30, 2020 without tax penalties;
- Notice 2020-51 (relating to the waiver in 2020 of required minimum distributions from certain retirement plans and IRAs due to the amendment of IRC Section 401(a)(9) by Section 2203 of the CARES Act);
 - Notice 2020-52 (clarifying the requirements that apply to a mid-year amendment to a safe harbor 401(k) or Section 401(m) plan that reduces only contributions made on behalf of highly compensated employees, and relief from certain requirements that would automatically apply to a mid-year amendment to a safe harbor 401(k) or Section 401(m)); and
 - Notice 2020-61 (providing single-employer pension plan sponsors additional time to meet funding obligations).

After the declaration of a national disaster, taxpayers struggled to comply because great portions of the relief provided were not automatic pursuant to the Revenue Procedure. In order to timely provide this relief, the IRS had to issue this guidance at a time when its own employees were subject to various state and local government shelter in place orders and not permitted to physically come into work and were dealing with significant technology restraints. The need to issue timely guidance during a nationwide crisis significantly burdened the already limited resources available to the IRS.

The IRS requested that the IRSAC provide recommendations relating to other relief that should be automatically granted pursuant to the Revenue Procedure in the event of a declaration of National Emergency or a declaration of a Qualified Disaster Area.

Recommendations

1. The IRSAC recommends that the IRS update the Revenue Procedure as follows:
 - Clarify that the Revenue Procedure specifically includes a Declaration of National Emergency, in addition to a Presidentially

Declared Qualified Disaster Areas. There was considerable confusion in the practitioner community with respect to application of the Revenue Procedure when President Trump declared certain areas Presidentially Declared Qualified Disaster Areas, and then issued a National Emergency but did not immediately declare the entire country a “Disaster Area.”

- Provide relief from the physical presence requirement in Treasury Regulations Section 1.401(a)-21(d)(6) for participant elections required to be witnessed by a plan representative or notary public, including spousal consent required under IRC Section 417 in order to facilitate the timely payment of emergency-related distributions and plan loans to qualified individuals, or for any other participant election that requires the signature of an individual to be witnessed in the physical presence of a plan representative or a notary and consider implementing an alternative to a notarized form such as by video attestation by the plan participant with the plan administrator in situations where a notary is not physically accessible by the plan participant.
- Permit employee plan sponsors to utilize electronic signatures for any plan filing required during the extension period permitted by any issued IRS notice.
- Pause or delay automatically the commencement of any new employee plan audits or examinations during the pendency of an extension period, and allow employee plans currently under audit to request telephonic or video hearings and meetings with IRS officials or request a delay of said hearings and meetings if telephonic or video capabilities are limited by either the IRS or the employee plan sponsor due to the emergency.
- Extend automatically all deadlines applicable to employee plan filings, including initial remedial amendment periods, determination letters, and other filings for the Extension Period.

- Take a “compliance assistance” approach to enforcement, which may include the extension of additional grace periods and other relief where appropriate for plan sponsors hardest hit by the emergency.
 - Increase permissibility and availability of electronic communications with the practitioner community in a manner that protects the security of transmissions, such as the utilization of secured file uploading by the Department of Labor in lieu of the need for double encrypted flash drives (drive and files) which typically need to be delivered in person to an examining agent to ensure confidentiality and security of participant data.
 - Provide for electronic or alternative methods for distributing necessary participant disclosures in the event that the mail systems are disrupted or experiencing unreasonable delays.
 - Develop a contingency plan to address relief that potentially should be granted in other scenarios such as:
 - Infrastructure issues such as the failure of, or terrorist disruption of, gasoline, natural gas, water, electricity, and major transportation arteries;
 - Failures of, or terrorist disruption of, the internet and on-line services;
 - Wide-scale data breaches and/or ransomware where systems cannot be accessed or data cannot be retrieved;⁶⁸
 - Mail disruptions (such as slowdowns, destruction of mail, or similar issues); and
 - Circumstances that cause taxpayers to be unable to leave their homes or force them to evacuate their homes.
2. Seek input from the employee benefits practitioner community regarding other recommendations to update the Revenue Procedure. Once the updated Revenue Procedure is published, the IRS should provide

⁶⁸ This type of disaster could occur within a geographic area, but could also impact businesses using certain vendors, hardware, or systems.

additional outreach to employee benefits practitioners regarding the updated guidance, such as at seminars or on the employee plans portion of the Tax Exempt & Government Entities operating division site at irs.gov.

Internal Revenue Service Advisory Council

Wage & Investment Subgroup Report

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Wage & Investment (W&I) subgroup is a collaborative group of seven members including CPAs, enrolled agents, attorneys, small business owners, software developers, payroll professionals, and volunteer income tax assisters. The members' collective tax experience includes accounting and tax return preparation (ranging from solo practitioners to large, commercial tax preparation firms), tax industry operations liaison, tax planning and advice, information technology consulting and software development, payroll processing, and representation of individual and business taxpayers from many segments of our society. The W&I spectrum covers a large and diverse population of taxpayers with a wide range of income and tax return complexity. W&I encompasses tax return processing, forms publication, electronic products and services, preventive and corrective identity theft programs, and the overall administration for delivering timely, accurate, and excellent service while reducing taxpayer burden. 2020 brought new challenges to the IRS – as the country responded to the novel coronavirus. Our subgroup worked closely with our IRS W&I colleagues as they responded to a working environment where campuses closed and employees transitioned to telework. The pandemic highlighted the need for secure digital communication channels as the IRS was unable, for several months, to open and process mail.

Our collaborative discussions with our W&I colleagues enriched and informed our work on five issues. Our report addresses digital communication, taxpayer burden and the Paperwork Reduction Act, business identity theft, how to reduce undeliverable mail, and employer tax forms/information reporting. These topics share common themes of enhancing taxpayer service and reducing taxpayer burden, leveraging potential one-to-many benefits from engaging with critical external stakeholders, improving communication, and providing excellent digital options across multiple service delivery channels. Delivering an exceptional customer experience while strengthening security and authentication measures

factored heavily into our discussions, along with searching for current and future technology and digital solutions.

We consider service on the IRS Advisory Council a privilege, and we are pleased to present this report. We thank W&I Commissioner Ken Corbin and the many IRS personnel with whom we've worked closely this year for their cooperation and assistance in developing this report and for their recognition of the Subgroup as an integral resource. We especially thank our liaisons for their guidance and facilitation of our service, providing information, advice, and access to essential IRS personnel needed to develop our report. We also were privileged, in preparing our report, to work closely with our colleagues from the full IRSAC, with their wealth of knowledge, experience and diversity.

The IRSAC W&I Subgroup thanks our IRS colleagues for their careful consideration of the issues presented in our 2019 report. We were particularly pleased to see Form 1040-X electronic filing implemented in August 2020.

ISSUE ONE: Taxpayer Digital Communications Next Step and Taxpayer Digital Communications Outbound Notification

Executive Summary

The IRS conducts examinations (exams) of tax returns to ensure information is reported correctly and to verify the reported information is correct. These exams may be conducted via in-person meetings with the taxpayer or his/her representative, or via correspondence. The IRS generally employs correspondence exams when questioning a specific item or a limited selection of items on a tax return.

In December 2016, IRS began a pilot program for conducting correspondence exams via secure messaging, intending to have Taxpayer Digital Correspondence (TDC) supplement and reduce conventional mail and phone interaction between the taxpayer and the IRS.

Under the IRS Integrated Modernization Business Plan, the IRS also announced plans to modernize the taxpayer experience by deploying the Taxpayer Digital Communications Outbound Notifications (TDC-ON). TDC-ON is a Web-based application that will allow individual taxpayers access to specific IRS notices using a single sign-on capability. TDC-ON will leverage the existing IRS eAuthentication, Web Apps Online Account (OLA), and Web Apps Platform capabilities to authorize access and manage online functionality. The IRS also recognizes the importance of incorporating tax professionals into taxpayer communication channels.

These technologies will allow the IRS to significantly lower costs by reducing paper-based correspondence, reducing phone calls and walk-in visits while enhancing the taxpayer experience by offering more modern ways of communicating and transmitting digital documents.

TDC and TDC-ON support the IRS Future State and the IRS Strategic Plan 2018-2022. The IRS asked for the IRSAC's recommendations for increasing participation in the TDC by both taxpayers and tax professionals, and for feedback regarding future TDC-ON releases.

Background

As communication needs between the IRS and the taxpayer community continue to grow, the IRS must utilize new online technologies to more efficiently and securely communicate with taxpayers and tax professionals. TDC and TDC-ON involve different areas within the IRS W&I division. TDC operates out of Customer Account Services (CAS) Accounts Management. TDC-ON involves Customer Assistance, Relationships and Education (CARE) Media and Publications (M&P) distribution.⁶⁹ The IRSAC, while recognizing that TDC and TDC-ON operate separately and involve separate delivery platforms, combined them into one issue for our report. For the user, TDC and TDC-ON enhance more effective tax administration and customer experience. The goal of both TDC and TDC-ON is to increase access to service by expanding proactive outreach and self-help options while simultaneously improving the overall customer experience by increasing channel awareness, integrating channels, and seamlessly introducing assistors into service interactions to enhance effectiveness and meet customer expectations.

The TDC pilot has been in production since November 2016 for five IRS use cases to test how users will potentially use the system. The following use cases have been implemented to pilot Secure Messaging: 1) SB/SE Exam (Philadelphia), 2) Taxpayer Advocate (Cleveland, New Orleans, Nashville, & Dallas), and 3) Large Business & International (LB&I) Affordable Care Act (ACA). For online chat, the IRS implemented a use case for Small Business Self Employed (SB/SE) Automated Collection Services (ACS - Brookhaven). Most recently, the IRS implemented a pilot for Tax Exempt Government Entity (TEGE) Tax Exempt Bonds (TEB) to provide secure messaging communication between the IRS and State and Local Government representatives. The IRS is expanding

⁶⁹ Wage & Investment Division At-a-Glance: <https://www.irs.gov/about-irs/wage-investment-division-at-a-glance>

the eGain platform to add and enhance LB&I and correspondence exam options and to add the Automated Underreporter (AUR) Program and Appeals.⁷⁰

The primary goals of the IRS TDC program are to decrease the time taxpayer cases are open, significantly lower communication costs, reduce operational risks, and increase taxpayer satisfaction. The TDC platform currently supports the following communication channels for the IRS:

- Secure Messaging – allows the taxpayer or tax professional to send and receive secure messages and digital documents in a secure online portal.
- Chat – text chat is available to provide online chat to support taxpayers and IRS assistors.
- Co-Browse – this allows the IRS to offer a limited online ability to view a taxpayer’s screen to assist them with any online issues of filling out online forms.
- Video Chat – this feature allows a face to face interaction between taxpayers and the IRS via online voice and video capability.
- Virtual Assistant – this provides automated answers to natural language questions provided by taxpayers- this feature also allows escalation to a live communication channel with an IRS assistor.
- Click-to-call - this feature provides a call back mechanism for those use cases that want to escalate a chat or webpage interaction into a voice conversation.

In July 2020, the W&I Modernization Advisory Council released TDC Metrics for Chat and Secure Messaging. When comparing FY2019 and FY2020 metrics for participating taxpayers, the IRS realized a 221% increase in Total Chats Connected, a 58% reduction in Average Wait Time, a 3% increase in Average Handle Time, a 44% reduction in Abandoned Calls, and a 1% reduction in Resolution Rates. The IRS looks at high completion rates and user satisfaction as key metrics in measuring success.

⁷⁰ eGain is the vendor that provides the TDC solution and is the source for the metrics reported. eGain uses the Foresee platform to survey users.

The SB/SE Division reported Secure Messaging Metrics that reflect an encouraging and increasing rate of Invitations Mailed, Taxpayers Sign Ups, Messages Received, and Messages Sent. The Metrics also suggest that taxpayers send an average of 3.2 messages per user while examiners respond at an average of 2.0 messages per user. In addition, over 1,600 taxpayers have been welcomed into the Secure Messaging platform since the start of the FY2020 work plan.

The IRS established the TDC-ON project to provide taxpayers with channels to receive and access IRS Outbound Notices digitally. TDC-ON will establish the framework that will allow individual taxpayers to view digital notices through their Online Accounts (OLA). Over time, TDC-ON, pending OLA adoption, will reduce the utilization of US Mail and initiate greater use of IRS Online services.

The TDC-ON will be released in phases. TDC-ON Release 1 will allow users to navigate to a Message Center within their online account using a single sign-on capability, and to view, download, and sort notices that they have received in a Section 508 compliant format.⁷¹ Release 1 will include the 11 most common notices issued to the current OLA user population,⁷² and it will also provide taxpayers with the ability to navigate directly to IRS.gov online payment options tools from within the message center. Proposed TDC-ON Release 2 includes an opt-in/opt-out feature to cease the generation of paper notices upon taxpayer request, and the ability to opt back in and cease the delivery of notices to the taxpayers' online account. Additional proposals for OLA expanded functionality include incorporating 171 Notices, push notifications via email or SMS text message, and a read/unread indicator functionality for notices.

⁷¹ GSA Government-wide IT Accessibility Program: Section 508 of the 1973 Rehabilitation Act establishes standards and guidelines to ensure covered communications are accessible to people with disabilities. The U.S. Access Board published a final rule on January 18, 2017.

⁷² Release 1 will include the following notices: CP-21A, Recalculation – Balance Due; CP-60, We Removed Payments from Your Account – Balance Due; CP-14I, Return Filed – IRA Taxes or Penalties Due; CP-521, Monthly Installment Agreement Payment Reminder; CP01A, We Assigned You an Identity Protection Personal Identification Number (IP PIN); CP-62, We credited your account; CP-14, Balance Due; DP-49, Refund Offset; CP-39, Overpaid Taxes Applied – Balance Due; CP-14H, Owed Minimum Essential Health Coverage Payment (Shared Responsibility Payment); CP-721A, Data Processing Adjustment Notice, Balance Due (Spanish).

Both TDC and TDC-ON are designed to improve and clarify taxpayer communications. The IRS Modernization Business Plan (April 2019) discusses customer experience in terms of helping taxpayers resolve issues quickly and efficiently, empowering taxpayers with information about their accounts, making services available when needed, while protecting information and data. The IRS Customer Experience/Service Delivery (CS/XD) Plan contemplates a “Hey Neighbor” initiative designed to present content as if a human wrote it, eliminating legalese and bureaucratic language. “Hey Neighbor” incorporates human language, digitally aided translation, human language training, redesigned letters, human phone voices, legal language, and content hierarchy.

TDC could also greatly enhance IRS tax practitioner services, particularly the Practitioner Priority Service (PPS). The ability to communicate digitally with the IRS, instead of using the current telephone system, would be welcomed and used extensively by the tax professionals representing their taxpayer clients.

Recommendations

The IRSAC strongly supports TDC and TDC-ON. Recommendations 1-6 relate to TDC. Recommendations 7-10 relate to TDC-ON. To improve and increase participation in TDC and TDC-ON, the IRSAC recommends that the IRS:

1. Prioritize for next stage development the capability for taxpayers to upload documents needed to support examinations, respond to IRS inquiries, and exchange other requested documents.
2. Research how the State of New York conducts its exams via digital correspondence with taxpayers whereby all audit documents are shared via a secure messaging system.
3. Enhance capabilities to allow taxpayers to communicate with IRS Assistants via chat and secure messaging in their online account; a significant year over year SB/SE Secure Messaging Adoption statistics support this request.
4. Focus resources on authenticated chat questions. While general tax questions are thoroughly supported in the marketplace via practitioners and

multiple search engines, the IRS is the only service provider that can answer account-specific questions and/or make corrections to accounts. Thus, the IRS should focus resources on authenticated chat support to help resolve the more difficult account specific inquiries.

5. Market TDC to the tax professional community, including low income tax clinic (LITC) providers and other volunteers. For the short-term, include a staffer with notices already in use. For the long-term, revise all notices to include TDC opt-in information.
6. Explore incorporating TDC into the Practitioner Priority Service (PPS) operation – enabling more efficient and effective two-way communication between the IRS and tax professionals. Also, please note the PPS discussion in the SB/SE subgroup report.
7. Accelerate its Customer Experience Service Delivery (CX/SD) Plan to leverage its “Hey, Neighbor” messaging, which is intended to write content as if a human wrote it, eliminating legalese and bureaucratic language that may unnecessarily confuse a taxpayer.
8. Move forward with Release 2 of the TDC-ON for taxpayers to cease the generation of paper notices and request the push of notifications via text or email; OLA Analytics overwhelmingly support this request.
9. Develop a workflow authorization—an Application Programming Interface (API)—to share digital notices, resolution correspondence, and other considerations that would significantly enhance the abilities of Third-Party Designee or other authorized third-parties to be copied on notices and correspond with the IRS on the taxpayer’s behalf. Enable taxpayers to authorize the IRS to share digital notices with their tax professionals and entities such as firms and tax software providers as this would help coordinate efforts to resolve taxpayer notices. This collaboration would be best accomplished through a structured data sharing protocol that would authenticate related parties that are deemed essential to resolving taxpayer notices and ultimately reduce the need for manual review of resolution correspondence.

10. Incorporate within TDC-ON taxpayer-focused user experience enhancements, such as emphasizing time-sensitive dates and notices that require taxpayer action to avoid additional interest, penalty charges, and other assessment actions.

ISSUE TWO: Paperwork Reduction

Executive Summary

Tax return filers may think of their tax returns as many things, but the IRSAC wonders how many think of them as information collection requests (ICR). The 96th Congress, perceiving that the requirement for federal agencies (including the Department of the Treasury) to collect information created a burden for those providing the information, introduced the Paperwork Reduction Act (PRA) on February 5, 1980, and it was enacted on December 11, 1980.⁷³ The PRA purports to reduce the paperwork/reporting burden the federal government imposes on private businesses and citizens. Federal agencies must calculate or estimate the burden they impose on their respondents through their collection of information. The PRA established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). The OMB/OIRA oversees federal agency ICRs and establishes information policies. The PRA was last amended in 1995, with the amendment clarifying that OIRA's authority extended (besides agency orders to inform the government) to agency orders to inform the public. OIRA maintains the website, www.reginfo.gov, publishing data on regulatory review and information collection review. Neither the PRA nor OMB regulations prescribe methods for federal agencies to develop burden estimates. The Government Accounting Office (GAO) reported on the PRA in July 2018 – looking at how federal agencies could better leverage both the review process and public outreach to improve burden estimates.⁷⁴ The GAO report outlines the PRA requirements as 1) explaining the necessity of the collection information, 2) estimating the burden imposed, and 3) consulting with the public to obtain input. The report looked particularly at how agencies estimate the burden and how they consult with and receive comments from the public. The IRS, identified as one of

⁷³ The Paperwork Reduction Act of 1980 (Pub. L. No. 96-511, 94 Stat. 2812, codified at 44 U.S.C. sections 3501-3521) <https://www.govtrack.us/congress/bills/96/hr6410>

⁷⁴GAO-18-381: Paperwork Reduction Act: Agencies Could Better Leverage Review Processes and Public Outreach to Improve Burden Estimates <https://www.gao.gov/products/GAO-18-381>

the four agencies with the largest burden hour estimates, features prominently in the GAO report. Calculating the burden imposed on respondents also creates a burden on the agencies tasked with administering the PRA. The IRS asked for the IRSAC's help in examining its burden calculation process, analyzing how forms, publications, and other IRS guidance may lower the burden for taxpayers complying with complex and frequently changing tax law, and asked for our recommendations on improving the agency's PRA compliance.

Background

What would tax compliance look like without tax forms and publications? How would taxpayers comply with tax law without regulations and other guidance? The IRS, tasked with administering the tax law, creates and publishes tax forms, publications, and guidance to help taxpayers meet their tax obligations and pay the right tax. The IRS must balance taxpayer burden with its duty to administer the tax code. Both sides of this relationship involve costs. The Tax Policy Center summarizes tax compliance costs as 1) taxpayers' time spent filing tax returns, 2) taxpayers' monetary costs of recordkeeping, hiring tax professionals, purchasing software, and related expenses, and 3) the government costs of administering the tax system.⁷⁵ Drivers of tax compliance burden include 1) Volume of activity, 2) Availability of data sources, 3) Taxpayer characteristics, and 4) Technology infrastructure.⁷⁶ The IRS collects volumes of information to fulfill its mission. Tax forms, viewed through the PRA lens, are ICRs. For each tax form/ICR, the IRS Wage & Investment Media and Publications office coordinates reporting burden estimates to the OMB. Much has changed since the enactment of the Paperwork Reduction Act in 1980 and since the last amendment in 1995. Information formerly collected via paper forms and filing is collected and delivered electronically. The development and evolution of commercial tax preparation software and electronic

⁷⁵ How costly is complexity? Tax Policy Center Briefing Book 4.6.2:

http://www.taxpolicycenter.org/sites/default/files/briefing-book/4.6.2-how_costly_is_complexity.pdf

⁷⁶ Tax Compliance Burden (July 2018): <https://www.irs.gov/pub/irs-soi/d13315.pdf>

filing changes how businesses and the public responds to the IRS' ICRs (filing tax returns and other tax-related information).

The IRS began its PRA journey with a 1984 study by the Arthur D. Little (ADL) consulting firm. The ADL looked at a much different tax filing landscape than the one we live in today. Most tax returns were prepared by hand and filed on paper. Electronic filing and tax preparation software came later. Thus, the ADL method tied burden to each separate tax form and the number of lines on each form – contemplating a taxpayer manually filling out the tax form and reading the associated instructions and publications. The ADL was simple—inputting the number of lines on a form and the expected number of forms filed per tax year to calculate the burden hours for each tax form. As taxpayer characteristics and behavior changed, the IRS realized the ADL was outdated.

To modernize its burden estimates, the IRS formed a task force with representatives from the IRS, Treasury (Office of Tax Analysis and Assistant Secretary for Management), OMB, and the GAO in 1998. The GAO published a report in May 2000 explaining the IRS' efforts to improve its taxpayer burden estimates.⁷⁷ The GAO report describes new initiatives to measure costs involved in tax compliance that looked at activities involved in the pre-filing, filing, and post-filing stages. The ADL, while calculating burden hours, did not calculate burden costs. Time is money and the monetary costs to both tax filing and information reporting are significant.

Under this new model, the IRS surveys taxpayers to gather data on both the time and out-of-pocket costs involved with their tax filing obligations and uses this data in calculating the associated burden. The surveys include questions regarding 1) how taxpayers prepared their returns (self-prepared on paper, self-prepared using software, and prepared by a third-party/tax preparer) and why they chose that method, 2) time spent on recordkeeping, tax planning, completing the tax return, and other tax-related activities, 3) the dollar cost of return preparation, software, filing, tax classes and reference material, and 4) demographic and open-

⁷⁷ GAO Report (2000) TAX ADMINISTRATION: IRS is Working to Improve Its Estimates of Compliance Burden: <https://www.gao.gov/products/GGD-00-11>

ended response items. Although the survey packets are mailed, all surveys have a web completion option.

Individual Taxpayer Burden (ITB) surveys began in 1984 (original ADL survey) and have been conducted annually since 2007. Business Taxpayer Burden (BTB) surveys also began in 1984 (original ADL survey) and are conducted on a three-year cycle since 2009. In addition, the IRS now conducts taxpayer burden surveys related to tax-exempt organizations, information return document issuers, employers, pension plans, excise taxes, trust and estate income tax, estate transfer tax, and gift transfer tax on a three-year cycle. Special surveys are conducted to understand the impact of major tax law changes (e.g., Affordable Care Act and Tax Cuts and Jobs Act). Sample copies of the burden surveys are available online, so that recipients can verify that it is a legitimate survey.⁷⁸

After survey responses are gathered, RAAS methodology matches the time and money burden data gathered from taxpayer surveys with IRS administrative data to create, validate, and update a robust mathematical model, with modules tailored to the tax segments listed above, to produce its burden estimates. The IRS Research, Applied Analytics and Statistics (RAAS) division first used this burden method, the IRS Taxpayer Burden Model (TBM), in 2005 and updates it annually. The TBM model is taxpayer-centric and considers the taxpayer's tax compliance burden from beginning (pre-filing) to end (filing). The IRS is planning to transition all taxpayer burden estimates to the TBM methodology, pending OMB approval, by 2022.⁷⁹

Soliciting public comments is a required part of the PRA burden approval process. The IRS solicits public comments through a Federal Register Notice

⁷⁸ Individual Taxpayer Burden Survey (2019) <https://www.irs.gov/pub/irs-utl/f14231sample.pdf>, Business Taxpayer Burden Survey (2019) <https://www.irs.gov/pub/irs-utl/f14296sample.pdf>, Tax-Exempt Organization (Rev. 3-2019) <https://www.irs.gov/pub/irs-soi/18teburdensurvey.pdf>, Taxpayer Compliance Burden Amended Federal Tax Return (Rev. 3-2020) <https://www.irs.gov/pub/irs-utl/f14404asample.pdf> Taxpayer Compliance Burden Federal Income Tax Return Post-Filing (Rev. 3-2020) <https://www.irs.gov/pub/irs-utl/f14404bsample.pdf> The IRS also has separate surveys for Trusts (Form 15073 5-2028) and Estates (Form 15074 5-2018)

⁷⁹Taxpayer Compliance Burden, Table 5, page 14-15.

(FRN). Realizing that the public may not be avid readers of the Federal Register, the IRS has linked to the FRN through its draft form webpage.⁸⁰

Beyond the PRA requirements, collecting survey data and draft form feedback enables the IRS to better understand the taxpayer experience and thus better fulfill its mission to provide quality service to taxpayers and evaluate the effectiveness of IRS procedures and initiatives.

In addition to calculating or estimating the burden of ICR's, the PRA also requires federal agencies to report on their administrative costs. In the IRS' case, its work is shaped largely by Congress (both tax law and budget). The IRS developed methodology to report on its costs looking at form development, printing and distribution, and associated costs.⁸¹

Executive Order 13771⁸² (January 30, 2017) emphasizes the importance of reducing regulatory burdens and directs federal agencies to minimize the regulatory burden by reducing two existing regulations for every new proposed regulation. The IRS must balance the need to publish clear and understandable guidance with the federal mandate to reduce the incremental cost of new regulations by reductions elsewhere (including paperwork burden). It's apparent that burden reduction involves a lot of work—both by the federal agencies tasked with reducing the burden and the consumers from whom the information is collected. But how much larger would the burden be on the taxpaying public if the IRS did not create forms, publications, and issue regulations and other guidance to help taxpayers comply? The absence of forms and other guidance would likely encourage noncompliance, and it would be impossible for the IRS to administer or enforce the law. The tax law imposes the burden; the IRS does its best to minimize the burden it must impose to administer the tax law. The July 2018 GAO report explores better public outreach to improve burden estimates.⁸³ The IRS gathers

⁸⁰ <https://www.irs.gov/draftforms> At the bottom of the draft form announcement, the IRS includes the following paragraph: "If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click here."

⁸¹ Taxpayer Compliance Burden, page 13.

⁸² <https://www.govinfo.gov/content/pkg/FR-2017-02-03/pdf/2017-02451.pdf>

⁸³ GAO-18-381

feedback from academics, tax professionals, and third-party stakeholders whenever it is deemed necessary. The report also suggests that “monetized respondent time cost estimates will be particularly important if agencies can use reductions in paperwork to offset new regulations under Executive Order 13771.” The IRS now provides monetized burden in its annual OMB burden approval requests.

The IRS helps taxpayers and tax professionals navigate complex tax law by issuing 1) Forms: The structure provided within forms and supporting worksheets allows taxpayers to organize and summarize items of income and deductions efficiently and effectively, 2) Instructions: Instructions summarize, in common language, the complex provisions related to taxpayer compliance, 3) Publications: Publications enhance instructions, provide detailed explanations of complex provisions, and provide direction to other IRS resources, 4) Other guidance: Revenue rulings, revenue procedures, notices, announcements, news releases, and frequently asked questions (FAQs) provide guidance with broad appeal to taxpayers. Notices, announcements, news releases, and FAQs have been extremely effective in quickly providing guidance to taxpayers where there may have been tax compliance failures due to misunderstanding or taxpayer abuse. Without the creation and release of forms, instructions, publications, and other guidance, the administrative burden on taxpayers would increase exponentially.

The IRS publishes proposed changes to forms and publications to the Federal Register and its related website <https://www.federalregister.gov/>. It additionally has early release draft copies within the IRS website, on a page labelled Draft Tax Forms, at <https://IRS.gov/DraftForms>. Comments on forms may be submitted to the IRS using the link to <https://IRS.gov/FormsComments> and comments on reducing paperwork burden regarding draft or final forms are forwarded to collection through the Federal Register process via a separate link. This link to the Federal Register was added to the cover page as a proactive way to receive feedback on burden related issues. The draft forms page and related

links could be further enhanced to provide an easier and more intuitive customer experience.⁸⁴

The IRSAC is pleased to offer these recommendations to improve the process for both the IRS and the taxpaying public.

Recommendations

The IRSAC acknowledges the incredible efforts of the TFP group to create user-friendly forms and publications, in an ever-changing regulatory world, that provide all necessary information to ensure taxpayer burden is minimized. As an advisory council with first-hand knowledge of the dedication of the TFP, the IRSAC has often met before the release or update or publication as part of a peer review function and provided feedback incorporated into the final product, proving the willingness to work with tax professionals to make the best forms and publications possible. These recommendations are based on conversations with TFP, some of which are already implemented.

1. Reconsider the concept of administrative burden. Currently the PRA applies only to actions by agencies, not to actions by Congress. It is often the statutory requirements that create the administrative burden and the agency (in this context the IRS) reduces the administrative burden through the creation and release of forms, instructions, publications, and other guidance.
2. Enhance communication of changes, additions and deletions to forms and publications and highlight the mechanisms for feedback to produce the best product.
3. Encourage participation by ensuring stakeholders have both an easy way to access the documents and the time to review and comment on them.

The IRSAC recommends enhancing the Draft Forms page as follows:

⁸⁴Additional resources: The Case for Reinvigorating the Paperwork Reduction Act (March 2019): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3351953
Reinvigorating the Paperwork Reduction Act (November 2019): <https://www.theregreview.org/2019/11/25/katzen-reinvigorating-paperwork-reduction-act/>

- a. Have the page follow the standard IRS look-and-feel as seen in the <https://IRS.gov/> page so it is user-friendly and consistent with the rest of the site.
 - b. Add a search flag for products under draft consideration. This will allow the interested party to identify them easier as there are multiple versions of a form listed.
 - c. Add a new column on the Draft Form listing page with the number of days left to comment on the form.
 - d. Add two new columns on the Draft Form listing page with visual icon links to the:
 - i. IRS feedback form <https://IRS.gov/FormsComments> with the Form/Instruction/Publication Number pre-populated.
 - ii. Federal Register feedback form <https://www.federalregister.gov/> with the linking directly to the comment page for the Form/Instruction/Publication number.
4. Anticipate future private business and individual administrative burdens and the impact of technology infrastructure. Currently, efforts to reduce administrative burden rely on the use of static forms. The IRSAC recommends considering the use of more interactive forms and instructions including links to multiple forms, instructions and publications. For example, forms, instructions and publications could include links that would take taxpayers to other relevant guidance (e.g. other forms, instructions and publications) that could assist in defining and describing an item of income or deduction.

ISSUE THREE: Reporting & Outreach Business Identity Theft

Executive Summary

Business identity theft (The Internal Revenue Manual refers to Business Master File Identity Theft or BMF IDT) involves the illegal impersonation of a business. It can take many forms and can severely compromise business operations. Tax-related BMF IDT involves either the use of a business's identifying (ID) information without authority or using a fabricated/improper employer identification number (EIN) to obtain tax benefits. It can manifest in false claims for business-related refundable credits or further individual ID theft by using employee data to create fraudulent W-2 forms used to file individual income tax refund claims. The IRS requested the IRSAC's assistance in improving communication and outreach to BMF IDT victims. The IRSAC Wage & Investment Subgroup thanks our colleagues, Mary Jo Werner (SB/SE subgroup) and Sanford Kelsey (LB&I subgroup) for working with us as we developed this issue.

Background

BMF IDT is a growing problem and while there may be fewer overall cases compared to individual ID theft, the dollar amounts involved are typically much higher. BMF IDT may involve creating business ID information or using existing data. While there may be some overlap with data breaches, BMF IDT is distinct from data breaches and requires separate procedures. Many tax reporting forms may be affected, including Form 941 (Employer's Quarterly Federal Tax Return), Form 1120 (U.S. Corporation Income Tax Return), Form 1120S (U.S. Income Tax Return for an S Corporation), Form 1041 (U.S. Income Tax Return for Estates and Trusts), and Form 1065 (U.S. Return of Partnership Income) with associated forms W-2 and Schedules K-1. New ID theft patterns emerge as perpetrators gain sophistication, technology tools, and respond to enforcement efforts.

The 2014 IRSAC report (SB/SE Subgroup) reported on BMF IDT and issued recommendations including 1) truncating employer ID numbers (EIN), 2) providing for surrendering an FEIN no longer in use because the business is no longer in

service, 3) developing a dedicated webpage for BMF IDT, 4) increasing awareness and use of Form 14039-B, 5) providing a dedicated point of contact for BMF IDT victims, and 6) using Out-of-Wallet questions to verify EIN application requests.⁸⁵ The Treasury Inspector General for Tax Administration (TIGTA) issued a 2015 report (2015-40-082) recommending the IRS improve procedures for detecting and preventing BMF IDT.⁸⁶ Specifically, the (heavily redacted) report recommended changes in IRS procedures associated with suspicious EINs, establishing systemic processes for identifying potential BMF IDT tax returns, expanding information-sharing agreements (State Suspicious Filer Exchange) to include business returns, and providing better informational outreach to inform businesses about BMF IDT. At the time of that report, the IRS had defined BMF IDT, created IRS employee guidance for working with potential BMF IDT, created internal Form 14039-B, *Business Identity Theft Affidavit*, to gather additional information, and conducted a BMF IDT project to detect potential BMF IDT related to Form 1120 overpayments and refundable credits. The report also noted the ready availability of EINs as a significant risk factor.

TIGTA issued a follow-up report (2018-40-061) indicating that since 2015 the IRS had increased its filters/selection processes to detect and prevent BMF IDT and updated the Internal Revenue Manual (IRM) Section 25.23, *Identity Protection and Victim Assistance*.⁸⁷ TIGTA also noted that the number of BMF IDT returns identified increased over three processing years (PY) from 350 (2015) to 5,780 (2016) to 20,764 (2017). The 2018 TIGTA report recommended expanding the use of BMF IDT filters, reviewing and updating the *Suspicious EIN Listing* periodically, locking all bogus/fictitious EINs, ensuring tax examiners accurately process BMF IDT cases, and suggesting that refunds associated with BMF IDT

⁸⁵ <https://www.irs.gov/pub/irs-prior/p5316--2014.pdf> pp 66-70.

⁸⁶ Processes Are Being Established to Detect Business Identity Theft; However, Additional Actions Can Help Improve Detection: <https://www.treasury.gov/tigta/auditreports/2015reports/201540082fr.pdf>. The TIGTA report also cites the 2014 IRSAC report on BIDT and reports on the IRSAC's recommendations and the IRS response.

⁸⁷ Additional Actions Can Be Taken to Further Reduce Refund Losses Associated With Business Identity Theft: <https://www.treasury.gov/tigta/auditreports/2018reports/201840061fr.pdf>

remain frozen. Exploring real-time filters comparing data submitted to the IRS (via Form 941) with data submitted to the Social Security Administration (SSA) is another potential screening method for early identification and intervention.

BMF IDT may be discovered by the IRS or by the business itself. Often the business will first notice or suspect ID theft when the business/EIN owner receives a notice about an unknown business. Businesses may also be tipped off to problems when e-filed returns are rejected because a return with the EIN was already filed. When they suspect BMF IDT, businesses need an efficient mechanism to alert the IRS and other taxing authorities. Recognizing this, the IRS asked the IRSAC for assistance. While individuals have had a form available to report ID theft (Form 14039) proactively since 2009, the IRS did not have a comparable form available for BMF IDT. The IRS used an internal Form 14039-B, but it was reactive, i.e., it was used after either the IRS or the business initiated a BMF IDT investigation and the IRS needed additional information to further their research. The only way a taxpayer could initiate a BMF IDT inquiry was to respond to the number on an IRS notice they received or otherwise contact the IRS by telephone or letter. The IRS recognized the potential to repurpose the internal form so taxpayers could use it to initiate BMF IDT reporting. The IRSAC is pleased to have provided real-time feedback, working closely with our IRS colleagues in our January, April, and July working sessions, as the IRS introduced a revised Form 14039-B designed for proactive taxpayer reporting.

If the IRS first identifies potential BMF IDT, it may notify the business via one or more letters that inform the business about suspicious information. These notices may inform businesses about employees that do not exist or activity related to a closed business with no known open or unresolved IRS issues, unexpected bills, etc.—all indicating fraudulent activity.

Additionally, the IRS may identify and flag a suspicious business tax return for review. When this happens, the IRS suspends processing of the return for review and may request additional information by issuing Letter 6042C, *Entity Verification for Business* or Letter 5263C, *Entity Fabrication*, in cases where it suspects the entity itself is created for fraudulent intent.

When a taxpayer submits a BMF IDT claim, the IRS acknowledges the claim by issuing Letter 5316C, *BMF Identity Theft Documentation Acknowledgment & Interim Letter*. When the case has been researched and a determination has been made, the IRS issues Letter 5317C, *BMF Identity Theft Request for Information or Closing Letter*, to explain the actions taken to resolve the claim. All of the abovementioned procedures involve the mail. A paper-centric/mail process involves delays under the best of circumstances. As we've discovered, during 2020's coronavirus-related shutdown and aftermath, relying on paper communications is fraught with problems. BMF IDT reporting would benefit from a secure digital mechanism for communication in both directions. We saw an unprecedented and successful IRS response to the CARES Act Economic Impact Payment with a free-standing, online application for taxpayers to transmit information securely, a digital service and communication model that could serve as a template for additional use cases such as BMF IDT reporting.

The IRS realizes that the tax practitioner community is a key stakeholder in assisting taxpayers with BMF IDT prevention, detection, and reporting. The IRS has a dedicated webpage, Tax Practitioner Guide to Business Identity Theft, designed for tax preparers advising their clients⁸⁸ in addition to a webpage for addressing businesses directly, Identity Theft Information for Businesses.⁸⁹ As BMF IDT patterns change and evolve, both businesses and the tax professionals who serve them need timely, up-to-date, and comprehensive BMF IDT information which these webpages are designed to provide.

As the IRSAC discussed BMF IDT issues with the IRS, we highlighted the importance of coordinating information with tax and other state agencies. BMF IDT may occur in different areas of a business that may not manifest at the federal level, indicating a higher risk for or a precursor to BMF IDT. Perpetrators provide false demographic information to states as part of a scheme to obtain loans or credit in the name of the business. Some state information-sharing occurs now,

⁸⁸ <https://www.irs.gov/tax-professionals/tax-practitioner-guide-to-business-identity-theft>

⁸⁹ <https://www.irs.gov/individuals/identity-theft-information-for-businesses>

most robustly with the state of Alabama. Alabama shares information with the IRS when it sees potentially fraudulent activity (i.e., undeliverable mail sent to a business). When Alabama reports potential BMF IDT to the IRS, the IRS can respond with appropriate security measures.

Both businesses and the Treasury face significant risks with BMF IDT. The IRSAC appreciates the opportunity to assist the IRS with identifying, notifying, and timely responding to BMF IDT.

Recommendations

1. Research, develop, and implement secure digital channels for BMF IDT-related correspondence – including the initial filing of Form 14039-B.
2. Explore additional outreach opportunities through tax professional associations.
3. Explore additional outreach opportunities via IRS Communications & Liaison (C&L), including the IRS Nationwide Tax Forums, specifically targeting BMF IDT.
4. Develop and publish additional resources for business owners, including video offerings in the IRS Video Portal for Businesses.
5. Work actively with the Small Business Administration (SBA), Chambers of Commerce, and similar business associations to share best practices for BMF IDT prevention, detection, and reporting.
6. Partner with the payroll industry to develop best practices for BMF IDT prevention, detection, and reporting and explore solutions that coordinate efforts for BMF IDT and fraudulent W-2 (and other information-reporting form) filing.
7. Coordinate with other federal and state agencies to share information (working with the Government Liaison, Disclosure and Safeguards Office within the IRS' Office of Privacy, Governmental Liaison & Disclosure [PGLD]) to identify and respond to BMF IDT cases more efficiently.
8. Create processes for real-time comparison of Social Security Administration (SSA) and Form 941 data.

9. Work closely with the IRS Fraud Enforcement Office (SB/SE) to ensure that BMF IDT information is widely shared among all IRS BODs.

ISSUE FOUR: Promotion of the Taxpayer’s Responsibility to Update Their Current Mailing Address

Executive Summary

Undeliverable mail is a problem for the IRS and uses valuable time and money. The IRS’ ability to develop strategies around and allocate funds in this area is often constrained by budgetary, staff, and IT resources. Processing undeliverable mail may be a low priority for the IRS when there are many other areas that compete for attention. The IRS obtained funding approval for the Taxpayer Correspondence Delivery Tracking (TCDT) to be implemented in August 2020—an initiative anticipated to greatly reduce the volume of undeliverable mail and save “between \$1.4 million and \$1.72 million annually in labor costs and about \$1.2 million annually in cost avoidance through a reduction in undeliverable mail.”⁹⁰ As long as the IRS is required to mail correspondence to taxpayers, the service will have the burden of undeliverable mail and the associated costs. As noted in other areas of this IRSAC report, the IRS is making headway toward more digital delivery of correspondence; however, there are still many notices that have statutory requirements for mailing.

Background

The IRS is bound by various statutes to provide certain notifications to taxpayers via paper mail and the IRS uses the US Postal Service (USPS) to deliver these notices.⁹¹ A notice is valid if mailed to the taxpayer’s last known address, even if not received by the taxpayer.⁹² The IRS may rely on the taxpayer’s most recently filed tax return to determine the last-known address. The majority of taxpayers have little interaction with the IRS outside of the annual filing of their tax return. As a result, when taxpayers move during the year, it is unlikely that they would think about updating their mailing address with the IRS. Because of

⁹⁰ TIGTA 2019-40-074 Additional Actions Are Needed to Further Reduce Undeliverable Mail
<https://www.treasury.gov/tigta/auditreports/2019reports/201940074fr.pdf>

⁹¹ Internal Revenue Code section 6213(a) Time for filing petition and restriction on assessment

⁹² Internal Revenue Code section 6212(b)(1) and Treasury Regulation 301.6212-2

outdated addresses, the IRS makes significant expenditures that ultimately result in mail returned as undeliverable.

Revenue Procedure 2010-16 describes how taxpayers notify the IRS of an address change.⁹³ The IRS may update a taxpayer's address upon notification in one of the following ways: 1) the taxpayer files a tax return with a new address, 2) the taxpayer files Form 8822, *Change of Address*, 3) the taxpayer verbally requests an address change (subject to identity authentication), 4) the taxpayer corrects their address in responding to IRS correspondence, 5) an update from the USPS National Change of Address (NCOA) database, and 6) USPS undeliverable returned with a (yellow) forwarding label—if the IRS can verify it's the taxpayer's address of record. The IRS maintains taxpayer address data in the Master File (Individual Master File or IMF for individuals and Business Master file or BMF for businesses).

A 2019 Treasury Inspector General for Tax Administration (TIGTA) report examined the issue of IRS undeliverable mail, noting that (in FY2018) the USPS returned 14.4 million pieces of mail to the IRS at an estimated cost of \$43 million.⁹⁴ In addition to the obvious problem of having the wrong address, there are internal processing problems associated with mail sent to known bad addresses. Additional work is generated if address changes come via the USPS. The taxpayer's IMF or BMF can be flagged with an undelivered (UD) mail indicator, but TIGTA found that the IRS failed to suppress correspondence to UD addresses.⁹⁵ The IRS also has problems with tax returns filed without an address. In this case, the taxpayer's address of record becomes an IRS campus address. TIGTA recommended service-wide changes, but a major variable in the IRS's success with mailing addresses is taxpayer behavior. If taxpayers more diligently inform

⁹³ Rev. Proc. 2010-16, 2010-19 I.R.B. 664, superseded Rev. Proc. 2001-18, 2001-1 C.B. 708, which superseded Rev. Proc. 90-18, 1990-1 C.B. 491

⁹⁴ TIGTA 2019-40-074

⁹⁵ The UD indicator was developed after a prior TIGTA report Ref. No. 2010-40-055 Current Practices are Preventing a Reduction in the Volume of Undeliverable Mail (May 2010) <https://www.treasury.gov/tigta/auditreports/2010reports/201040055fr.pdf>

the IRS when they move or otherwise change their mailing address, it will enable more efficient and cost-effective tax administration.

The IRSAC has been asked to help the IRS identify methods to spread the word to taxpayers regarding their responsibility to update their current mailing address with the IRS. Many taxpayers are unaware of the various ways available (mentioned above) to accomplish an address change but are aware that most businesses have an automated feature for address changes through a secure online portal. Further, because of online billing and electronic communications, a physical address change may not even be necessary in many cases if all communications with the business happen through electronic means.

The IRSAC believes that automation of the address change process is the ultimate answer. However, in the meantime, while the IRS continues to work towards the availability of an online portal for taxpayers through the IRS website, the IRSAC believes that targeting taxpayer awareness, coordination with other government entities, utilizing the contact tax professionals and tax software companies have with taxpayers, and taking advantage of mass-mailings to taxpayers could increase the number of taxpayers who voluntarily update their addresses promptly upon moving or otherwise changing their mailing address. The IRSAC recognizes that reducing the volume of returned mail to the IRS processing centers will create a significant savings both monetarily and from a standpoint of time investment from the IRS employees responsible for reconciling addresses on returned mail, who could then be deployed to work in other areas.

Taxpayers could be encouraged to update their addresses upon moving with wording, signage, or another form of announcement on www.irs.gov. Clicking a website feature directed at taxpayers who have recently moved could provide brief information regarding updating one's address with the IRS at the time of a change of mailing address, rather than waiting until the next tax return is filed. This informational page could also provide a link to IRS Form 8822 and mailing instructions. However, this would depend on some affirmative action being taken by a taxpayer.

It is the understanding of the IRSAC that under the current process, the USPS forwards mail for one year after an address change is submitted to the USPS. After this time frame, mail sent to the old address is returned to the sender (the IRS in this case) with a yellow sticker advising the mail was undeliverable as addressed. It is not until the IRS receives this returned mail that it becomes aware the taxpayer has changed addresses. At this point, the taxpayer's new address is researched and updated, if possible. If the IRS could attain a list of taxpayers who have filed changes of address with the USPS *before* the IRS receives undeliverable mail back (potentially a year or longer after the actual change), the IRS could contact taxpayers to advise of the importance of updating their mailing address with the IRS before filing their next return. Mailing a simple postcard to the taxpayer urging this update and providing instructions for doing so could be more cost effective in the long run than discovering the need to take similar action only once mail is returned.

Tax professionals often have websites or client portals which could be used to encourage taxpayers to keep their addresses current with the IRS. The IRSAC recognizes that it may violate Section 7216 (prohibition of disclosing/using tax return information knowingly or recklessly) for tax professionals to use tax return information to contact their client-taxpayers regarding address changes. If so, the IRSAC encourages seeking an exception to Section 7216 for the purpose of address updates. Alternately, tax professionals could simply spread the word, rather than targeting specific clients or sharing any client's information with the IRS.

Like tax professionals, tax software companies may learn of a taxpayer's address change prior to the IRS being notified of such a change. Software companies (and preparers) often have access to email addresses for communications with taxpayers that might not be directly available to the IRS. The IRS could explore working with software providers (and preparers) to conduct proactive outreach to their users (clients) with instructions on how to update their address with the IRS. Again, if this use of tax return information could be

considered a violation of Section 7216, the IRSAC recommends seeking an exception for this purpose.

At the time of return preparation, many do-it-yourself tax software companies populate in the taxpayer's address based on the prior year return and request the taxpayer to confirm that the address marked is still correct. As an additional step, the IRS could explore the efficacy of address validation at the time of tax return preparation to reduce undeliverable mail. Many other companies use this sort of verification when determining a USPS delivery address for the user in question. Software vendors and information return issuers (W-2, 1099, etc.) could also clarify that taxpayers need not use the same mailing address as is on their W-2/1099 if the taxpayer has moved since the issuer sent the W-2/1099 form. Many software vendors have a field to enter the mailing address shown on the W-2 (if it is different than the mailing address on the tax return).

If the IRS finds itself in the position where it must reach out to a large number of taxpayers again, such as the Economic Impact Payments (EIPs) that were mailed/delivered earlier this year because of COVID-19, the IRS should consider this as an opportunity to communicate the need to maintain a current address with the IRS at this same time. Although many EIPs were delivered via direct deposit to taxpayers' accounts, all taxpayers receiving an EIP received a letter in the mail confirming the payment. Future communications of this kind would be an excellent opportunity to advise taxpayers of the need to update their address. A small flyer could be included with the mailing focused on identifying those who may need to update their address. For instance, a small insert included in the mailing that says, "Did you receive this notice with a forwarding sticker from the USPS?" and/or "Have you moved since you filed your return last year?". The remainder of the insert could be devoted to providing instructions to visit www.irs.gov to obtain Form 8822 to complete the address change (the website link would directly reference a page regarding address change information).

Recommendations

The IRSAC advocates strongly for advancing a digital solution for taxpayer address changes. Deployment and adoption of digital correspondence and communication is the most effective long-term solution to undeliverable mail. As digital solutions evolve, we recommend that the IRS:

1. Create a banner, link or button on the IRS website “storefront” targeting users who have recently changed their mailing address.
2. Use mass-mailing situations as an opportunity to communicate the need to update an address to taxpayers.
3. Coordinate with the USPS to determine if the IRS could be notified of changed addresses within a short time frame (one to two months) after submission to the USPS. Study the cost-effectiveness of contacting taxpayers with information regarding officially changing their address with the IRS based on this list.
4. Partner with the USPS via their address change forms and web applications to remind taxpayers to change their address with the IRS when they change their USPS address similar to the USPS reminder about changing voter registration.⁹⁶
5. Utilize tax preparers (obtaining IRC 7216 exceptions if needed) to communicate the need for taxpayers to update their addresses with the IRS.
6. Enlist the assistance of software providers (obtaining IRC 7216 exceptions if needed) to encourage taxpayers to update their addresses promptly.
7. Explore address validation at the time of tax return preparation, partnering with tax preparation software developers, as a means to reduce the incidence of address formatting errors that result in undeliverable mail.

⁹⁶ The USPS Change-of-Address webpage (last accessed October 2020) refers to MYMOVE, an authorized affiliate of the USPS. The MYMOVE application has a checkbox for voter registration. <https://moversguide.usps.com/mgo/disclaimer>
<https://www.mymove.com/>

ISSUE FIVE: Employer Tax Forms and Information Reporting

Executive Summary

Many employers, specifically those who pay wages under multiple legal entities, seek to streamline and improve their payroll withholding, reporting, and payment of employment taxes by implementing either an Employer/Payer Appointment of Agent arrangement (also referred to as a Common Pay Agent) or a Certified Professional Employer Organization/Customer Reporting Agreement (also referred to as a CPEO).⁹⁷

A Common Pay Agent arrangement allows employers to appoint an agent to file employer tax returns, and make federal tax deposits or payments of Federal Insurance Contributions Act (FICA) taxes, Railroad Retirement Act (RRTA) taxes, income tax withholding (ITW), or backup withholding on a consolidated basis for multiple employer/payer entities using the appointed agent's federal employer identification number (FEIN). A Common Pay Agent uses Form 2678 to request approval to have an agent file returns and make deposits or payments or to revoke an existing appointment.

A CPEO uses Form 8973 to notify the IRS that a service contract between a CPEO and a customer has started or ended, and to correct a previously-filed Form 8973. In a very similar manner of an Employer/Payer Appointment of Agent arrangement, CPEOs have clear authority to collect and remit federal employment taxes under the CPEO's FEIN for wages the CPEO pays to their employees.

Employers who pay wages under multiple legal entities often transfer and pay employees between legal entities, and therefore must issue employees a

⁹⁷ The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113–295), added new sections 3511 and 7705 to the Internal Revenue Code (IRC) relating to the federal employment tax consequences and certification requirements, respectively, of a Certified Professional Employer Organization (CPEO). The ABLE Act requires the IRS to establish a voluntary program for persons to apply to become certified as a CPEO. Form 8973, *Certified Professional Employer Organization/Customer Reporting Agreement - CPEO*, was created for this purpose.

separate Form W-2 from each employer entity for which wages were paid during the same calendar year. Each entity must separately track an employee's wages against the Social Security wage base, without regard to wages paid by other entities. Use of the payer agent process does not change this.

Problems arise when multiple employers (often subsidiaries or otherwise related to a parent entity) use the same pay agent. When each pays wages to the same employee, it appears as if the employee has one employer (because the W-2 forms show the common pay agent's FEIN). It is challenging for an employee whose total wages from all employers using the same agent exceed the Social Security maximum wage base to claim the excess Social Security Tax as a credit on their individual income tax returns.⁹⁸

This common pay agent arrangement also makes it difficult for tax software applications, the IRS, and state labor departments to determine whether an employee has one or multiple employers. Both employers and employees have additional burdens associated with clarifying an employee's employment status. The IRS requested the IRSAC's assistance in improving employer tax forms and information withholding.

Background

Employers generally are required to deduct and withhold federal income tax and FICA taxes from wages paid to their employees under IRC sections 3402(a) and 3102(a), and are separately liable for the employer's share of FICA taxes under IRC section 3111 and Federal Unemployment Tax Act (FUTA) taxes under IRC section 3301. Instead of FICA taxes, railroad employers are required to deduct and withhold RRTA taxes from their employees' compensation under IRC section

⁹⁸ The IRS publishes helpful information (Topic No. 608 Excess Social Security and RRTA Tax Withheld) instructing employees how to claim a credit for the excess withholding. If a single employer withheld too much social security tax, the employee must seek a refund from the employer. If an employee had two or more employers, neither of which overwithheld Social Security tax, but the combined withholding exceeds the maximum, the employee generally can claim the excess as a credit against their income tax on their individual income tax return. The excess is entered (for 2019 returns) on Form 1040 Schedule 3, Part II, line 11.

3202 and are separately liable for the employer's share of RRTA tax under IRC section 3221.

FICA taxes, RRTA taxes, and income tax withholding (ITW) are collectively referred to as “employment taxes.” IRC regulations 31.3102-1(d), 31.3202-1(e) and 31.3403-1 establish that the employer is the person liable for the withholding and payment of employment taxes, whether or not amounts are actually withheld.

An employer must file an employment tax return reporting employment taxes for each employment tax return period. Generally, an employer files Form 941, *Employer's Quarterly Federal Tax Return* to report wages the employer paid—during a quarter of a calendar year—that are subject to federal income tax withholding and FICA taxes. Wages an employer pays that are subject to FUTA tax are reported annually on Form 940, *Employer's Annual Federal Unemployment Tax (FUTA) Return*. Employers that pay compensation subject to the RRTA file Form CT-1, *Employer's Annual Railroad Retirement Tax Return*, as well as Form 941 to report federal income tax withholding. All employers that pay wages or compensation subject to federal income tax withholding, FICA tax, or RRTA tax must file Forms W-2, *Wage and Tax Statement*, and a Form W-3, *Transmittal of Wage and Tax Statements*, with the Social Security Administration (SSA) and furnish a Form W-2 to each employee. The employer must obtain an FEIN using Form SS-4, *Application for Employer Identification Number*, for use in filing the forms. An FEIN is a nine-digit number used by the IRS to identify an employer's tax account.

Pursuant to IRC section 3504, the IRS has established administrative procedures under which a payer may request authorization to file employment tax returns and perform other acts for the employer. Specifically, Revenue Procedure 70-6, 1970-1 CB 420, provides the general procedures for a payer to request authorization to act as an agent under IRC section 3504 for depositing and reporting employment taxes, and describes the agent's resulting reporting and filing requirements. Each employer for whom the agent is to act provides the payer with a signed IRS Form 2678, *Employer/Payer Appointment of Agent* or, for a

CPEO, Form 8973, *Certified Professional Employer Organization/Customer Reporting Agreement*.

A payer seeking to act as an agent under IRC section 3504 submits Form 2678 or Form 8973 for a CPEO to the IRS. The IRS sends a letter to the agent once it has approved the application, and the appointment remains in effect until terminated by one of the parties. An agent with an approved Form 2678/Form 8973 files an aggregate Form 941 reporting FICA tax and income tax withholding for each tax return period using the agent's own FEIN (regardless of the number of employers for whom the agent acts). Effective for periods on or after January 1, 2010 (after enactment of the ABLE Act for Form 8973), an agent with an approved Form 2678/Form 8973 must also complete and attach to the aggregate Form 941 a Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*. The agent uses Schedule R (Form 941) to allocate the aggregate information reported on Form 941 to each employer. Schedule R (Form 941) is attached to the Form 941 in every quarter for which the agent files an aggregate Form 941. See IRC regulation 601.601(d)(2)(ii)(b). If an agent with an approved Form 2678/Form 8973 is acting for employers under the RRTA, the agent must report for each employer the taxable compensation as determined under RRTA with respect to each employer on an aggregate Form CT-1.

The use of an *Employer/Payer Appointment of Agent* is a common approach to simplify Form 941 and Form W-2 reporting. It allows for the consolidation of Form 941 filing, Form W-3 filing, consolidated deposits to a single EIN account for each employer/payer, simplified accounting, and greater consistency in payroll processing.

Sometimes it allows for consolidated Form W-2 filing. "An agent who has an approved Form 2678, Employer/Payer Appointment of Agent, should enter the following in box c of Form W-2: (Name of agent), Agent for (name of employer), (Address of agent)."⁹⁹

However, "If the agent (a) is acting as an agent for two or more employers or is an employer and is acting as an agent for another employer, and (b) pays

⁹⁹ General Instructions for Forms W-2 and W-3.

social security wages to an individual on behalf of more than one employer, the agent should file separate Forms W-2 for the affected employee reflecting the wages paid by each employer.”¹⁰⁰

The required application of a shared FEIN on multiple W-2s from separate and distinct employer entities, however, may make it appear as though a single employer has over withheld Social Security tax within the same calendar year. If an employee is paid in excess of the annual Social Security wage limit by more than one employer (even employers using the same pay agent) in the same calendar year, the employee must apply for a refund, via Form 1040, to recover the over withheld Social Security Tax on their W-2 (Form 1040, Schedule 3, line 11). With regard to granting a credit for excess Social Security Tax for employees who may have separate Forms W-2 with the same FEIN, please note that IRS Internal Revenue Manual (IRM) section 21.6.3.4.2.4(5) provides guidance for auditing and processing this credit, but this procedure is not consistently applied. In addition, part of the common pay agent W-2 reporting requirement is to report on Form W-2, Box C (Employer’s name, address, and ZIP code) the following: Name of Agent, Agent for (name of employer), and Address of Agent. This W-2 reporting guidance is also referenced in the IRM but is seemingly overlooked as the data appears to be part of an extended employer address as opposed to a key indicator that determines a valid refund of excess Social Security Tax. As a result, the IRS may deny the credit for excess Social Security Tax because it appears that the employee has a single employer and must therefore seek a refund from their employer.

Employees who receive W-2s from multiple employers (who utilize the same agent pursuant to an *Employer/Payer Appointment of Agent* or CPEO reporting arrangement) often receive an incorrect notification from the IRS, their tax preparer, or an alert from their tax filing software that their W-2s have an over withholding of Social Security tax that must be refunded by their employer. Ultimately, this burdens the employee to resolve the issue, the employer to provide

¹⁰⁰ General Instructions for Forms W-2 and W-3.

documentation clarifying the issue, and the IRS to send notices and expend human capital resources reviewing and processing the tax return.

For example, Employer A uses Agent B to file employer tax returns and make federal tax deposits. Employer A pays employee C wages of \$200,000 in 2019. The 2019 Social Security maximum wage amount is \$132,900, so Employer A only withholds Social Security tax on the first \$132,900 of wages. Employer D also uses Agent B as a third-party agent. Employer D pays employee C wages of \$100,000. Employee C receives two separate W-2 forms from two different employers. Because both employers use Agent B, agent B's FEIN is on both W-2 forms – and it appears as if employee C has wages of \$300,000 from a single employer/FEIN. As a result, when Employee C files a Form 1040 tax return, Employee C would be denied a refund of excess Social Security Tax withheld because the IRS would view Employee C as being required to seek the refund from the single employer.

When this occurs, Employee C receives an IRS letter denying a refund of their excess Social Security Tax, and Employee C presents this denial letter to their employer for a refund. The employer must explain its W-2 reporting actions, and then provide Employee C with a letter to explain to the IRS that the W-2's in question were appropriately issued using the common pay agent reporting arrangement. Employee C then replies back to the IRS, and approximately four to six months later, Employee C receives their excess for Social Security Tax refund. The IRS must also pay interest on refunds delayed beyond 45 days from the filing deadline (or the date the employee's tax return is filed, if later).

Another problem that derives from the *Employer/Payer Appointment of Agent/CPEO* reporting requirements is that when an employee files for state unemployment benefits, the state unemployment agency must charge unemployment benefits to the former employer's state unemployment account, and this is often linked to the FEIN that is reflected on the employee's Form W-2. If the state unemployment agency does not accept the *Employer/Payer Appointment of Agent* or CPEO W-2 reporting explanation, the state agency will often assess state unemployment tax to the agent, by incorrectly using the agent's

FEIN, as opposed to the employer's FEIN, which is the responsible employer entity for which state unemployment tax returns were actually filed. The employer (and not the appointed common pay agent) must now prove to the state unemployment agency that the former employee who is requesting unemployment benefits is not an employee of the agent, but instead was an employee of the employer who appointed the agent to file Form W-2 on their behalf.

Recommendations

1. Create a checkbox on Form W-2 that can be checked by employers who use an *Employer/Payer Appointment of Agent* or CPEO reporting arrangement.
 - a. This W-2 checkbox would be recognized by the IRS, tax preparers, and tax filing software as a W-2 with the same FEIN of other W-2s issued in the same calendar year, and therefore eligible for a refund of excess Social Security Tax withheld as applicable.
 - b. This W-2 checkbox would also be recognized by state unemployment agencies that would acknowledge that the W-2 recipient may have a different employer and FEIN that is not the FEIN that is correctly reflected on the Agent's Form W-2.
 - c. The checkbox will serve as a reminder to IRS employees that an employee's claim for excess Social Security tax is permissible, an explanation to state labor departments (unemployment agencies) that the Agent FEIN and employer FEIN will differ, and as an indicator to tax preparation software applications that a taxpayer's refund for excess Social Security tax is valid.
2. Include, to clarify the identity of both the employer and the third-party agent, an additional field/box on Form W-2 to reflect the actual (common law) employer's EIN.

Appendix A: IRSAC Member Biographies

* **W. Edward “Ted” Afield** – Mr. Afield is the Mark and Evelyn Trammell Associate Professor and Director of the Philip C. Cook Low-Income Taxpayer Clinic at Georgia State University College of Law, one of the largest academic low-income taxpayer clinics in the country. Professor Afield’s research focuses on a range of tax procedure issues relating to tax compliance and professional regulation, state and federal tax issues that impact educational policy, as well as more practice focused doctrinal research into tax procedure for the practicing bar and, in particular, for the community of low-income taxpayer clinics. Professor Afield is a member of the American Bar Association, the Association of American Law Schools, and the National Tax Association. He holds a J.D. from Columbia Law School, an LL.M. (taxation) from the University of Florida Levin College of Law, and an A.B. in history, cum laude, from Harvard College. **(Small Business/Self-Employed Subgroup)**

* **Martin Armstrong** – Armstrong is VP of Payroll Shared Services for Charter Communications, a Fortune 100 company and the second largest cable operator in the United States. He has held executive roles with Time Warner Cable and Caesars Entertainment, is a retired Navy Supply Corps officer, and is currently the Accounting & Finance Area Chair for the University of Phoenix, where he was named the 2018 Distinguished Faculty of the Year. Armstrong is a former Vice President, Board of Advisor, and current member for the American Payroll Association, the Society for Human Resource Management, the National Association of Tax Professionals, the American Society for Quality, and the Academy of Management. Armstrong is also an Advisory Board member for the Bloomberg Tax Payroll Administration Library and the Workforce Institute, is a Certified Payroll Professional (CPP), and holds a MBA degree from the University of Maryland University College (UMUC), and a Doctor of Business Administration (DBA) degree from Argosy University. Dr. Armstrong has written for, or been covered by, the APA’s *PAYTECH* magazine, the Bloomberg Tax *Payroll Administration Guide*, *Human Resource Executive*, *The Paycard Advisor*, *Accountant’s World*, *The Institute of Management & Administration*, *Training Magazine*, and *Business Finance*. **(Wage & Investment Subgroup)**

Martin Bentsen – Mr. Bentsen is an attorney and director of product development, FIS Wall Street Concepts (WSC), in New York, NY. He interacts with hundreds of financial firm clients on tax reporting matters. WSC’s client base is comprised of self-clearing brokerage firms, hundreds of trust companies, large online brokers and international banking institutions and firms in the asset management advisory business. Mr. Bentsen is the lead for WSC’s “Tax Community” outreach to clients, which provides a forum for clients to express their views and positions on tax-reporting matters. He is a member of the New York State Bar Association and a certified regulatory and compliance professional. **(Large Business and International Subgroup)**

* **Sharon Brown** – Ms. Brown is a partner at Barclay Damon LLP, where she is a member of the Tax and Public Finance Practice Areas and the tax credits team. She primarily concentrates her legal practice on the federal tax treatment of tax-exempt bond financings and serves as bond counsel, underwriters' counsel, and special-tax counsel. Ms. Brown also routinely handles a wide variety of public finance transactions, including multifamily and single-family housing, power and energy, and 501(c)(3) financings. She has been named to Law360's Influential Women in Tax Law list, and she received the Trailblazing Women in Public Finance Award from *The Bond Buyer* in 2018. In addition to her role at Barclay Damon, Ms. Brown is a federal income-tax adjunct at Monroe College. She is a member of the National Association of Bond Lawyers, the New York State Association for Affordable Housing, the New York State Government Finance Officers Association, and the Municipal Forum of New York. **(Tax Exempt & Government Entities Subgroup)**

Alexandra Cruz – Ms. Cruz is a Senior Manager in the Information, Reporting & Withholding practice of Ernst & Young's Financial Services Office in New York. Ms. Cruz works with large asset management and banking organizations with both domestic and nonresident alien reporting and withholding issues. For the past six years, she has been primarily focused on FATCA and its impact on the asset management industry. Ms. Cruz was a member of the Information Reporting Program Advisory Council in 2018. She is an attorney and is a member of the bar in the state of New York. **(Large Business and International Subgroup)**

Ben Deneka – Mr. Deneka serves as industry operations liaison with The Tax Institute at H&R Block. In addition to managing H&R Block's relationship with the IRS, Mr. Deneka represents H&R Block in the Security Summit and various industry working groups, including CERCA. He has over 7 years of experience providing expertise on IRS administration and informing his business partners on how to effectively implement standards and practices into H&R Block's scaled tax preparation operation, which includes over 10,000 U.S. tax offices and a robust suite of do-it-yourself tax products. Mr. Deneka earned his B.A. from the University of Mississippi and J.D. from the University of Mississippi School of Law. He currently resides in Pittsburgh, PA. **(IRSAC Vice Chair and Wage & Investment Subgroup)**

Michael Engle – Mr. Engle is a partner with BKD, LLP in Kansas City, MO. He has extensive experience working with exempt organizations and governmental entities on various tax issues including employment tax. He has direct experience working with non-profit hospitals and colleges and universities. He has written a number of technical articles and has been a presenter for conferences and webinars. He is a CPA and actively involved with the AICPA. He serves on the BKD, LLP non-profit committee and is the leader of its healthcare committee. He is involved with the AICPA and the Missouri Society of CPAs. **(Tax Exempt & Government Entities Subgroup Chair)**

Diana Erbsen – Ms. Erbsen is a New York based tax partner at DLA Piper, where she has worked since 2000, except during her service as the Deputy Assistant Attorney General for Appellate and Review for the Tax Division of the US Department of Justice, which position she held from November, 2014 until January, 2017. During her tenure at the DOJ Tax Division, Ms. Erbsen oversaw the Appellate Section, the Office of Review (responsible for civil settlements), and the Financial Litigation Unit (tasked with collecting judgments secured by the Trial Sections of the Tax Division). She was also actively involved in the management and operations of the Civil and Criminal sections of the Tax Division and served in an *ex officio* capacity on the Bankruptcy Rules Advisory Committee. Since returning to DLA Piper, Diana has resumed representing clients (public and privately held corporations, as well as partnerships estates and individuals) in all aspects of sophisticated, challenging tax disputes. She concentrates her practice on federal, state and local tax controversies, including criminal tax matters. Informed by her experience at the DOJ, she regularly counsels clients on issues relating to judicial deference to IRS guidance as well as on the appeal process and the intersection of criminal and civil tax enforcement. In 2018, Ms. Erbsen was selected as a member of the IRSAC and during 2019 she chaired the LB&I Subgroup. She also serves on the Council of the ABA Tax Section, in which capacity she oversees the operations of the Civil & Criminal Tax Penalties Committee, the Tax Policy & Simplification Committee and the Standards of Tax Practice Committee. Ms. Erbsen earned her B.A. from Amherst College (*cum laude*), J.D. from Northeastern University School of Law, and LL.M. from NY School of Law. She has been recognized by the American College of Tax Counsel as a Fellow. **(IRSAC Chair and Large Business and International Subgroup)**

Deborah Fox – Ms. Fox is a Certified Scrum Product Owner (CSPO) in Boca Raton, FL, with experience in a broad spectrum of verticals. As the Director of Marketing she is responsible for developing future strategy for tax solutions portfolio. She has a broad background in all aspects of product management, including business case development, project management, partner management, development, operations, client services, systems analysis, sales and quality assurance. Ms. Fox is a self-starter with team building and leadership skills, as well as a strategic thinker with market analysis skills. She is currently pursuing her EA designation. **(Small Business/Self-Employed Subgroup)**

April Goff – Ms. Goff is a Partner with the law firm Perkins Coie LLP in Dallas, TX. Prior to joining Perkins Coie LLP, she acted as the sole in-house ERISA counsel for J. C. Penney Corporation, Inc. and was in private practice since 2003 with Holland & Knight LLP, Sonnenschein Nath & Rosenthal LLP (now Dentons LLP), Seyfarth Shaw LLP, and Warner Norcross & Judd LLP where she assisted clients ranging from small employers to Fortune 50 companies on complex employee benefit plans and strategic labor and employment issues. Ms. Goff holds multiple leadership roles within the American Bar Association, currently serving as the Vice-Chair of the Employee Plans and Executive Compensation Group under the Real Property Trusts & Estates Division and acting as a publications editor and columnist. She held multiple leadership positions at the local and national level

with the Association of Corporate Counsel while in-house, including acting as the national Vice Chair of the national Employment and Labor Law Network. She also serves on the TEGE Council – Gulf Coast Area. Ms. Goff is CIPP/US certified and a frequent speaker and author on a variety of ERISA, Labor & Employment, and Cybersecurity and Data Privacy topics. She completed her B.B.A. in Financial Institution Management and a minor in Economics from Tarleton State University at age 18, and Ms. Goff went on to obtain an M.B.A. with an emphasis in Global Finance from Baylor University and a J.D. from St. Thomas University School of Law. **(Tax Exempt & Government Entities Subgroup)**

Antonio Gonzalez – Mr. Gonzalez is a CPA and Founder and Co-Owner of Sydel Corporation in Coral Gables, FL, an accounting and information technology consulting firm specializing in the financial services industry. He designs and develops multilingual applications to assist financial institutions manage both operations and compliance functions. Sydel's flagship product CompliXpert includes a taxation module for FATCA, CRS and 1042-S reporting in addition to proactive, alert-based activity monitoring and watch list name checking technologies leveraged by both domestic and international financial institutions. Mr. Gonzalez is currently an appointed board member of the City of Coral Gables Property Advisory Board. He earned a B.B.A. degree in Accounting from the University of Wisconsin-Madison and a M.S. in Accounting (specialization in Accounting Information Systems) from Florida International University. **(Wage & Investment Subgroup)**

* **Robert Howren** – Mr. Howren has 33 years of tax experience all in the Atlanta, Georgia area. The last 15 years he has been the Head of Tax for BlueLinx Corporation, one of the nation's largest building products distributors. At BlueLinx, Mr. Howren brought all areas of the tax function in house including income, financial provision, sales & use, property and fuel. In addition, he oversaw the tax due diligence for BlueLinx's acquisition of Cedar Creek in 2018. Mr. Howren has also created the in-house tax function at three other corporations during his corporate career. At the various companies, he has dealt with both inbound and outbound tax issues including transfer pricing issues. The first 10 years of his career was in public accounting. He started his career at Price Waterhouse before moving to a local CPA firm. Mr. Howren is a past international president of the Tax Executives Institute, where he has been a member for over 22 years. As President and a member of the Executive Committee of TEI, he has led and participated in numerous Internal Revenue Service and Treasury Liaison meetings. He is a long time member of both the Georgia Society of CPAs and the AICPA. Mr. Howren holds a B.S. (Accounting) from Berry College and his MAcc (Tax and Auditing Systems) from the University of Georgia. He has served as President and a Member of the Board of Directors for many years for the Empty Stocking Fund. He is also an Eagle Scout. **(Large Business and International Subgroup)**

* **Denise Jackson** – Ms. Jackson is the Vice President of Tax Preparer Development for the State Employees' Credit Union in Raleigh, NC. She supervises and coordinates the training program for over 3,000 tax preparers for the credit union's 267 branches across North Carolina. She is an Enrolled Agent and CFP® practitioner and holds a Bachelor of Science from Wingate University in Business and Mathematics. **(Wage & Investment Subgroup)**

Sanford Kelsey – Mr. Kelsey works with ecommerce tax issues at Expedia Group. He is a CPA and attorney with experience in government and private law practice. He worked on administrative and legislative initiatives while in government. In addition, his tax experience includes structuring transactions and providing representation during tax contests. He is a member of the ABA Tax Lawyer Editorial Board. Mr. Kelsey earned both J.D. and LL.M. degrees. **(Large Business and International Subgroup)**

Phyllis Jo Kubey – Ms. Kubey has over 30 years of experience in taxation. She is the owner of Phyllis Jo Kubey, EA CFP NTPI Fellow 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 is an officer (2nd Vice President) of NYSSEA and 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 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, the American Payroll 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. She is a director of Voices of Ascension, a professional choral ensemble in NYC. Ms. Kubey holds a Bachelor of Fine Arts from Carnegie-Mellon University and a Master of Music (Voice) from The Juilliard School. **(Wage & Investment Subgroup Chair)**

Mas Kuwana – Mr. Kuwana is a member of Uber's corporate tax department in San Francisco, CA, where he supports Uber's tax operations and advises the business on items related to information reporting/withholding. Prior to joining Uber, Mr. Kuwana was a member of Amazon.com's tax operations team and worked as an executive director at JPMorgan Chase & Co, where he managed U.S. tax operations supporting multiple lines of business. **(Small Business/Self-Employed Subgroup)**

* **Kathleen Lach** – Ms. Lach is a Partner resident in Saul Ewing Arnstein & Lehr’s Chicago office. She represents clients before a variety of different tax authorities, including the Internal Revenue Service, the Illinois Department of Revenue, and the Illinois Department of Employment Security. Ms. Lach represents both businesses and individuals in income tax, sales tax, and penalty controversies, and in IRS audits and liability settlement negotiations. She has represented a number of individuals before the IRS on innocent spouse claims and in offshore voluntary disclosure cases. Ms. Lach has had cases pending before the U.S. Tax Court, U.S. District Court, and before IRS and state administrative agencies. **(Small Business/Self-Employed Subgroup)**

Carol Lew – Carol Lew is a shareholder of Stradling, Yocca, Carlson & Rauth in Newport Beach, CA. She has over 32 years as a tax lawyer with substantial experience with TEB audits and TEB VCAP cases. She served as president of the National Association of Bond Lawyers from 2006-2007, and she served as chair of the ABA Tax-Exempt Financing Committee from 2001-2003. She has experience as bond counsel, underwriter’s counsel, special tax counsel and borrower’s counsel for various kinds of bond issues for state and local government and non-profits for the provision of public infrastructure, housing, charter schools, performing arts facilities, hospitals, museums and other types of facilities. She served as editor-in-chief of the Federal Taxation of Municipal Bonds from 2000-2001. **(Tax Exempt & Government Entities Subgroup)**

Emily Lindsay – Ms. Lindsay is a former executive of Marriott International, Inc., serving as Vice President, Corporate Accounting Services. She directed a large and diverse team of accounting, tax, systems and business services experts responsible for a wide variety of payroll, business support services, business systems analyses and development, payroll tax services, payroll accounting, and related banking services functions. Ms. Lindsay is a CPA and Chartered Global Management Accountant (CGMA). She serves on the Board of Directors of the American Payroll Association and was on the Board of the Greater Washington Society of CPAs (GWSCPA) and received the 2018 GWSCPA Outstanding Member in Business & Industry award. She has been a past member of three IRS advisory committees (IRSAC, IRPAC, and ETAAC). She currently teaches accounting and MBA courses at American University in Washington, DC, where she has received several outstanding teaching and service awards. **(Small Business/Self-Employed Subgroup)**

Charles “Sandy” Macfarlane – Mr. Macfarlane has 40 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 35 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 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 past international president of the Tax Executives Institute, where he has been a member for 20 years. He is 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. **(Large Business and International Subgroup Chair)**

* **Kelly Myers** – Mr. Myers is a tax consultant with Myers Consulting Group, LLC, based in Huntsville, Alabama. Mr. Myers primarily provides seminars, tax planning, consulting, and controversy services to clients across the United States which include individuals and large to small accounting firms. He spent 30+ years with the Internal Revenue Service (retired 2017) with the last 20 years working for the Washington, DC, Headquarters as a Senior Technical Advisor. His IRS experience included official guidance projects, examiner and litigation technical support, and implementing new legislation. He leverages his decades of IRS and public accounting experience to strategically add value to a varied client base. He has developed efficient tax strategies in both preparation and controversy arenas. He has been a guest speaker for numerous CPA and EA continuing education events, IRS Nationwide Tax Forums, national tax associations, and others in both live settings and webinars. Mr. Myers serves on the Federal Tax Committee for the National Society of Accountants (NSA). He has an MBA from the University of Tampa with emphasis in Accounting and Taxation. His BA is from Western Colorado University (f/k/a Western State College) with a double major in Accounting and Business Administration and a minor in Economics. **(Small Business/Self-Employed Subgroup)**

* **Joseph Novak** – Mr. Novak is Abbott's Vice President, Taxes. He was appointed to this role in June 2017. Previously, Mr. Novak had served in Abbott's corporate tax organization since 2004, in a variety of roles, including leadership positions in the income tax accounting, transfer pricing, M&A, planning and compliance groups. Prior to joining Abbott, he worked for Deloitte. Mr. Novak earned his B.S. in Accountancy from the University of Illinois, Champaign-Urbana **(Large Business and International Subgroup)**

* **Robert “Bob” E. Panoff** – Mr. Panoff is a certified tax attorney specializing in representing individual and entity taxpayers in civil and criminal tax litigation matters at all levels of the IRS and in court. He was an adjunct Professor at the University of Miami School of Law in this subject matter from 1981 through 2006. He is a past chair of both The Tax Section and the CLE Committees of the Florida Bar and is a member of the Tax Section's Executive Council. He is also a member and past President of the Greater Miami Tax Institute and a member of the Miami International Tax Group and the South Florida Tax Litigation Association. In 2006, Bob received the Tax Section's Gerald T. Hart Outstanding Tax Attorney of the Year Award. Bob was previously a member of the IRSAC from 2005 through 2007. He was Chair of the IRS South Florida District Compliance Plan Study Group under then District Director Thomas from 1996 through 2000. He was an invitee to the Judicial Conference of the United States Tax Court in 1999, 2003, 2005, 2007, 2009, 2015 and 2018. Bob is one of a small number of tax litigators who have successfully invalidated a tax regulation. See *Durbin Paper Stock Co. V. Commissioner*, 80 T.C. 252 where two DISC regulations were found to be invalid. He is also the only tax litigator ever to obtain attorney's fees against the Florida Department of Revenue in a corporate income tax case. **(Small Business/Self-Employed Subgroup)**

Charles Read – Mr. Read is a CPA and the Founder and CEO of Get Payroll in Lewisville, TX, where he has provided full-service payroll and payroll tax services since 1991. Get Payroll helps small to medium-sized businesses across the U.S. with direct deposits, debit card loads, printed checks, payroll deposits, reports and tax filings, year-end Forms W-2 and employer-employee website portals. Mr. Read is an accomplished senior executive and entrepreneur with more than 50 years of financial leadership experience in a broad range of industries, as well as a licensed CPA. In addition, he is also a US Tax Court Non-Attorney Practitioner which enables him to represent clients in the US Tax Court without being an attorney. He is the author of three e-books: *Starting a New Business: Accounting, Finance, Payroll, and Tax Considerations*, *Small Business Short Course (Employees Book 1)* and *The Little Black Book of the Beauty Biz, Volume 1*. Mr. Read is an accomplished speaker and has been featured on Fox Business News, Biz TV Texas, New York City Wired, Dallas Innovates and many more. In addition to his executive career, Mr. Read is a decorated United States Marine Corps sergeant, and a combat veteran of the Vietnam War. **(Small Business/Self-Employed Subgroup)**

Martin Rule – Mr. Rule is a CPA with over 25 years of experience as a tax and accounting professional. He is a subject matter expert in both tax management and payroll processing with a range of knowledge stemming from employment with public accounting firms, academic institutions, and healthcare institutions. He previously was a Senior Manager with Deloitte, and he also served as the Director of Payroll and Tax at Northwestern University and at Lurie Children's Hospital. Throughout his career, he has engaged in improving and developing electronic systems and tools for managing federal, state and local employment tax and information reporting. Key to his success is his passion for training others. He was

also a part-time lead tax instructor at DePaul University, where he developed and presented lectures for the individual income tax module of the school's Certificate of Financial Planning Program. Mr. Rule earned his B.S. in Accounting from Northeastern Illinois University and his M.S. in Taxation from Northern Illinois University. **(Wage & Investment Subgroup)**

* **Nancy Ruoff** – Ms. Ruoff is the Manager of Statewide Payroll and Collections for the State of Kansas and maintains responsibility for payroll processing and reporting for all state agencies, including the Executive, Legislative, and Judicial branches of government and seven higher education regent institutions. In addition, she manages the Kansas Setoff and Kansas Treasury Offset Programs. Ms. Ruoff has over 28 years of experience in all aspects of payroll including management of integrated payroll and accounting business applications and upgrades, analysis and application of Federal State and Local regulations, and identification and implementation of system enhancements and efficiencies. Ms. Ruoff is a CPA and participates in the APA Strategic Payroll Leadership Tax Force Government/Public Sector Subcommittee and the National Association of State Comptrollers' Payroll Information Sharing Group. **(Tax Exempt & Government Entities Subgroup)**

Jeffrey Schneider – Mr. Schneider has over 35 years of experience as an enrolled agent and currently is Vice President of SFS Tax & Accounting Services in Stuart, FL. His company handles all areas of tax including taxpayer representation and tax preparation bookkeeping and payroll for multiple types of taxpayers. Prior to joining SFS in 1999, he worked in various corporate taxpayers for 20 years, culminating as a Director of Tax for a major jewelry concern. He is a Fellow of the NAEA National Tax Practice Institute and a Certified Tax Resolution Specialist. He served 4 years as a director for the National Association of Enrolled Agents, two years as a member of NAEA's National Government Relations Committee. He served two terms as chair of NAEA's Awards Committee, and one year as chair of the NAEA's Membership Committee. Mr. Schneider was a founding member of the NAEA Educating America's Task Force. He was also President of the Florida Society of Enrolled Agents. He is a national speaker on all things tax, including Circular 230 and ethics. Mr. Schneider earned his B.S. in Finance from College of Staten Island and his Master of Science in Tax from Long Island University. **(Small Business/Self-Employed Subgroup)**

* **Katie Sunderland** – Ms. Sunderland is Assistant General Counsel, Tax Law for the Investment Company Institute (ICI), the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. She has experience with a broad range of tax issues that impact the investment fund community, including managers, investment funds, and investors. At ICI, she primarily works on global tax issues affecting both US and non-US regulated funds, such as treaty entitlement and EU matters (e.g., public country-by-country reporting). She is also involved in Business at OECD's Business Advisory Group to the Organisation for

Economic Co-operation and Development's (OECD's) projects on the Common Reporting Standard (CRS), Tax Relief and Compliance Enhancement (TRACE), and the Digital Economy. Prior to joining the ICI, Ms. Sunderland worked extensively with private funds (i.e., hedge funds and private equity) and sovereign wealth clients as an associate with large international law firms. **(Large Business and International Subgroup)**

Jean Swift – Ms. Swift is a tribal leader in Mashantucket, CT, with diverse experience in business and financial management, administration, and establishing strategic partnerships. She is a Certified Public Accountant in the State of Connecticut and a certified financial counselor. She recently served as Tribal Council Treasurer of the Mashantucket Pequot Tribe, and currently works for the Tribe as a Financial Advisor. **(Tax Exempt & Government Entities Subgroup)**

Patricia Thompson – Ms. Thompson is a CPA and Tax Partner with Piccerelli, Gilstein & Company, LLP in Providence, RI. She has extensive experience in complex tax transactions including multi-state tax returns, real estate transactions and like-kind exchanges. She focuses on assisting clients with the intricacies of sale transactions to minimize income tax consequences, business and financial consulting and audits with governmental agencies. In addition to directing the firm's tax department, she has distinguished herself in the accounting profession both at the state and national levels. She is a member of the Rhode Island Society of CPAs, where she previously served on the Board of Directors and held the positions of Secretary, Treasurer, Vice President, and President. At the national level, she served as Chair of the AICPA Tax Executive Committee, which is AICPA's final authority on policy recommendations relating to national tax legislation, tax administration, and ethical standards. She is currently the Chair of the AICPA Relations with The Bar Committee, which maintains cooperative professional relations with the American Bar Association to identify areas of mutual concern to the professions and seeks to have them addressed through mutual discussion and concurrence. Ms. Thompson earned her B.S. in Accounting from the University of Rhode Island, Master of Science in Taxation from Bryant College and received the Personal Financial Specialist (PFS) designation from AICPA. **(Small Business/Self-Employed Subgroup Chair)**

* **Kevin Valuet** – Mr. Valuet is a Senior Payroll Consultant for PayTech, Inc. He has more than 10 years of payroll experience in financial, educational, and supply chain industries. He is the current President of the Northstar Chapter of the American Payroll Association (Minnesota). Mr. Valuet is an active member of the payroll community and volunteers on the Government Relations Task Force, Strategic Payroll Leadership Task Force, and Certification Item Development Task Force with the American Payroll Association. He holds a bachelor's degree in accounting from Baker College in Flint, Michigan. **(Wage & Investment Subgroup)**

Daniel Welytok – Mr. Welytok has over 30 years of experience as an attorney. He is currently a shareholder in Von Briesen & Roper, S.C., in Milwaukee, WI, where he serves as chair of the Opinion Review Committee reviewing and analyzing numerous opinions on taxable and tax-exempt bond issues, many involving the State of Wisconsin Public Finance Authority. He practices primarily in the areas of taxation, exempt organizations, employee benefits and business law. He also provides a broad range of representation, advising clients on various aspects of nonprofit organization and planning, 501(c) operational issues and compensation practices, income reporting and recognition issues. He represents clients before the DOL, the IRS and state departments of revenue in obtaining and maintaining tax-exempt and nonprofit status, as well as audits and tax controversies. **(Tax Exempt & Government Entities Subgroup)**

Mary Jo Werner, CPA, CFF, JD – Ms. Werner is a partner in Wipfli's tax services and valuation, forensics and litigation services groups. She specializes in litigation support for law firms and assists in fraud and forensic investigations. She is certified in financial forensics by the AICPA. She prides herself on establishing long-term, solid relationships with her clients and works very hard to help them achieve their goals. Ms. Werner's professional memberships and activities include AICPA, American Bar Association, WICPA and Wisconsin Bar Association. She currently serves on the Wisconsin State Bar Tax Board of Directors and is a past member of the IRS Taxpayer Advocacy Panel. **(Small Business/Self-Employed Subgroup)**

Charles Yovino – Mr. Yovino is currently President of Global HR GRC in Atlanta, GA and provides litigation support on retirement plan cases and also writes about HR governance, risk management and compliance. Prior to that he spent 28 years at PricewaterhouseCoopers and was head of the Atlanta HR consulting practice and a national leader of the HR tax, accounting and regulatory practice. He spent the first six years of his career working at a Washington, DC law firm and then for the IRS in Employee Plans Technical. He has worked in all aspects of benefits, including plan design, plan compliance, determination letter requests, VCP applications and working with clients on IRS audits. **(Tax Exempt & Government Entities Subgroup)**

* New Members

Appendix B1

**IRSAC March 16 ,2020 Letter to Commissioner Rettig
Regarding COVID-19 Relief**



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March 16, 2020

Via email: Charles.Rettig@IRS.gov
Internal Revenue Service
Commissioner Charles P. Rettig
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Rettig,

I write on behalf of the IRS Advisory Council (IRSAC) to express our support for and appreciation of all IRS staff and their families and to request some administrative relief that we believe would ease the burden on taxpayers and the IRS as the nation faces the COVID-19 pandemic, requiring us all to work together to limit everyone's exposure.

Specifically, at present, with the understanding that additional federal funds may well be necessary to implement our recommendations and other remedial measures, we urge the IRS to (a) offer either (i) an automatic extension of filing and payment deadlines at least until one of the upcoming dates for estimated payments (June 15, 2020 or September 15, 2020) or (ii) an automatic abatement of failure to file, pay and deposit penalties at least until one of the upcoming dates for estimated payments (June 15, 2020 or September 15, 2020), (b) provide at least temporary relief from physical signatures on all tax returns by applying the standard that is available to paid preparers, (c) consider permitting electronic signatures on Powers of Attorney, (d) require that, to the extent possible, all written communications be sent by electronic mail or fax rather than by mail, (e) provide relief where deadlines are missed, particularly in collection cases, and (f) provide relief for accidental residents.

Automatic Extension or Automatic Penalty Relief

Insofar as people are being discouraged from personal interaction, it seems likely that many taxpayers, including individuals, businesses and other entities, will find it challenging to gather information necessary to meet filing deadlines, to engage with tax professionals (or volunteers who provide assistance through VITA and low-income tax clinics), and to timely file either accurate tax returns or extension requests. Further, although some of the tax filing season work of the IRS is automated, some of it does require on-site work by individual employees and we share your concern for their physical and emotional security. Finally, many individuals and businesses are experiencing unexpected financial hardship, including a dramatic decline in



reasonably anticipated income. We understand the federal and state governments are attempting to address those issues on a substantive level and we believe it would be appropriate for the IRS, to the extent possible, to administratively support individuals and businesses facing these challenges. We also think such action would instill further confidence in the IRS and thereby enhance its goal of voluntary compliance.

We recognize that any automatic extension of a deadline or automatic abatement of penalties imposes a technological burden, so the IRSAC recommends that the IRS offer the most easily internally administrable of the following options: either an automatic extension of time to file tax returns and time to pay tax or an automatic abatement of failure to file, pay and deposit penalties (without treating the abatement as a first time penalty abatement) at least until one of the upcoming dates for estimated payments – June 15, 2020 or September 15, 2020. We believe California has already extended its deadline for filing and payment through June 15, 2020 and also note that certain taxpayers, particularly certain fiscal year taxpayers, might have a need for a longer extension and that perhaps refunds could be expedited for those who do file by the original deadline.

Signature Relief

Certain business tax return filings that are not permitted to be electronically filed must be physically signed and dated by an officer of the company. In a pandemic environment where teleworking is encouraged or required, business taxpayers are faced with the challenge of delivering a paper copy of each tax return to the applicable authorized signatory, and then collecting those signed paper tax returns to timely mail them to the IRS. A paid preparer, however, may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

The IRSAC recommends that the IRS issue guidance providing at least temporary relief from physical signatures on all tax returns by applying the same standard that is available to paid preparers.

Electronic Signatures on Powers of Attorney

Many individual taxpayers, persons responsible for filing entity tax returns, and tax professionals are working from home without the capacity to physically sign and/or deliver documents once signed, including Powers of Attorney. We recognize that there are valid security concerns that generally compel the requirement that such forms be physically signed by both taxpayers and tax professionals. However, insofar as it is imperative that personal interactions be limited for some as yet undetermined period of time, the IRSAC recommends that electronic signatures be permitted on Powers of Attorney (and similar documents) at least until June 15, 2020.



Faxing/Emailing Written Communications

In order to ensure that taxpayers and tax professionals receive written communications during this period when many are teleworking, and also to facilitate communications with the IRS and ease the burden on employees of the IRS and the postal service, the IRSAC recommends that, where email and fax numbers are available to the IRS, written communications be emailed or faxed to taxpayers and tax professionals at least until June 15, 2020. Such a communication might require some mechanism to authenticate it to avoid fraud, including advance telephonic agreement of both parties to communicate in that way. Secure communication would be best, but might not be available to all taxpayers or tax professionals at this time.

Deadline and Collection Relief

Taxpayers and tax professionals, despite their best efforts, may miss deadlines as they deal with the challenges of a pandemic. The IRSAC recommends that, at least with regard to non-statutory deadlines, the IRS afford penalty-free extensions wherever possible, at least until June 15, 2020. Taxpayers with installment payment plans or other extended payment arrangements and taxpayers who are on the verge of severe collection activity may be particularly vulnerable to the sudden economic shift.

The IRSAC recommends that otherwise compliant taxpayers who miss payments in connection with formal payment agreements (such as Installment Agreements and Offers in Compromise) between now and either June 15, 2020 or September 15, 2020 not have those agreements defaulted due to failure to timely file or timely pay (including payments under those agreements). The IRSAC also recommends that the IRS consider a three month hold on enforced collection activity where there is a risk of extraordinary economic harm (i.e. loss of business or home).

Relief for Accidental Residents

Some non U.S. persons are now, and will continue to be, stranded in the United States. As a result of the substantial presence test, some of these people may end up being tax residents who clearly did not intend to be tax residents in the United States. The IRSAC recommends that the IRS consider offering relief to persons who are unable to return to their home countries due to circumstances relating to COVID-19.



Conclusion

The IRSAC appreciates your consideration of these recommendations and commends your efforts to support the IRS community as well as the taxpayer and tax professional communities. We also appreciate federal (and state) efforts to address tax issues arising in connection with COVID-19 and trust that adequate funding will be provided to the IRS to permit the institution to act quickly and effectively to implement these and other appropriate remedial measures.

To the extent we as a group or any of our individual members may be of assistance, please do not hesitate to contact me. As I will be working from home for the foreseeable future, I will also provide my personal cell phone information by separate email.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'D. Erbsen'.

Diana L. Erbsen
Chair, IRSAC

Appendix B

**IRSAC August 19, 2020 Letter to Commissioner Rettig
Regarding COVID-19 Relief**



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August 19, 2020

via email: Charles.P.Rettig@IRS.gov
Internal Revenue Service
Commissioner Charles P. Rettig
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Rettig:

The IRSAC acknowledges and appreciates the implementation of most of the recommendations made in our March 16, 2020 letter. Implementing those recommendations significantly reduced taxpayer burden. The IRSAC also appreciates the tremendous amount of guidance issued by the IRS regarding the Families First Coronavirus Response Act (Families First Act) and the Coronavirus Aid, Relief and Economic Security Act (CARES Act). The guidance has been issued through Frequently Asked Questions (FAQs), Notices and News Releases. The youtube videos provide concise information on the tax provisions. The IRS webpage dedicated to Coronavirus relief centrally locates all guidance issued.

Both of these Acts provide relief to taxpayers during this pandemic. However, many of the relief provisions overlap, which makes it difficult to navigate and properly guide taxpayers in some circumstances. We are providing feedback seeking clarifying guidance to assist in ensuring compliance and accurate implementation of the legislation and reduce the level of non-compliance.

As you continue to provide guidance, please consider these items that are of concern to taxpayers, tax practitioners, and employers with regard to tax returns not yet filed and/or returns that may be amended.

Reliance on FAQs

We request that the IRS clearly state that taxpayers can rely on guidance in FAQs to avoid penalties and maintain an accessible record of published FAQs. The Taxpayer Advocate Service (TAS) also identified this as an issue in a blog post dated July 7, 2020. TAS points out that the FAQ answers often change. *Id.* A taxpayer may have filed a tax return relying on a FAQ answer prior to it being changed (or removed). The FAQ will indicate the date of the change, but a history of prior answers is removed from the



website. We think it would be helpful to footnote or otherwise record the prior answer(s) along with the dates posted so taxpayers will have the support for the position taken on the return. If not, taxpayers might not as easily be able to document the basis for their tax return position unless they had printed the FAQ at the time of preparing/filing the return.

Calculation for Exclusion of Family First Act Emergency Leave Wages from the Calculation for Employer OASDI Gross Wages

Section 7005(a) of the Families First Act specifies that emergency leave wages paid under the Families First Act are not considered wages for the employer portion of OASDI. Qualifying Section 125 pre-tax benefits are also excluded from the calculation of employer OASDI taxable gross wages. Clarification (including example calculations) is requested regarding the Families First Act emergency leave wages excludable from the calculation for employer OASDI taxable gross wages. Should the exclusion of those wages from the employer OASDI taxable wage calculation be completed before or after the reduction for Section 125 pre-tax benefits? The potential for varying interpretations of this section of code can cause either 100% or a reduced portion of the Family First Act emergency wages being excluded from the calculation of the employer OASDI taxable gross wages. This uncertainty increases the risk for inconsistent calculation of employer OASDI taxable gross wages for employees with Families First Act emergency leave wages.

Qualified Sick Leave Credit and the Qualified Family Leave Credit for Self-Employed Taxpayers

The Families First Act includes a tax credit for qualified sick leave wages and qualified family leave wages for self-employed individuals. FAQ 62 explains how the "average daily self-employment income" is calculated for a self-employed individual. The amount is derived using this year's net earnings from self-employment and dividing by 260. FAQ 66 allows the self-employed individual to take advantage of the credit by reducing the estimated income taxes due during the year. Since the calculation of the amount eligible for the credit is based on 2020 net income, the self-employed individual may not know the proper credit when he/she must make estimated tax payments. Is it possible to use the prior year's net earnings from self-employment to allow the taxpayer to take advantage of the credit during the current tax year? Taxpayers may also benefit from an administrative waiver of estimated tax penalties like relief the IRS granted through Notice 2015-09 regarding reconciliation of excess advance premium tax credits.

FAQ 49 states eligible employers must include the full amount of credits in gross income. This language is specific to employers but does not clearly state whether the FAQ applies to self-employed taxpayers. Clarification as to whether the credit for self-employed taxpayers is a type of refundable personal credit that should not be included in gross income would be helpful as failure to clarify this may result in a significant mismatch for self-employed taxpayers that does not match their economic reality.



Non-deductibility of Certain Expenses Under the Paycheck Protection Program (PPP)

Pursuant to the CARES Act, a PPP loan forgiven will be excluded from income if certain requirements are met. Notice 2020-32 states that expenses are not deductible for federal income tax purposes if the expenses were paid through a PPP loan that is forgiven and the forgiveness is excluded from income. The position taken by the IRS effectively indirectly taxes the PPP loan forgiven by disallowing the expenses paid with the PPP loan forgiven and seems to have created inequity among some similarly situated taxpayers (by arguably favoring self-employed taxpayers whose only expense is compensation for themselves).

On May 5, 2020, Senate Finance Committee Chair Chuck Grassley (R-Iowa), Ranking Member Ron Wyden (D-Ore.), and House Ways and Means Committee Chair Richard E. Neal (D-Mass.) wrote to Secretary Mnuchin stating that Notice 2020-32 “is contrary to congressional intent” and urging reconsideration of the position taken in that Notice. We join in requesting reconsideration of Notice 2020-32.

If Notice 2020-32 is not reconsidered or legislation isn't passed to allow the deductibility of expenses paid with the PPP loan, taxpayers will need to know how to treat expenses paid with the PPP loan when the PPP loan forgiveness determination isn't made until after the end of the taxpayer's year end. This is an immediate concern for fiscal year entities with year ends ending on or after April 30, 2020. The entity will need to know its taxable income to properly estimate the tax liability for federal extension purposes. All taxpayers making quarterly estimated tax payments and not using a safe harbor also need to know the impact on the quarterly payments due to avoid underpayment penalties. We think it would be helpful to have confirmation that the expenses would be deductible until the loan forgiveness determination is made so that the taxpayer whose loan forgiveness determination overlaps years will be able to deduct the expenses in the year when paid and the expense reduction would take place in the same year as the loan forgiveness determination.

If the result of Notice 2020-32 is not reversed, another issue that needs clarification is the impact on the qualified business income (QBI) deduction when wages paid with PPP loan proceeds are disallowed. One of measures is wages. The W-3 and W-2s are usually used for the wages component in the QBI deduction. It would be helpful for the IRS to provide guidance as to whether/how the disallowance of the wages paid through the PPP loan forgiven impacts the wage component of the QBI deduction.



Deferral of Employment Tax Deposits and Payments Through December 31, 2020

FAQ 4 relating to the CARES Act discusses deferral of employment tax deposits and payments through December 31, 2020. It states a taxpayer is allowed to defer the employer's share of Social Security tax that would be required beginning on March 27, 2020 through the PPP lender's decision to forgive a PPP loan. It would be helpful to clarify if taxpayers may retroactively take advantage of this provision by amending Forms 941.

Net Operating Loss Election to Forgo Carryback – Reasonable Cause

Revenue Procedure 2020-24 Section 4.01(1) provides the time and manner of filing an election to waive the net operating loss carryback period. The election must be made by the due date, including extensions, for filing the taxpayer's federal income tax return for the first taxable year ending after March 27, 2020. The election is made by attaching a separate statement for each of the taxable years 2018 or 2019 for which the election is to apply. It would be useful for the IRS to publish reasonable cause guidance if a taxpayer fails to attach the required statement(s) to their return for the year ending after March 27, 2020. The guidance could be as direct as "...reasonable cause may apply under IRM xxx..." This is a unique one-time subsequent year disclosure raising concerns of taxpayer missteps.

Amended Partnership Tax Returns

Revenue Procedure 2020-23 Section 3 allows eligible partnerships to amend the 2018 or 2019 partnership tax returns to take advantage of the CARES Act provisions. The partnerships must amend the partnership tax return and furnish the corresponding Schedules K-1 before September 30, 2020. Extending the September 30, 2020 deadline would be extremely helpful since operations of many taxpayers and tax practitioners continue to be disrupted by COVID-19 and related business issues.

PPP Loan Forgiveness Certification

The Small Business Administration (SBA) issued an interim final rule Docket Number SBA-2020-0033 RIN 3245-AH47 indicating the SBA may review the borrower's certifications and representations regarding the borrower's eligibility for PPP loan forgiveness. In addition, the interim final rule expects the lender to perform a good-faith review of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. It might ease the administrative burden for the IRS and for taxpayers to permit the SBA and/or lender review of the PPP loan forgiveness application to be presumptively sufficient to allow the taxpayer/borrower to exclude the loan forgiveness from income for income tax purposes, absent indicia of abuse or other disqualification.



PPP Loan Forgiveness - Presentation on the Tax Return of Disallowed Expenses

It would be helpful for the IRS to provide a mechanism for taxpayers - perhaps by providing either a designated space on the tax return or guidance in instructions as to the appropriate mechanism - to identify on their tax return the total amount of expenses disallowed as a result of being paid through PPP loan forgiveness. This would enable taxpayers and others to translate reported taxable income to economic reality.

Many third parties use the tax returns for lending purposes. Taxpayers use tax returns for financial analysis and comparison of expenses from year to year. Depending on how the nondeductible expenses will be reflected on the tax return, the tax return may not accurately reflect the amount of business expenses. For example, if each expense is reduced by the amount of expenses paid by the PPP loan, the expenses listed on the tax return will be distorted. If the nondeductible expenses were reported as one amount on the tax return, third parties and taxpayers could easily see the impact of PPP. The expenses listed on the tax return would be representative of actual costs. Insurance companies, banks, and state taxing authorities use tax return information when determining premiums, interest rates and state tax assessments. The IRS may also use the tax return information for data analytics, audit selection or matching the payroll expense deduction to payroll tax returns filed. This suggestion will reduce the burden of taxpayers and others in analyzing tax return data.

Economic Impact Payment Eligibility

The IRS has issued numerous FAQs regarding Economic Impact Payments (EIPs) pursuant to the CARES Act. However, taxpayers could benefit from additional guidance to address questions such as:

1. Regarding payments to deceased individuals, how should receipt be determined for an Automated Clearing House (ACH) deposit versus a payment issued by mail?
2. Will the spouse of an individual who dies in 2020 who files a married filing jointly (MFJ) return for tax year 2020 be eligible for the full \$2,400 EIP assuming they meet the income threshold requirements?
3. Is an individual who is incarcerated in 2020 but no longer incarcerated in 2021 eligible for an EIP if they file a tax year 2020 return?
4. Under what, if any, circumstances should EIPs be returned to the IRS?



Commissioner Rettig
August 19, 2020
Page Six

Notices to Taxpayers Pending Processing of Correspondence

Many taxpayers are filing their returns electronically with balances due. In some cases, the taxpayer may have sent in the balance due shortly after filing the return while others waited until July 15, 2020 to make the payment. IRS sent notices to taxpayers requesting payment of the balance even though the payment had already been made or was scheduled to be paid by the due date. Some taxpayers were sending in duplicate payments based on the notice. The IRS was including an insert indicating the due date was July 15, 2020. Taxpayers may not read inserts. The taxpayer has no acknowledgement that the IRS received the correspondence. The IRS has not been able to process the mail for some time due to staffing reductions. We encourage the IRS to review the process of sending notices while correspondence has not been processed.

Conclusion

The IRSAC appreciates your consideration of the items above and commends your support of the IRS community as well the taxpayer and the tax professional communities. We are available to assist you with questions regarding the above or any other issues surrounding the Families First Act and the CARES Act.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Erbsen'.

Diana L. Erbsen
Chair, IRSAC

Appendix C

IRSAC Comment Regarding Notice 2020-43 Relating to Tax Capital Reporting



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August 3, 2020

Internal Revenue Service
CC:PA: LPD (Notice 2020-43)
Room 5207
P. O. Box 7604
Ben Franklin Station
Washington, DC 22044

The IRSAC appreciates the opportunity to provide comments on Notice 2020-43 *Tax Capital Reporting-Notice Requesting Comments (the Notice)*.

Background

The Notice is intended to provide a consistent framework for all partnerships to comply with the tax capital account requirement and to reduce complexity of preparing partnership tax returns. The Notice allows two methods of calculating partner tax capital accounts: the Modified Outside Basis Method and the Modified Previously Taxed Capital Method. These methods are described in detail in the Notice. The proposal is for these changes to be effective for tax years ending on or after December 31, 2020. The Notice also eliminates the reporting of tax capital accounts using the Transactional Approach. Below, we provide feedback with regard to the Notice, including those topics with regard to which comments were specifically requested.

Whether the methods used to satisfy the Tax Capital Reporting Requirement described in section iii of the Notice should be modified or adopted:

Small Partnerships

Using either of the two methods provided in the Notice will add complexity to preparing tax returns rather than simplifying the preparation of partnership tax returns. For many small partnerships, this added complexity will be exceptionally burdensome given their limited resources.

With regard to the Modified Outside Basis Method, a partnership will now be required to obtain information from the partners if there has been a transaction outside the partnership such as basis changes in acquired interest or inheritance. Partners may be reluctant to share the basis in the acquired interest or the inherited interest. The Notice allows the partnership to rely on the partner basis information provided by the partners to avoid penalties on providing incomplete or inaccurate information. We appreciate this relief. However, even with a partnership making every effort to comply, no matter how administratively burdensome, not all partners will comply with the requirement to provide the information to accurately report the tax capital account using the Modified



Outside Basis Method, which would result in the partnership not accurately reporting the tax capital account, which would frustrate the stated purpose of the Notice.

If the Modified Previously Taxed Capital Method is selected the partnership will have to make an annual calculation of the tax capital account assuming the partnership liquidated which will increase the cost of compliance with the provision and likely not be realistic for small partnerships.

Many small partnerships will find these methods administratively extraordinarily burdensome and costly to implement due to their limited resources. We believe that relief for small partnerships should be considered in the form of an exemption for small businesses to comply with the tax capital account reporting requirements (once a partnership no longer meets the definition of a small partnership, the partnership would be required to report the tax capital account). There is precedent for allowing an exemption from reporting tax capital accounts. Indeed, the Form 1065 Frequently Asked Questions (FAQ) Question 7 provides relief from reporting negative tax capital accounts for small partnerships that meet the following requirements:

- The partnership total receipts for the tax year were less than \$250,000
- The total partnership assets at the end of the year were less than \$1 million
- Schedules K-1 were all furnished to the partners and filed with the return by the due date (including extensions) for the partnership return and
- The partnership is not filing and doesn't have to file Schedule M-3.

In the experience of those members of the IRSAC whose practice provides perspective in this area, the threshold for exemption under FAQ 7 for reporting negative tax capital accounts is too low to capture many small partnerships. Listed below are three alternative options for defining a small partnership eligible for an exemption:

- a. A partnership that meets the gross receipts test of Code Section 448(c) without treating a syndicate as a tax shelter as defined in Code Section 448(c)(3)(C) and 1256(c)(3)(B) (the syndicate provision). The syndicate provision treats as tax shelters, among others – (i) Many real estate entities which are heavily financed and create losses from interest expense and bonus depreciation (ii) Other small businesses that experience operating losses due to the accelerated depreciation methods, including bonus depreciation and (iii) Some start-up businesses. These business partnerships should not automatically be excluded from a small partnership exemption.
- b. A partnership that is not required to file Schedule M-3. Schedule M-3 is required when total assets are \$10 million or more or total receipts are \$35 million or more.
- c. A partnership that has fewer than 25 partners.



Effective Date for Implementation

The current due date is for capital account changes to be made for partnership returns beginning with year-end December 31, 2020. The proposed requirement for partnerships to change the methods available for reporting the tax capital account differs significantly from the current reporting methods and is going to involve a lot of time and effort collecting information to meet the new reporting options. Converting to the Modified Outside Basis Method will require the partnership to contact each partner for the outside basis. Not all partners may respond on the first request and partnerships must follow up with each nonresponding partner. Current business and economic matters due to COVID-19, never seen before or expect to be seen again, have disrupted partners and tax practitioners' operations. The focus has been on 2019 tax compliance, implementing recently enacted legislation, and business operations.

The effective date for reporting tax capital should be delayed. Some options to consider are:

1. Delay the reporting requirement to partnership tax returns beginning with year-end December 31, 2022. This gives the partners and tax practitioners time to meet the administrative task of collecting and reporting the information to the IRS.
2. Require the partnership to report the information for partnerships formed as of a certain date. This option would reduce the compliance burden of reconstructing existing partnership capital accounts. This option is similar to the way the IRS implemented the basis reporting requirements for stock and security transactions.
3. Phase in the tax capital account reporting requirements starting with large partnership for tax year 2022. Other partnerships would be phased in over a subsequent two-year period. A large partnership could be defined as one required to file Schedule M-3 or based on the number of partners in the partnership.

Administrative Issues

The partnership tax return includes a balance sheet that may be prepared using a nontax basis methodology. Currently, Form 1065, Schedule M-2 and the Schedules K-1 capital account balances reconcile to the capital balance on the balance sheet. Changing the Schedule K-1 capital account reporting to tax capital will require the partnership to prepare a reconciliation between the balance sheet and the Schedules K-1 which would change Schedule M-2. By using different methodologies to report the capital account on the various schedules, the result may lead to more reporting errors. The tax return preparer is confident the information reported on the Schedules K-1 is accurate if the capital accounts on the Schedules K-1 reconcile to the balance sheet. This procedure will no longer be available if the Schedules K-1 uses a different reporting methodology for capital.

Partnership capital accounts on the Schedule K-1 start with the ending balance from the prior year. The prior year ending capital account balance may not be the tax capital account which will add confusion.



There is a tremendous amount of information reported on the Schedule K-1 line 20. We encourage the IRS to consider the proposals below to address some of the administrative complexities associated with Tax Capital Reporting:

1. Initial Tax Basis Capital Account Reporting: Allowing partnerships to determine the initial tax basis capital account as of the beginning of the effective date year by converting the balance sheet (which is presumably reported in accordance with Generally Accepted Accounting Principles (GAAP)) to tax basis by adjusting it for tax adjustments reported on Schedule M-1 or Schedule K-1 could facilitate the reporting changes.
2. Supplemental Information Reporting for Tax Capital Accounts. Leaving the capital account procedures in place permit the Schedule K-1 and balance sheet to be reconciled with the use of Schedule M-2 and report the tax capital as:
 - a. supplemental information on the Schedule K-1, adding a code to line 18 to indicate the difference between the balance sheet capital account and the Schedule K-1 capital account,
 - b. use item J of the Schedule K-1 if the information reported there doesn't provide information used by the IRS
 - c. use the space in the bottom right hand portion of the first page of the Schedule K-1 or
 - d. have the Schedule K-1 include a reconciliation of the balance sheet capital account and the Schedule K-1 capital account.
3. Expanding the Schedule K-1 to two pages with specific lines for many items reported on Line 20 would simplify reporting and correspond to the draft Form 1065 Schedule K-3 Partner's Share of Income, Deductions, Credits, etc.-International released on July 8, 2020, which moves many of the international related Schedule K-1 line 20 footnotes to a separate schedule.
4. Guidance should be provided on how to report the beginning capital account on Schedule K-1 when it differs from the ending balance from the prior year. The guidance may be that the beginning balance agrees with the prior year ending balance and a line is added to convert the opening balance to the tax capital balance.
5. Partner Reporting Changes: Having the partner report the initial purchase price or the fair market value of inherited interests on their filed tax return that included the transaction may encourage partners to inform the partnership to allow the partnership to properly use the Modified Outside Basis method.
6. New Basis Form: The 2019 instructions to Form 1065 Schedule K-1 include a worksheet for adjusting the basis of a partner's interest in a partnership. This worksheet could be used as a starting point to create a new form for the partner to calculate basis, which would include reporting the allowable deductible loss, taxable distributions and gain on sale or other disposition of the partnership interest. The form can be similar to Form 6198, At-Risk Limitations. The partner would use the tax capital account using the Transactional Approach provided by the partnership in completing the appropriate parts of the new form. The new basis form and Form 6198 can be linked to improve compliance with partner's obligation to keep track of basis and to properly apply the loss



limitation rules and taxation of distributions. Placing the responsibility on the partner for keeping track of their basis would reduce the burden on the partnership to report transactions that happen outside the partnership. When a taxpayer has an investment in a partnership, this new form would assist the taxpayer with complying with the requirement to report basis. Taxpayers would need to be educated on use of the form. Form 1040 Schedule E Part II includes a note that if a taxpayer reports a loss, receives a distribution, disposes of stock, or receives a loan repayment from an S corporation, the basis computation is required to be attached to the tax return.

Whether the Transactional Approach, or similar method should be permitted for purposes of meeting the Tax Capital Reporting Requirement and, if recommended, what additional guidance would be necessary

We understand many commenters provided reasons not to use the Transactional Approach such as: partnerships may not have the information needed to comply, it would be costly to reconstruct the tax capital accounts using this approach, or that it would consume significant IRS resources to provide detailed guidance on how to modify the Transactional Approach for special situations. However, other commenters indicated many partnerships, including many small partnerships, maintain their capital accounts using the Transactional Approach

Many partnerships currently use the Transactional Approach in calculating tax capital accounts. The administrative burden and the cost of compliance for tax capital account reporting using the Transactional Approach is therefore reduced. Therefore, given that neither of the other methods is without infirmities (such as reliance on partner reporting and the difficulties in addressing transactions outside the partnership), to the extent it is possible to ensure reliability and consistency, it would be advisable to permit use of the Transactional Approach for all partnerships, including publicly traded partnerships. If small partnerships are required to report tax capital accounts, those partnership should have the options to use the Transactional Approach.

Conclusion

We appreciate your consideration of our feedback and welcome the opportunity to discuss these topics further. If you have questions, please contact me or Ben Deneka.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Erbsen'.

Diana L. Erbsen
Chair, IRSAC

Appendix D

IRSAC Letter to Office of Professional Responsibility (OPR) Director Fisk Regarding Circular 230



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September 17, 2020

via email: Sharyn.M.Fisk@IRS.gov
Sharyn Fisk, Director
Office of Professional Responsibility
Internal Revenue Service

Dear OPR Director Fisk:

Thank you for taking the time to meet with us last week. The IRSAC commends you and the Office of Professional Responsibility (OPR) for your renewed effort to update Treasury Department Circular 230, Regulations Governing Practice before the Internal Revenue Service (Circular 230) and appreciates the opportunity to follow up on our previous recommendations in this regard.

The IRSAC continues to endorse its previous recommendations, unless already implemented, and continues to recommend, as it did in its 2016, 2017, and 2018 reports, that Congress provide the IRS with statutory authority to establish and enforce minimum standards of competence for all tax practitioners, including tax return preparers. The IRSAC also wishes to reiterate the following two key recommendations from our 2018 report:

1. Excise old law from Circular 230 (including removing all references to the defunct Registered Tax Return Preparer program) and make other ministerial revisions, add appropriate references to the Annual Filing Season Program and generally clean up the regulations for consistency and readability. In connection with this recommendation, the IRSAC also recommended that the IRS seek specific authority to address these types of updates through Revenue Procedures or other administrative guidance, so that going forward the IRS can keep Circular 230 updated and thereby preserve its credibility, reliability and usefulness.
2. Transition Circular 230 from a rules-based to a principles-based document. Expand OPR's long-running effort to reformulate Circular 230 towards a more principles-based rather than rules-based collection of practice standards, in line with other professional codes of conduct. This effort could build on OPR's similar effort in 2014, which eliminated the detailed covered opinion rules contained in former §10.35, created a principles-based competency standard in new §10.35 and created a new §10.37 reflecting a principles-based standard for rendering written advice. As part of the effort to transition



Director Fisk
September 17, 2020
Page Two

Circular 230 to a principles-based document, the IRS should consider moving Subparts A and D out of Circular 230 (which contain minutely detailed rules governing authority to practice and rules applicable to disciplinary proceedings) and focus on how it describes mandatory versus permissive behavior, insofar as the current version of Circular 230 toggles back and forth between using must/must not, shall/shall not, will/will not and even may/may not.

Finally, we propose that the IRS consider the following changes to Circular 230 which have not been previously addressed by the IRSAC:

1. Replacing the term “tax advisor” in §10.33 with the term “practitioner,” as that is the terminology used throughout the remainder of Circular 230.
2. Modifying §10.22(b) to include a provision indicating that a practitioner will be presumed to have exercised due diligence if the practitioner relies on the work product of a supervisor under certain circumstances.
3. Modifying §10.79 to clarify that OPR retains jurisdiction over practitioners who have been suspended or disbarred.

We appreciate your consideration of our feedback and welcome the opportunity to discuss these topics further. If you have questions, please contact me or Ben Deneka, IRSAC’s Vice-Chair.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Erbsen'.

Diana L. Erbsen
Chair, IRSAC

Appendix E:SB/SE Subgroup Excessive Withholding on Forms 1099

Executive Summary

The Treasury Inspector General for Tax Administration (TIGTA) examined tax withholding appearing on Forms 1099 and identified instances where withholding exceeded the statutory withholding rates. These instances were identified as questionable. To support the response to the TIGTA report,¹⁰¹ the Internal Revenue Service (IRS) requested input from the IRSAC's Small Business/Self Employed (SB/SE) subgroup. Specifically, the IRS inquired as to why withholding might exceed the statutory withholding rate.

Background

Section 3406 of the Internal Revenue Code requires payers to apply backup withholding against certain payments. The IRS can inform the payer that the taxpayer's name and taxpayer identification number (TIN) is incorrect and will require the payer to send a B-Notice to the taxpayer to solicit updated tax information. If the taxpayer fails to comply, the payer is generally required to apply 24% backup withholding against reportable payments. Payers are also generally required to apply 24% backup withholding when the taxpayer furnishes a missing or obviously incorrect name and/or TIN.

Payers may also be required to apply withholding on certain distributions from retirement accounts. In certain cases, the taxpayer can request that the payer withhold an additional amount.

In all cases, withholding on payments to US persons is reported on a Form 1099. The Form 1099 is furnished to the taxpayer and to the IRS.

¹⁰¹ TIGTA Strengthened Validation Controls Are Needed to Protect Against Unauthorized Filing and Input of Fraudulent Information Returns dated September 26, 2019 Reference Number: 2019-40-071

SB/SE Subgroup Observations

During the year, the IRSAC's SB/SE subgroup provided the IRS with ad hoc observations to explain when a payer might report an amount of withholding that exceeds the statutory rate.

Voluntary Withholding

The taxpayer can request that the payer apply an excess amount of withholding (as much as 100%) as a vehicle to maximize withholding (and avoid making estimated tax payments). The voluntary withholding can exceed the statutory withholding rate. Voluntary withholding can be from retirement plan distributions, unemployment compensation, Commodity Credit Corporation (CCC) loans, and certain crop disaster payments.

Operational Processes

For many payers, withholding processes are manual and subject to the risk of error. Payers can incorrectly process payments or erroneously identify accounts as subject to backup withholding. If the errors are identified, then the payer's operational processes may prevent the payer from refunding any excess amounts withheld in error. The amounts must be reported on a Form 1099 and, for certain payments, the amount withheld can exceed the statutory rates.

Voluntary Disclosures and Self-Disclosure

Payers may pursue a voluntary disclosure to report a withholding liability to the IRS or self-disclose a withholding liability on Form 945. (Annual Return of Withheld Federal Income Tax). The withholding reported on the Form 945 should reconcile to the amount of withholding that is reported on Forms 1099. For voluntary disclosures, IRS Revenue Agents may require that the payer file a Form 1099 to report the amount of withholding. The SB/SE subgroup believes that industry practice follows a similar approach when self-disclosing a withholding liability without a voluntary disclosure. In these situations, reporting the withholding

on the Form 1099 can result in the amount of withholding exceeding the statutory rate.

Summary

The above highlights valid reasons for why an excessive amount of withholding is reported on a Form 1099. The SB/SE subgroup does not believe there are widespread instances of fraud that contribute to the reporting of excess amounts of withholding.

The SB/SE subgroup appreciated the opportunity to provide real-time input. The subgroup looks forward to future opportunities to engage with the IRS and to provide real-time feedback.

Appendix F: W&I Subgroup Employer Tax Credit

The IRSAC Wage & Investment subgroup, on an August 18, 2020 conference call, offered real-time feedback on the Family First Coronavirus Response Act (FFCRA) and Coronavirus Aid, Relief, and Economic Security (CARES) Act employer tax credits.¹⁰²

These credits are reflected and recognized on Form 941 and/or the new Form 7200. The intention of the credits is to 1) quickly provide employers liquidity, 2) assist with the cost of the newly mandated sick and family leave credits, 3) subsidize the costs of retaining employees on the payroll, and 4) provide health plan benefits to employees when the employees are not providing services. For both large and small employers, the complexity is compiling the data to calculate the credit to be recognized on Forms 941 and/or Form 7200. Employers are further challenged when they use third-party payroll processors, which require submission of payroll data up to three weeks before the due date of Form 941. Because of these complexities and challenges, many employers cannot accurately quantify eligible credits and timely reduce employment tax deposits and reflect the credits on Form 941. Therefore, many credit-eligible employers have filed their 2020 Q2 Form 941 without recognizing the credits and will need to amend their 2020 Q2 Form 941. Amendments to Form 941 are completed on Form 941-X. As of August 18, 2020 (the date of our call), the 941-X had not been revised to reflect adjustments for the CARES Act and FFCRA credits.

The IRSAC, noting that many large employers were struggling with compliance issues, proposed and discussed 1) Treasury/the IRS providing guidance to employers on how to correct previously-filed Forms 941 (that omitted the FRCRA/CARES Act credits), 2) Allow, if Form 941-X cannot be timely revised, employers to file Form 941 with “CORRECTED” as a header on the return (The corrected Form 941 would supersede the previously-filed 941), 3) Allow employers to submit Form 941-X (if timely revised) or the corrected/superseding Form 941

¹⁰² <https://www.irs.gov/newsroom/covid-19-related-tax-credits-general-information-faqs>,
<https://www.irs.gov/newsroom/covid-19-related-tax-credits-how-to-claim-the-credits-faqs>

via fax (The IRS published a fax number, 855-248-0552, for submitting Form 7200 on their Instructions for Form 7200 webpage last updated April 1, 2020).

The IRSAC noted that 1) employers using third-party payroll providers have a short window to submit payroll data, 2) employers with non-essential employees are eligible for substantial credits they should be able to recognize on Form 941, 3) there was no mechanism for employers to show the credits on Form 941 and Form 941-X had not been changed to allow the credits to be reflected. Employers would have cash flow and accounting/financial statement complexity – with uncertainty about when they could expect the refunds from the credits and when they could book them for financial statement reporting. The IRS would have an additional burden with processing large numbers of 941-X returns.

The IRS shared with the IRSAC their challenges implementing the new law, including the more complex processing pipeline for Form 941-X, the backlog of business and individual returns they face during the pandemic, service center protocols, coordinating between W & I and SB/SE, and the struggle they face coordinating the many “moving parts” involved with the new legislation. At the time of the call, the IRS reported daily conversations on these issues.

The IRSAC noted the success large employers had with the IRS large corporation tax technical groups that serve as a dedicated point of contact to process tax returns and handle other compliance issues. The employer requests, and the case is assigned to a specific IRS employee. Could this work for large employers with 941-X returns? Many employers did not claim the credit on their 2nd quarter returns and will be using Form 941-X. When the third-party payroll providers must prepare amended/manual tax returns, their resources are also strained. Form 941 processing and filing is electronic; Form 941-X still involves manual processing and filing on paper.

Updates (as of October 6, 2020): The IRS published an article addressing the second quarter Form 941-X.¹⁰³ The IRS published draft form 941 and instructions on September 30, 2020.¹⁰⁴ The IRS published draft Form 941-X on October 2, 2020.¹⁰⁵

¹⁰³ <https://www.irs.gov/forms-pubs/information-about-filing-form-941-x-for-2020-2nd-quarter>

¹⁰⁴ <https://www.irs.gov/pub/irs-dft/i941--dft.pdf>, <https://www.irs.gov/pub/irs-dft/f941--dft.pdf>

¹⁰⁵ <https://www.irs.gov/pub/irs-dft/f941x--dft.pdf>