2008 Information Reporting Program Advisory Committee Index

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

EXECUTIVE SUMMARY

Executive Summary and Recommendations Submitted from the Chair of IRPAC

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

The primary purpose of the IRPAC is to provide a public forum for the IRS and members of the information reporting community in the private sector to discuss relevant information reporting issues. This year, the IRS increased the number of members from 22 to 34. The additional 12 new members are on a three year term to work directly with the Office of Professional Responsibility (OPR). The remaining members of IRPAC have worked closely with the IRS to provide advice and industry experience on a wide variety of issues intended to improve the Information Reporting Program and achieve fair and equitable treatment of all taxpayers.

In addition to the new OPR sub-group, the IRPAC was restructured this year into four functional subgroups that focused on specific reporting issues. This allowed for issues to be discussed across operating divisions. The four new subgroups are: Burden Reduction, which looks at new tax forms as well as updated forms and their instructions with a keen eye toward reducing burden on the taxpayer, the tax form provider and the IRS; Emerging Compliance Issues, which reviews new and pending legislation and regulations from a usability standpoint; Modernization, which keeps a close watch on technological advancements; and Ad hoc, which addresses some very specialized aspects of the tax code, i.e. Pensions, Barter Associations. Each of these subgroups had carryover items as well as new items that were discussed throughout the year.

The IRPAC met four times in Washington, DC prior to the public meeting on October 29, 2008 to discuss, review and make recommendations on their items. Details of these items may be found later in this report under the respective subgroup headings. I would like to provide an overview of three (3) specific items that the IRPAC feels were of top priority for 2008. However, the order below is not prioritized.

The first item comes from our OPR subgroup.

The Office of Professional Responsibility (OPR) requested that the OPR subgroup review and provide comments on a penalty grid that OPR developed to indicate the range of sanctions that could be applied to non-filing and non-paying conduct by Circular 230 practitioners. The following recommendation is offered:

- Consider eliminating the existing grid in favor of providing guidance in the form of hypothetical's that address different types of conduct potentially subject to Circular 230 sanctions. If the penalty grid is maintained, the OPR subgroup has additional recommendations. Please refer to the full report under OPR for those recommendations.

The second item comes from our Emerging Compliance Issues Subgroup.

IRPAC requests written guidance on whether Treas. Reg. § 31.3406(d)-1(b)(2)(iv)(A) requires an acquiring payer to re-solicit taxpayer identification numbers ("TIN") from each affected account holder when it acquires accounts from a third-party payer who has been making reportable payments subject to the Form W-9 certification requirements. On May 28, 2008, the IRPAC submitted this item for consideration and

inclusion on the 2008-2009 Guidance Priority List (see appendix). The following recommendation is offered:

- A certified TIN should not be required to be re-solicited by the acquiring payer rather the selling payer provides the acquiring payer written notification of all pre-1984 accounts and their corresponding TINs, and all post-1983 accounts and corresponding TINs. Please refer to the full report for additional considerations with respect to the B and C Notices process.

The third item comes from our Modernization Subgroup.

The IRPAC Modernization Subgroup continued to focus on the concept of masking the Taxpayer Identification Number (TIN) on information returns, carrying forward this issue from the 2007 IRPAC Final Report. On May 28, 2008, the IRPAC submitted this item for consideration and inclusion on the 2008-2009 Guidance Priority List (see appendix. The following recommendation is offered:

- Work with tax filers, state agencies and practitioners to develop guidance to allow filers to display some form of masking TIN's on Forms 1099, 1098, 5498 and W-2 sent to the recipient. IRPAC would be pleased to remain in consultation with PIPDS to help them prioritize any other forms that could be placed under this guidance.

I encourage you to review each of our full subcommittee reports and recommendations.

In closing, I would like to express my sincere gratitude to the employees of the Office of National Public Liaison (NPL) where The IRPAC program has resided for the past eight years. The administrative support provided by NPL is vital to the continued success of the committee. The IRPAC members wish to

recognize the excellent service and support received from all the members of NPL, in spite of some of the changes we experienced in critical personnel. Without their help and coordination in setting agendas and finding the right people for us to meet, we could not have made the progress we have made this year.

Finally, I want to thank each one of my Committee members. They have generously taken time from their jobs, their practices, their lives and families to help improve our tax system. Their enthusiasm, openness, understanding and flexibility in a year of change have made our year successful. Thank you for your dedication and much success for the future years.

Respectfully submitted,

/s/ Karen Botvin

Karen Botvin

2008 Chair of IRPAC

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

Modernization Subgroup Report

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ISSUES

A. System Enhancements to FIRE (Filing Information Returns Electronically)

Discussion

The IRPAC Modernization Subgroup continued to focus on Electronic Tax Administration, including items carried forward from the 2007 IRPAC Final Report and new initiatives identified by both IRS and IRPAC.

Several years ago IRS looked into the advisability of folding a number of electronic capabilities (with recommended enhancements) into a conceptual clearinghouse. The Service commissioned an outside consulting firm to explore this concept in depth and develop cost figures for various configurations and scenarios, one of which was enhancing the FIRE System's capabilities and making it part of the clearinghouse concept. After consideration of the consultants' cost findings, no action was taken by the Service.

In April, the IRPAC Modernization Subgroup met with Jim Weaver and Arleen Rogers, both of ETA, for an update on the clearinghouse concept. At that briefing, the subgroup learned that there was little if any ETA attention being given to the clearinghouse concept, that there was no internal "champion" to support the proposal and, most significantly, there was no business proposal in the modernization budget to support these efforts over the next several years. A required first step for the budget process would be a business proposal; the subgroup was encouraged to draft a business proposal.

In August the subgroup had two teleconferences, the first with ETA Director David Williams and members of his staff and the second with Melanie Mose of the Martinsburg Computing Center staff. The subgroup learned from these briefings that the clearinghouse concept was no longer a viable project and no funding had been provided for further development or evolution over the next 4 – 5 yearly budget cycles. The subgroup also learned similarly that there are no enhancements to the FIRE System planned for the next 5 years. The only changes planned are year-to-year compliance updates such as phasing out obsolete processes and magnetic cartridge use.

As a result of these meetings, the Modernization Subgroup believes the current FIRE System requires enhancements to maintain effectiveness in supporting users in the near term.

Recommendation

IRPAC is encouraged by the attention given to Electronic Tax Administration. We support the "four pillars" strategy covered by Mr. Williams in his briefing. We believe that the Customer Account Data Engine (CADE), Account Management System (AMS), Modernized Efile (MeF) and Data Strategy will benefit IRS and all of the key stakeholders. We appreciate the attention despite the reduction in resources and the retirement of some key individuals.

Following are the key enhancements we recommend; the FIRE System should:

1) **Support Two-way Communications**. The current FIRE System only supports one-way delivery of information reports, from filers to IRS. The

current system lets the payer community transmit reports but provides minimal acknowledgement information confirming receipt of the filing. The filing community strongly urges IRS to deliver other notices and correspondence electronically. Examples of other correspondence are B (CP2100) and C (penalty) notices.

The filing community strongly supports two-way electronic communication of information. By eliminating paper notices, the payer community reduces the cost of processing them. The electronic transmission of these notices will improve compliance and improve service to their customers (taxpayers). Compliance will be improved by the ability to resolve issues earlier in the error resolution process. Customer service will be improved by eliminating delays in paper notice processing and potential penalty avoidance.

Providing two-way electronic communication of notices will reduce costs for B and C notices produced on paper and the costs of creating notices via CD and mailing them to payers, as is done now for larger organizations. Two-way communications will also eliminate the cost of recreating lost paper notices. Additionally, two-way communication would help eliminate delayed processing from lost or misdirected notices that go to the current corporate address on file as a result of the Service's single address on file for a taxpayer system. This issue occurs primarily in large corporations where tax or payroll processing may be in a different location than accounts payable or securities processing.

Often, closed businesses and loss of information hamper IRS collection activity. IRS will be able to deliver B and C notices much earlier electronically than by using the current process. By delivering and resolving issues earlier, IRS will be able to resolve and collect more effectively thereby increasing collection.

2) **Enhance Transmission Validation.** Filers currently transmit information reports and only receive an acknowledgement that the filing was received with a status saying that it was acceptable or unacceptable. The ability for IRS to perform upfront validation would eliminate the need for many downstream error correction processes.

   Providing upfront validation of reports allows payers to resolve issues prior to back-end processing. The timeliness of error resolution will reduce costs associated with later error resolution processes.

   Providing upfront validation of information reporting filings will reduce IRS error resolution costs associated with simple validations that currently require human intervention.

3) **Support Unattended Transmission.** The current FIRE System uses a web interface that allows for a simple transfer of a single filing. This interface requires a human to interact to perform filing functions. This is an effective method for filers with few transactions. This interface is not effective for large transmitters filing on behalf of many payers. Current technology allows software programs to perform direct communication without requiring direct user interaction with a given system. Those

updated methods also provide a higher degree of security based on the availability of tools.

Providing automated computer-to-computer transmissions and supporting the current data strategy will reduce IRS costs incurred based on the support of varying standards and subsequently with supporting the large transmitters.

4) **Replace the current file format to support the Service-wide Data Strategy**. The current system relies on an outdated file format understood only by IRS legacy systems. More modern formats such as XML provide for extensibility (ability to use and understand the data beyond the current year). State taxing agencies are also in the process of adopting XML as a filing format. Those agencies will begin to expect these updates as IRS's data strategy is implemented.

   By supporting widely-accepted modern formats and processes that are used by other tax agencies, payers will reduce the cost of development related to supporting outdated formats. The extensibility of more modern formats also will reduce the cost of management and retrieval of data in the future. Extensibility provides more effective use of data by clearly defining the information that is included in the filing.

B. Taxpayer Identification Number (TIN) Masking

Discussion

The IRPAC Modernization Subgroup continued to focus on the concept of masking the Taxpayer Identification Number (TIN) on information returns,

carrying forward this issue from the 2007 IRPAC Final Report. Filers are required to send statements to payees showing name, address and Social Security Number (SSN). The payee statements are mailed in an envelope with the legend "Important Tax Document Enclosed." This combination is an invitation to identity theft, an issue of great concern to the Service and both payers and payees. Last year IRPAC recommended that IRS continue to study the concept of masking TINs on information returns. Based on additional discussions with the Service during 2008, IRPAC is recommending the Service permit filers to mask the TIN in a format to be determined by the Service.

In an effort to combat the rising problem of identity theft, masking the recipient's TIN on all information returns sent to payees would be a pro-active measure toward enhancing taxpayer privacy and thwarting identity theft. We continue to believe this proposal will satisfy all purposes of information reporting with no harm to IRS processing or the filing of tax returns, and will greatly benefit both taxpayers and the Service by reducing the likelihood of identity theft.

IRPAC met with Director Deborah Wolf and Deputy Director Rich Phillips from the Privacy, Information Protection and Data Security (PIPDS) Office this year and learned that PIPDS has taken the lead on several projects that identify the use of TINs as part of efforts to reduce the overall use of these numbers on IRS correspondence. Rich Phillips has been reviewing all uses of SSNs with the goal of reducing such use Service-wide and assessing downstream effects of doing so. Deborah Wolf said the IRPAC recommendation would be a project among many in PIPDS and would welcome prioritization help from IRPAC.

IRPAC also learned that the Service has started masking TINs (by using only the last four TIN digits) on several types of correspondence. The recommendation to allow payers to mask TINs on information returns mailed to recipients would complement current PIPDS efforts in this direction. Implementation of this measure is fully supported by Director Wolf who agreed to take ownership of this recommendation and implementation measures.

IRC Section 6109 (a) (1) requires provision of identifying numbers ***when required by the Secretary*** (emphasis added). For this purpose, for individuals the identifying number is the individual's SSN. Subsection (d) further states that the SSN shall be used "except as shall otherwise be specified under regulations." The consensus of the IRPAC Modernization Subgroup is that since the use of an identifying number is left to the Secretary, IRS could deem use of the last four digits to meet the requirement in Section 6109 through issuance of guidance by IRS and, further, that no legislative changes are needed. (Forms sent to the IRS in the form of electronic filings, will have the complete TIN). Rich Phillips added that Submission Processing (W&I) and the Social Security Administration should be consulted on this item. Mr. Phillips also indicated the need to identify who in the Office of Chief Counsel would have the lead on this in an effort to confirm whether a regulation change by the Treasury is required. Additionally, Mr. Phillips thought that Chief Counsel may want to solicit public input through a Federal Register announcement of a comment period. Lastly, Mr. Phillips again confirmed that all federal agencies are under an OMB directive to reduce, to the

degree possible, use of personal identifying information such as SSNs and this recommendation would go a long way toward the goal for the IRS.

Recommendation

Our recommendation is that the IRS develops guidance to allow filers to not display the entire 9 digit TIN on Forms 1099, 1098, 5498 and W-2 sent to the recipient. In order to move forward with this recommendation, IRPAC suggests the Service take the following actions:

1) Work with the Social Security Administration, tax filers, state agencies and practitioners to come to agreed upon masking criteria.
2) Involve state agencies to understand the impact to their processes if the employee's SSN is masked on information reporting tax returns
3) Start to formulate outreach programs and media materials to fully inform the public of their responsibilities with respect to their SSNs and ensuring its accuracy in their tax filings.
4) Continue to look at other additional and alternative ways to assist with ramifications of identity theft and how the Service may be able to be more effective in combating the issue.
5) Work with IRPAC in a consultative role with PIPDI to help prioritize any other forms that could be placed under this guidance.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

OFFICE OF PROFESSIONAL RESPONSIBILITY SUBGROUP REPORT

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A. Allegation Letter

Discussion

OPR requested our comments and recommendations on their current allegation letter. OPR has an existing letter it uses to inform practitioners that allegations have been made regarding conduct violations under specific sections of Circular 230. The subgroup members provided suggestions in the form of editorial revisions and comments about the letter. The most significant changes suggested included: Rename the letter to "Notice of Potential Disciplinary Action" to make its purpose clear and unequivocal; and stress the ramifications for failure to respond.

Recommendation

Revise the Allegation Letter to clarify its intent and to make it more understandable.

Appendix

1. OPR original Allegation Letter
2. Subgroup proposed revisions and suggestions

B. Offer to Consent Letter

Discussion

OPR requested the subgroup's comments and recommendations on their current pro forma settlement letter called "Offer to Consent". OPR currently has a single pro forma letter which it uses after a practitioner has agreed to a resolution of his/her case by accepting specific charges, terms and conditions,

and discipline. The letter is intended to be addressed to OPR from the practitioner as an offer to consent to specific charges, terms and conditions, and discipline which OPR can then "accept". The subgroup proposed substantial revisions to the existing pro forma to provide clarity and focus for the letter's purpose.

Recommendation

Clarify the Offer to Consent Letter and consider adding additional letter templates to make the language and format appropriate for the level of sanction being offered. Creating additional templates will make the letters more comprehensible and workable for both staff and the public and just might avoid some of the "boilerplate" errors that a one-size-fits-all letters produce.

Censure should be a one-time reprimand occurrence, not stated as a period of time. This could alleviate problems associated with the same language for all three letters. It also demonstrates the need to treat the three discipline levels differently.

Consider adding private censure to the Letter as a separate and distinct form of sanction to allow OPR to send the equivalent of a "warning" letter to someone whose conduct does not currently justify and public discipline. The statute does not appear to prevent this approach and OPR already uses this form of "discipline".

Remove the minimum terms for removal from practice stated in the template.

Appendix

1. OPR original Offer to Consent Letter
2. Subgroup's proposed revisions and additional comments

C. Hypothetical Situations

Discussion

OPR requested our comments and recommendations regarding how to better communicate with practitioners OPR's interpretation of Circular 230, the related sanctions, and mitigating or aggravating factors.

Recommendation

Develop and publish hypothetical situations describing Circular 230 violations, possible mitigating factors and potential sanction ranges.

Appendix

1) Examples of Hypotheticals
    a) Appraisal Hypothetical
    b) Bond Counsel Circular 230 Hypotheticals
    c) Non-Compliance Hypothetical
2) Cover letters
    a) Cover Letter Example 1
    b) Cover Letter Example 2

D. "Soft" Letter or Warning Letter

Discussion

The subgroup was asked to develop a letter to be used by OPR to communicate to practitioners who were referred to OPR, but whose conduct did

not warrant further investigation or discipline. The subgroup drafted a form of "soft" letter for consideration by OPR. The contents of the letter should refer to specifics of the conduct alleged, the practitioner's opportunity to provide a defensive response, and OPR's retention policy which the subgroup recommends OPR adopt. The subgroup further recommends that the "soft" letter, and any defensive response, be maintained in the same file for the requisite statutory retention period. The contents of the "soft" letter make it clear that OPR is not obliged to respond to any defensive response received from the practitioner.

Recommendation

Use the letter to put the practitioner on notice that allegations have been received by OPR, the type of conduct alleged, and corrective measures which should be taken to avoid future referrals, while also advising the practitioner that disciplinary action will not be taken with respect to the current conduct.

Appendix

1. Subgroup's proposed text for the "Soft" letter

E. OPR Section of Internal Revenue Manual ("IRM")

Discussion

At the time of our report, OPR was in the process of drafting its section of the IRM. We asked for the opportunity to review it as it becomes available. Because this is the first effort by OPR to document in the IRM its policies and procedures in connection with the administration of Circular 230, the subgroup

believes it is important for interested practitioners to have an opportunity to provide feedback and input before the OPR manual sections are finalized. As a result of the changes to the definition of who is a tax return preparer, what constitutes a return, and increases in the preparer penalties, the subgroup anticipates an increase in disciplinary referrals to OPR. Consequently, we feel that private practitioner input to the IRM provisions will enhance the ultimate product.

Recommendation

Provide draft sections of the IRM to the IRPAC subgroup for review and comment as they become available, and before release to the public.

F. Penalty Grid

Discussion

OPR developed a penalty grid to indicate the range of sanctions to be applied to non-filing and non-paying conduct by Circular 230 practitioners, and provided a copy to the subgroup for comment. The proposed penalty grid does not allow for proper consideration of mitigating circumstances. The subgroup is concerned that including minimum sanctions within the grid may interfere with the proper analysis of mitigating factors and result in the mechanical application of sanctions. Any guidelines developed should address mitigating factors, including examples, in greater detail. The weight and effect of mitigating and aggravating factors on sanctions needs to be further developed and clarified.

Sanctions should be applied based on the specific facts and circumstances of each situation. Therefore, the subgroup believes a grid will be inappropriate guidance in many cases. The subgroup also believes it is not feasible or desirable to develop grids for other areas of misconduct that are heavily dependent on specific facts and circumstances. As a result, the subgroup believes the grid should be used, if at all, only for the conduct currently identified in it.

The stacking/compounding of sanctions should occur only as a response to aggravating factors.

The subgroup believes OPR should consider adding a grace period after notification of a non-compliance violation to allow for corrective actions before imposing sanctions.

OPR should consider emphasizing in the narrative to the grid that the purpose of the criteria for discipline is to encourage compliance and corrective action, rather than punishment. In addition, OPR should define these terms as used in the narrative discussion of the grid: “clear”, “convincing”, and “preponderance”.

Recommendation

Consider eliminating the existing grid in favor of providing guidance in the form of hypotheticals that address different types of conduct potentially subject to Circular 230 sanctions. If the penalty grid is maintained, then consider:

- Using the penalty grid only for failure to file and failure to pay violations.

- Eliminating minimum sanctions from the grid.
- Avoiding stacking sanctions in a mechanical application of the grid.

G. Office of Professional Responsibility – Public Relations

Discussion

OPR requested our input, comments, and recommendations regarding how to enhance their profile in the practitioner community. Informal surveys revealed that far too many tax practitioners had limited knowledge of OPR, its responsibilities, and of Circular 230 (other than the Section 10.35 disclaimer). As such, any public relations campaign must first be a grassroots effort focusing on the basics.

Recommendation

We recommend that OPR enhance its profile in the practitioner community through outreach, education, and other public relations type initiatives. See the attached document in the Appendix for a summary of our ideas and comments.

Appendix

1. OPR Public Relations document

H. ALJ Recommendations

Discussion

The subgroup was asked by OPR to consider the viability of OPR having its own Administrative Law Judges (“ALJ”) to hear contested disciplinary cases. Currently OPR uses ALJs that are assigned out of a common pool. Most

recently they have come from the NLRB. However, the NLRB has advised OPR that its ALJs will not renew their contract to hear OPR disciplinary cases. Treasury is authorized to, but has not established its own ALJ pool. Whether the anticipated increase in contested disciplinary cases is sufficient to justify a recommendation that Treasury retain one or more ALJs dedicated to hearing Circular 230 cases is something the subgroup needs to study and consider.

Recommendations

This project can be addressed more efficiently and effectively if the subgroup addresses it as a priority item for the 2009 year.

I. Section 10.38 Advisory Committee

Discussion

Currently, OPR's advisory committee functions as an IRPAC subgroup. Pursuant to Circular 230, Section 10.38, in order to promote and maintain the public's confidence in tax advisors, the Director of the Office of Professional Responsibility has been authorized to establish one or more advisory committees composed of at least five individuals authorized to practice before the Internal Revenue Service. The Director is to ensure that membership of an advisory committee is balanced among those who practice as attorneys, accountants, and enrolled agents. Under procedures prescribed by the Director, an advisory committee may review and make general recommendations regarding professional standards or best practices for tax advisors, including whether hypothetical conduct would give rise to a violation of Sections 10.35 or 10.36.

The nature and context of the Circular 230 issues and the relationship between OPR and tax practitioners is more conducive to a separate group rather than the current IRPAC subgroup arrangement.

Recommendation

We recommend OPR establish its own advisory group as provided by Circular 230, Section 10.38.

J. Decline in Enrolled Agents

Discussion

OPR expressed concern over the drop in special enrollment exams registrations. They asked us to make inquiries regarding this decline and other related issues.

The format of the Special Enrollment Exam (SEE) was changed in 2007 when the Office of Professional Responsibility (OPR) chose an outside firm, Prometric, to administer the new three-part online examination.

Under the new format, it has been difficult to determine if the rate of SEE passers has increased, decreased or remained the same. Further complicating the issue, OPR was not able to maintain statistics on the passing rate for the SEE prior to 2007.

The subgroup plans to solicit information from organizations and companies offering SEE preparation courses to determine if a trend is evident to them.

Recommendation

No recommendation at this time. This project can be addressed more thoroughly after obtaining available statistics on the Special Enrollment Exam ("SEE") passers and feedback from organizations and companies offering SEE preparation courses.

K. Look Up Feature

Discussion

Our subgroup was asked to solicit reactions and ideas from our respective organizations regarding the addition of a look up or listing feature on the OPR website for the benefit of the IRS and for public access to the status of enrolled agents licensed by OPR.

OPR explained their employees need to have quick access to information on EAs as well as all Circular 230 practitioners. The public also makes regular inquiries as to whether a preparer is an EA, and is in good standing with OPR.

Since EAs are the only Circular 230 preparers who are not licensed or regulated by the states, at the present time the only way for taxpayers and IRS employees to check on an EA practitioner is to call OPR. Our Committee's suggestion is to establish a "look up" feature on the OPR portion of the IRS website where everyone may easily obtain information without using OPR personnel time.

The committee solicited anecdotal responses from their respective professional organization regarding the pros and cons of establishing such a resource which has resulted in the current recommendation.

Recommendation

The subgroup received the following feedback:

1. Any website look-up feature should contain minimal practice information and should include all enrolled agents' ("EA") names and their status, i.e., good standing or discipline.

2. The look-up feature should contain a statement that OPR does not endorse any tax preparer, and that the listing is designed to assist the public in determining the status of practitioners licensed by OPR.

3. Attorneys and CPAs have federal and state bar associations and the State Boards of Accountancy who maintain an updated listing of their respective licensed members. EAs are not licensed by the states; they are authorized to practice before the IRS pursuant to Circular 230, Section 10.40. Thus, the public does not have the same access to status or listing of EAs.

Any website for OPR should contain the following:

1. Description of the purpose of the look up listing.
2. Description of all types of practitioners regulated by OPR.
3. Public access to choose the practitioner best suited for their needs.

4. A statement that IRS does not endorse any professional group or practitioner.

The solicitation process was conducted within the Subgroup and with various associations the members were affiliated with. We are an eleven-member committee representing eleven different professional organizations.

The following questions were used to solicit responses from the various professional organizations:

1. Should IRS make a listing of enrolled agents available to the public?
2. List the pros to making an EA listing public.
3. List the cons to making an EA listing public.
4. Suggestions for type of information IRS should make public.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

AD HOC SUBGROUP REPORT

JAMES DRIVER
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ISSUES

A. Barter Exchange Back-up Withholding & B-Notice Requirements

Discussion

Barter Exchanges are defined as third-party record keepers under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and as such are subject to Form 1099-B reporting and subsequent B-Notice solicitations for non-matching TINs. The B-Notice which states, the payer will back-up withhold, makes an assertion that is impossible for Barter Exchanges to comply with since they do not control any cash for their client members. In its 2007 Public Report IRPAC made three recommendations regarding this issue:

1) The IRS should educate the Barter Industry through outreach programs to effectively reduce 972CG penalties.
2) The B-Notice should be amended to provide language more pertinent to the Barter Industry's inability to comply with back-up withholding.
3) Barter Exchanges should be exempt from back-up withholding requirements.

In 2008 the IRS concluded that recommendations 2 and 3 above would require legislative changes which are outside the scope of the operating division's authority. As a result, the Ad Hoc Subgroup of IRPAC looked at creative new approaches to address the barter back-up withholding issue.

Recommendation

A) Revise Publication 1281, Backup Withholding for Missing and Incorrect Name/TINs

B) Change the text of the IRS.GOV website Topic 420 called Bartering and to the "Barter Exchange" section.

C) Study the procedures relating to Non-Matching TIN Penalties being assessed without Letter 972CG, Notice of Proposed Civil Penalty, to determine if a pattern exists where 972CG penalty notices are not being sent after the CP2100, Backup Withholding "B" Notice Report, letters are sent.

Ad Hoc Chairman, Ron Whitney was asked to advise Barter Exchanges to provide links on their websites to www.irs.gov after the new website enhancements discussed herein have been implemented.

The Ad Hoc Subgroup will continue to encourage the IRS to initiate and/or expand partnerships with the Barter Industry to include links on Industry websites that direct members to the enhanced www.irs.gov content pertinent to Barter Exchanges.

B. Simplifying Employer Tax Compliance for Non Resident Alien Scholars

Discussion

There is confusion over the complexity of reporting and withholding of non-resident aliens, specifically as it covers non-resident alien teachers on J-1 visas. Assuming teachers are covered for FICA either under a Section 218

Agreement or by Mandatory FICA laws, an educational employer struggles with the complexity of determining proper withholding and reporting.

When discussing a non-student exchange visitor we are generally talking about professors, research scholars, alien physicians, government visitors, camp counselors, Au Pair and Edu-Care Workers, teachers, and international visitors. "J" Visa holders must work in accordance with the rules of the exchange program through which the visa is issued.

There are treaties with over sixty countries. Seventy-five percent of the treaties have specific articles on teachers and researchers. Form DS-2019 with a "Teacher/Professor" indicator may qualify them for treaty benefits if other conditions of the article are satisfied. Generally, treaty articles allow for a 2 year (Fiscal Year, not calendar year) tax exemption. If the initial visit exceeds 2 years, the benefit is not available. If the visit is extended, the benefit is not lost, but it only applies to the first two years.

The employer is hampered by several issues. One is the obvious complexity of the laws and regulations. Another is the potential change of status that could occur with an individual. Additionally, an employer could be confused by the various treaties (which change periodically) but also are at the mercy of non resident aliens who might be tempted to "treaty shop." In sum, the employer is challenged unnecessarily to confidently apply the correct reporting and tax withholding.

Recommendation

The Ad Hoc subgroup recommended that a “decision tree” web link be made available that would allow educational entities such as universities and school board districts (as well as State Agencies) to follow a decision making process that would lead them to the correct tax withholding of income for a Non-Resident Alien Scholar. Since Tax Treaties can not be substantively changed or altered, either quickly or easily, this recommendation works within existing laws to enhance compliance in an easy to use format.

The IRS LMSB lead for this project is Lowell Hancock. Mr. Hancock believes that a decision tree can be provided and he is working on having one designed by late October of 2008. Depending on actual implementation date, this issue may be a carry over item to 2009 (though at this time it is not anticipated to be so). The addition of this tool on the web site will assist employers to easily navigate a complex issue to ensure there is compliance with Non-Resident Alien Scholars.

C. 1099 Reporting for Entities Not Subject to Income Tax

Discussion

Individual Retirement Accounts and similar accounts such as Archer Medical Savings Accounts and Heath Savings Accounts ("Tax Exempt Accounts") are generally not subject to income tax on earnings that accrue or are paid to such accounts. As a result, payers who are otherwise subject to Form 1099 reporting are not required to issue Forms 1099 to Tax Exempt Accounts.

The current versions of the instructions for 1099 reporting are not consistent in describing the Tax Exempt Accounts that are exempt from 1099 reporting. For example, the 2008 version of the instructions for Form 1099-DIV state that 1099 reporting is not required for "payments made to certain payees including a corporation, tax-exempt organization, any IRA, U.S. agency, state, the District of Columbia, U.S. possession, or registered securities or commodities dealer." Missing from the description of entities exempt from 1099 reporting are Heath Savings Accounts, Medical Savings Accounts, and Coverdell Educational Savings Accounts. Similar omissions are present in the 2008 version of the instructions for Forms 1099-INT and 1099-OID, 1099-MISC, 1099-PATR, and 1099-B.

The omission of the 1099 instructions to exempt all Tax Exempt Accounts from 1099 reporting results in a burden to the Service and taxpayers as many payers may issue 1099 forms where such forms are not necessary in order to avoid any possible failure to file penalties. In addition, some Committee members have indicated that 1099 reporting for Tax Exempt Accounts may result in over reporting of income on Form 1040 as the Payees listed on the 1099s for these accounts will include an individual taxpayer's name.

When the Service was informed of this issue, it began an immediate review of all 1099 instructions to determine which instructions failed to list all Tax Exempt Accounts as exempt from 1099 reporting.

Recommendation

The Ad Hoc subgroup recommended clarification of the instructions to the aforementioned 1099 forms by inserting the missing Tax Exempt Accounts which should result in the filing of fewer unnecessary 1099 forms and may also help prevent the over reporting of income.

The Service has indicated that the 2009 instructions for Forms 1099-DIV, 1099-INT and 1099-OID, 1099-MISC, 1099-PATR, and 1099-B will list all Tax Exempt Accounts as exempt from 1099 reporting.

D. Disaster Relief Reporting Guidance as Applied to IRAs

Discussion

The disaster relief reporting instructions found in 'Specific Instructions for Form 5498' state that special reporting instructions may apply to individual Presidentially Declared Disaster areas. Also stated is how to find the location of and any special reporting rules applicable to a Presidentially Declared Disaster area. However, no specific guidance is provided.

Unless otherwise limited, affected taxpayer contributions may be postponed as specified under IRC section 7508A, Treasury Regulation section 301.7508A and Revenue Procedure 2007-56 due to presidentially declared disaster or a terroristic or military action.

IRA contributions normally due by April 15 for a prior tax year may be made through the period of postponement as described by the IRS in a news release, notice, revenue ruling, revenue procedure, announcement, or other guidance published in the Internal Revenue Bulletin. Such contributions may be

deposited after the deadline for Form 5498 reporting. To our knowledge, the IRS has provided guidance for affected taxpayers, but has not provided custodians/trustees/issuers of IRAs with reporting guidance for postponed annual tax year contributions.

Recommendation

The Ad Hoc subgroup asked the Service to provide specific and standardized reporting instructions for postponed annual tax year contributions to IRAs (traditional and Roth). The new instructions for disaster reporting have been drafted and are scheduled to be added to the 2009 'Specific Instructions for Form 5498'.

E. Requested Clarification to Form 1099-R Reporting Instructions for IRA Distributions

Discussion

The reporting instructions for 1099R Box 2a. *Taxable Amount* and Box 2b. *Taxable Amount not Determined* with respect to traditional and SEP IRA Distributions lack clarity and appear conflicting which results in different Form1099-R reporting results by IRA custodians/trustees/issuers. Excerpts from the reporting instructions reveal the conflict.

> **Box 2a states**: "Generally, you must enter the taxable amount in box 2a. However, if you are unable to reasonably obtain the data to compute the taxable amount, leave this box blank."; "Traditional IRA or SEP IRA. Generally you are not required to compute the taxable amount of a traditional IRA or SEP IRA nor designate whether any part of a distribution is a return of basis attributable to nondeductible contributions. Therefore, report the total amount distributed from a traditional IRA or SEP IRA in box

2a. This will be the same amount reported in box 1. Check the "Taxable amount not determined" box in box 2b."

Box 2b states: "Enter an "X" in this box only if you are unable to reasonably obtain the data to compute the taxable amount. If you check this box, leave box 2a blank. Except for IRAs, make every effort to compute the taxable amount."

Recommendation

The Ad Hoc subgroup requested the IRS clarify the Form 1099-R reporting instructions for Boxes 2a and 2b without recommending specific completion instructions, and since clarity is the issue, have the IRS determine how the future instructions will be written.

F. Requested Clarification to Reporting Instructions on HSAs

Discussion

One clarification issue was raised on each of the HSA reporting documents, Form 1099-SA and Form 5498-SA.

First, regarding Form 1099-SA the instructions for Box 4. *FMV on Date of Death* state to enter the FMV of the account on the date of death. This instruction is adequate when there is one nonspouse beneficiary upon death because this is the amount included in income. The quandary in the reporting community is how to complete this box if there are multiple death beneficiaries. Is the total FMV on the date of death shown on each beneficiary's Form 1099-SA as the instructions indicate or should each beneficiary's share of the FMV be shown? Each beneficiary's share appears to be the needed information for both a beneficiary's tax records as well as the IRS.

Second, on Form 5498-SA the instructions for Box 2. *Total Contributions Made in 2008* has confused some in the HSA reporting community. The confusion involves whether amounts reported in other boxes (and specifically Box 4. *Rollover Contributions*) are included with the amounts ordinarily reported in this box which consist of regular tax year type contributions.

Recommendation

The Ad Hoc subgroup has recommended that since each beneficiary's share appears to be the needed information for both a beneficiary's tax records as well as the Service, that the instructions for Form 1099-SA, Box 4 be modified accordingly. Also recommended was, at a minimum, clarification that Form 5498-SA Box 2 instructions state Box 4 rollover amounts are not included.

G. Rollovers and Direct Rollovers of Required Minimum Distributions are Occurring during Years Employee Retires or becomes Age 70 1/2

Discussion

Required minimum distributions (RMD) of plan participants from qualified employer plans are not eligible for rollover or direct rollover to an IRA or other eligible retirement plan and there are many IRS sources to find this information. However, some plan administrators have an understanding that this rule does not apply until the last day a plan participant must take his/her RMD; which is April 1 following the year the participant turns age 70 ½ or retires, if later. There does not appear to be information published addressing this rule from a first year perspective.

If the rule is ignored and the plan administrator/trustee sends assets (including the RMD) to an IRA by direct rollover; beyond the issue of a plan failing to operate according to its terms, causes other reporting problems. The IRA custodian/trustee/issuer upon learning of the ineligible rollover is required to modify its rollover reporting and report the RMD amount as a regular tax year contribution on behalf of the participant. If the amount was directly rolled over to a traditional IRA, which is most common, this individual who is age 70 ½ or older is not eligible to make a regular contribution and thus it turns into an excess contribution that must be removed within a certain time frame to avoid a 6% penalty.

Recommendation

The Ad Hoc subgroup requested that this information be presented in writing by the IRS and be utilized as a future reference to aid in prevention.

The IRS published a question and answer in the IRS's spring edition of Retirement News for Employers (RNE) to address the issue. Following the Publication, the Ad Hoc subgroup requested that an additional issue be addressed and volunteered to write the document. The answer was published in the summer 2008 edition of Retirement News for Employers:

> **We're Glad You Asked!**
> Each issue of the *RNE* looks at a common question we receive and provides an answer and additional resources in response to the question. **One of our retired 401(k) plan participants turned 70½ in 2008 and must begin taking his required minimum distributions (RMDs) by April 1, 2009. During 2008 he requested that his entire plan account balance be sent to his IRA by direct rollover and assured us that he**

will take his RMD by April, 1, 2009. As plan administrator, can we send his entire account balance to the IRA?

No. Assuming the retired plan participant has not already taken his RMD for the first required distribution year (2008 in this example), any amounts distributed from the plan in 2008 are deemed to be the RMD for that year until an amount sufficient to satisfy that year's RMD has been distributed. An RMD is not eligible for rollover, either by 60-day rollover or by direct rollover. After you have calculated and distributed this participant's 2008 RMD, his remaining account balance can be rolled over in 2008 to his IRA. The plan trustee issues two Forms 1099-R:

- one for the RMD amount paid to the plan participant, and
- a second for the direct rollover paid to the IRA.

A plan participant still employed who does not own more than 5% of the employer may delay taking RMDs until April 1 following the year of retirement, in which case, the same rule as explained above applies: RMDs must first be distributed and are ineligible for rollover to an IRA or to any other eligible retirement plan.

H. Reporting Guidelines for an IRA Beneficiary of a Beneficiary in the Participant Name Field on Form 5498

Discussion

Reporting instructions for inherited IRAs currently address the account title as being the beneficiary of the deceased IRA owner as beneficiary of the deceased IRA owner. For instance, "Brian Willow as beneficiary of Joan Maple" where Joan is the original IRA owner and Brian is her beneficiary. These reporting instructions are found in Specific Instructions for Form 5498 and are supported by the 1989 Revenue Procedure 89-52. Additionally recent guidance on account titling is found in Notices 2007-7 and 2008-30 with respect to

beneficiaries of deceased plan participants following rollover to inherited traditional and Roth IRAs respectively.

A beneficiary of an IRA frequently designates a successor beneficiary(s) to receive distributions over a remaining period dictated by regulations. This beneficiary of a beneficiary phenomenon and the IRA holding these assets is often times referred to as a 'stretch' IRA.

TE/GE stated that the current guidance does not address the titling issue for Form 5498 reporting and indicated the Service must determine what information it wants to collect with respect to these 'stretch' IRAs before providing guidance and reporting instructions. Two issues for consideration include: 1) there is an 80 character limit for the electronic reporting field; and 2) in addition to naming the current beneficiary responsible for taking distribution, is the original decedent's name necessary, or is the preceding beneficiary's name necessary, or are all preceding beneficiary names necessary, or is only the name of the party on which the distribution period is based necessary, or some other combination of these parties?

Recommendation

IRPAC will carryover this issue for resolution in 2009. The reporting community will report on these accounts without uniformity in the meantime.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

BURDEN REDUCTION SUBGROUP REPORT

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Information Reporting Program Advisory Committee
Burden Reduction Subgroup

The goal of this subgroup is to minimize the time and effort placed on taxpayers when filing tax returns without compromising IRS tax administration objectives. We selected projects based on input from the National Taxpayer Advocate (NTA), the IRS and various sponsorship organizations. For example, we address in Issue E the NTA's concern about simplifying IRS forms, instructions and publications on cancellation of debt income since such use is expected to increase with the current economic downturn.[1] Also, we met with representatives from the IRS Taxpayer Burden Reduction Office sponsored by the Small Business/Self-Employed (SB/SE) division which is working on new forms and instructions to streamline payroll reporting requirements. These forms include Forms 944, 941X and 2678 (Issues A, B and C). Further, we have responded to various taxpayer communities such as the nonprofit community that must file the redesigned Form 990 (Issue I).

The issues are organized by the four operating divisions of the IRS: SB/SE, Wage and Investment (W&I), Tax Exempt and Government Entities (TEGE) and Large and Mid-Size Business (LMSB).

ISSUES

A. Form 944 Reporting (SB/SE)

Discussion

This subgroup asked to review Form 944 reporting with the Program Manager to gain clarity on the current status and direction of the IRS program for small employers to file an annual Form 944. The W&I subgroup had made

[1] Executive Summary of the National Taxpayer Advocate's 2007 Annual Report to Congress page I-2, #2.

several suggestions in the 2007 public report and we wanted to understand the results of any that were adopted by the Service. The 944 program started in 2006 with temporary regulations, which expire in December 2008. We, additionally wanted to give continued input to the Service on the unintended burdens caused by the program.

This subgroup met with the IRS Program Manager for Form 944, via teleconference on March 6, 2008. The IRS shared data regarding the success of the program to reduce burden to, and impact on IRS.

- The employers in the 944 program, as a whole, were generally compliant tax payers,
- The percentages using EFTPS as a method of payment were high,
- The number of taxpayers filing the required return was higher than among Form 941 filers,
- IRS burden reduction statistics from first filing year show
    - 645,000 employers were included in initial identification extract, but 50% were found not to be active accounts,
    - 300,000 plus actual active filers were identified in final analysis,
    - 1,300,000 returns were filed in 2005 for these identified taxpayers,
    - 305,000 Forms 944 were actually filed for tax year 2006,
    - IRS estimated that there was a combined total of 2 million hours of burden reduced by the 944 program.

Although there was a clear reduction in the burden to taxpayers and the Service with the inception of the Form 944 program, there were known issues with the

program as well. Most of the issues fell into three major categories: taxpayer confusion, increased IRS notice generation and IRS's extract criteria used to determine Form 944 filers.

In September 2007, the IRS decided to extend the program for one more year to gain further data on the burden reduction efforts. The IRS planned to further study the impact on the employment community by doing a survey to understand the confusion with the program. IRS reported that 12% of taxpayers continued to file Form 941 repeatedly, even after receiving an IRS notice stating that they had been identified as a Form 944 filer. The IRS changed the extract criteria when selecting which employers to include in the program. Selection of Form 944 filers was reduced from 379,000 in 2007 to only 242,000 for 2008 by applying more conservative criteria parameters. There were additional clarifications made of the requirements for Form 944 filing, including functionality for the IRS to code a permanent opt-out notation to a taxpayer account.

Recommendations

- Make the 944 program voluntary instead of mandatory, which IRS is considering
- Increase publication of the requirement clarifications made by IRS, including wording in Publication 15 and the instructions for Form 944
- Allow new businesses to file Form 941 for the first two years of operation until a full look-back period is established
- Clarify the instructions for Form SS-4, Application for Employer Identification Number, to address an online application process regarding

the question in box 14, “Do you expect your employment tax liability to be $1000 or less in a full calendar year?” (A Yes answer indicates that the taxpayer will be determined to be a Form 944 filer.)

- Provide an alternative mechanism for bulk filing of Form 944 electronically (other than XML) that is similar to the way the Social Security Administration allows online preparation and submission of Forms W-2, Wage and Tax Statement.

B. Form 941X (SB/SE)

Discussion

The IRS Burden Reduction Office has been working on a project to develop an alternative to Form 941-C, Supporting Statement to Correct Information. The IRS realized that the process of correcting employment taxes needed improvement because of the number of errors when preparing and processing which resulted in the generation of notices of discrepancy, all adding to burden for both taxpayers and the Service. This subgroup wanted to review the final drafts for the form and instructions to analyze the ease of use and understanding of the new form, instructions and process.

The new Form 941X, Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund, is a stand-alone correction form similar to the Form 1040X with line by line correlation to the original return. The IRS plans to develop additional specific amended returns for other employment returns such as Forms 944, 943, 945 and CT-1. The Form 941 and other forms in the series, will also

be revised to remove the previous prior period adjustment lines that are no longer needed.

The instructions for Form 941X have been greatly expanded with examples and plain language explanations. The overall burden reduction impact of the new improved form and process will allow employers to make tax adjustments easily and quickly rather than waiting to report the adjustment on the next return filed. The IRS expects to benefit from a reduction in processing time for corrections by receiving accurate and complete information initially, rather than through generating multiple correspondence or notices to taxpayers. By mirroring the amendment process used for personal income tax reporting (Form 1040) the IRS should realize burden reduction because taxpayers and preparers will more easily understand the process.

We applaud the IRS efforts to reduce the burden to taxpayers with the new form and process. Because of the release of various vision drafts and the involvement of many industry focus groups conducted by IRS in the development of the new Form 941X, we did not have any substantive comments or recommendations for changes to the form or instructions.

Recommendation

- We recommend that the final version of the 941X and all other adjustment forms be released at least 6 months prior to the tax year for which they must be used to allow for programming and process changes.
- We recommend that the IRS release the new XML scheme as soon as possible.

C. Form 2678 and Schedule R (SB/SE)

Discussion

This subgroup reviewed Form 2678 and a draft of proposed new schedule R (941) as a result of unanswered questions from the work done last year by the W&I subgroup. We continue to have concerns as to how the IRS intends to capture the information needed to achieve compliance and to identify agents who act as the employer. In 2005, the IRS Taxpayer Burden Reduction Office created a task force to study the use of Employer/Payer Appointment of Agent (Form 2678). In the study, it was determined that this form was not being used to its full potential.

This subgroup was told that Chief Counsel would be working on regulations and outreach plans. The main reasons given by the IRS for the new Schedule R and clarifications for Form 2678 were twofold: safety of client funds when there is a failure of a Designated Agent and a more formal identification of those groups acting as an appointed agent, but unknown to the Service (for example, agents in the home health care field). Taxpayer protection from third-party failures was one of the key points made in the National Taxpayer Advocate Report for 2007 under legislative recommendations. TIGTA released a report (Reference Number 2007-30-169) on September 19, 2007 recommending that the IRS explore all options, including use of the revised Form 2678, requiring that this form list clients, and to ensure that outreach programs are available to inform taxpayers of potential risks.

Reporting Agents (RAs) use Form 8655 as the authorization form, and RAs are governed by Revenue Procedure 2007-38. Reporting Agents pay and

file employment taxes under the employer identification numbers of the client or employer. Form 2678 is used for the appointment of an agent who uses his or her own employer identification number to file and pay aggregate Form 941 employment taxes. Agents under the Form 2678 are governed by Revenue Procedure 70-6 and Notice 2003-70 (state and local government agents). Agents appointed by use of Form 2678 are allowed to aggregate Forms 941, but not Forms 940 as described in IRS Code Section 3504. Currently, Professional Employer Organizations (PEOs) are not required to use Form 2678; and as such, would not be subject to the additional reporting.

The IRS has decided to delay until tax year 2010 the original release of Schedule R (941) due to updated thinking on related filing of Form 940. In 2008, 23,000 notices were sent to home health care employers erroneously asking for individual Forms 941 after their individual Form 940 filings were posted. The Service is now working on a change to the requirements for agents subject to Form 2678 to make both Forms 941 and 940 consistent. They are developing Schedules R for Forms 941 and 940 to properly recognize and separately allocate the employment tax liabilities of the individual employers being reported by such agents.

Recommendations:

- Increase publication for acting as a Designated Agent under Form 2678, and specifically when Form 2678 must be executed.
- Make Schedules R for Forms 941 and 940 mandatory for all Form 2678 agents.

- Develop a matching program with Forms 2678 and these Schedules R.
- Study the effect of aggregate Form 940 filings and state unemployment tax certifications and matching programs.
- Release draft forms and instructions by mid-2008 to allow time for programming requirements for forms and related processing if effective date will be January 1, 2010.
- Work with industry groups to determine the impact of such changes and establish a voluntary program to include PEOs in a similar reporting requirement, but consistent with other variable conditions unique to that industry (i.e. insurance and benefit plans).

D. Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(s) (SB/SE)

Discussion

Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(s), includes over thirty frequently asked questions. It is the experience of many financial institutions that the IRS service centers reference Publication 1281 in their responses to penalty abatement requests related to Notice 972CG, Notice of Proposed Civil Penalty. One FAQ answer does not accurately reflect the applicable Treasury regulations. As a result, financial institutions must spend additional time corresponding with IRS to receive penalty abatement under the reasonable cause regulations. In addition, this subgroup has begun discussions with the IRS regarding a second FAQ related to closed accounts.

Publication 1281 FAQ number 6: ”Is a payee an exempt corporation if it uses the term ‘Company’ or ‘Co.’ in its name?” is answered as ”A payer cannot treat a payee as an exempt organization merely because the business name contains the word ‘Company’ or ‘Co.’ A payer can only treat the payee as exempt if it certifies it is exempt on Form W-9, Request for Taxpayer Identification Number and Certification.”

IRS Regulations Section 1.6049-4(c)(1)(ii)(A) provides that a payer may treat a payee as a corporation (and therefore as an exempt recipient) if one of the requirements of paragraph (c)(1)(ii)(A)(1), (2), (3) or (4) of Section 1.6049-4 are met before a payment is made.

An entity whose name contains the word “Company” or “Co” will not meet the first requirement that the name of the payee contain an unambiguous expression of corporate status unless the name contains the term insurance company, indemnity company, reinsurance company or assurance company. Requirement (1) is also met if the entity’s name indicates that it is an entity listed as a per se corporation under Section 301.7701-2(b)(8)(i). In addition, such an entity could be treated as a corporation under requirement (2) if the payer has on file a corporate resolution or similar document clearly indicating corporate status; requirement (3) if the payer receives a Form W-9 which includes an EIN and a statement from the payee that it is a domestic corporation, or requirement (4) if the payer receives a withholding certificate described in Section 1.1441-1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

Publication 1281 FAQ number 25: “If I don’t do business anymore with a payee, or if it was only a one-time transaction, what should I do with the B Notice?” is answered as ”Send it and try to get the correct TIN. Also, note your records to track the notice for the “two-in-three” rule. You will need this information if you should renew business with the payee. We require that you track these accounts for three years after the date of the first CP2100A or CP2100 Notice.”

If a customer’s account is closed and non-reportable in the year that a financial institution receives the CP2100, listing of missing, incorrect, and/or not currently issued TIN(s), there is no benefit in soliciting the TIN. The financial institution is not paying income on the account and therefore has no avenue to backup withhold when the former customer fails to respond. In addition, because there is no current reporting to the IRS, this name/TIN mismatch will not be reflected on future CP2100s.

The Burden Reduction Subgroup has begun discussions about this issue with SB/SE.

Recommendation

Change the answer to Publication 1281 FAQ number 6 to include all of the requirements under which a payer may treat an entity, whose name contains the word “Company” or “Co”, as an exempt recipient corporation. SBSE agrees with this recommendation and has taken steps to include the change in Publication 1281 set to be released September 30, 2008.

This subgroup will continue to discuss the solicitation of TINs for non-reportable closed accounts with the appropriate IRS personnel in 2009.

E. Form 1099-C, Cancellation of Debt (W&I)

Discussion

The National Taxpayer Advocate's 2007 Annual Report to Congress includes "Tax Consequences of Cancellation of Debt Income" as one of the most serious problems encountered by taxpayers. It recommends several steps that the IRS should take related to cancellation of debt. This subgroup provided feedback on several of the NTA's recommendations.

Accordingly, IRPAC addressed two recommendations specific to Form 1099-C, Cancellation of Debt, made to ease the burden of already distressed debtors who are attempting to understand the information reported and its affect on their taxable income. These recommendations are that issuers provide contact information and an indication of recourse versus non-recourse debt on Form 1099-C. Further, IRPAC held discussions on promulgating a comprehensive publication that specifically addresses the tax consequences of canceled debt.

Form 1099-C Changes

The IRS currently requires the telephone number of a contact person on numerous Forms 1099 and 1098. This number must provide direct access to an individual who can answer questions about the statement. This subgroup concurs that the reporting of a contact telephone number on Form 1099-C would be beneficial to the taxpayer. However, inclusion of a specific individual's phone

number on Form 1099-C may be burdensome to financial entities. Many financial institutions centralize Form 1099-C reporting but the responsibility for the loan relationship could be housed in many areas, (e.g., consumer loans, commercial loans, credit cards or mortgages).

Further, the IRS should consider requiring issuers of Form 1099-C to indicate whether debt forgiveness relates to a recourse loan or non-recourse loan similar to Form 1099-A, Acquisition or Abandonment of Secured Property. The Form 1099-A currently indicates recourse versus non-recourse debt in box 5 with the question, "Was borrower personally liable for repayment of the debt?" Providing this information on Form 1099-C would not be overly burdensome and avoids any confusion to the debtors regarding the use of the terms recourse and non-recourse.

Comprehensive Publication

The debtor instructions on Form 1099-C directs taxpayers to seven different forms and publications to obtain additional information on various canceled debt scenarios. This unnecessarily burdens those taxpayers and practitioners who are attempting to properly calculate the amount of canceled debt includable in income.

This subgroup believes that taxpayers and practitioners would benefit greatly if the IRS developed a single comprehensive canceled debt publication. Ideally the publication would be enhanced to include numerous examples to assist taxpayers with the complex canceled debt concepts. In addition, this publication should explain to the debtor the lender's requirements related to the

reporting of fair market value and canceled debt. This explanation would assist debtors in better understanding the amounts provided on Form 1099-C, which are an integral part of any reportable canceled debt calculation.

Form 1099-C directs a debtor to Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness, if canceled debt is excluded from income during insolvency. Form 982 provides a reference to Publication 908, Bankruptcy Tax Guide. Both sources simply state that a taxpayer is insolvent to the extent that their liabilities exceed the fair market value of their assets immediately before the debt discharge without explanation of the most common types of assets and liabilities or insolvency calculation examples.

Recommendations

Form 1099-C Changes

This subgroup recommends that when a phone number requirement is added to Form 1099-C that the filer, financial institutions in many cases, be allowed the option to provide a central customer service phone number rather than a specific individual phone number. This option would minimize the burden on large filers with centralized Form 1099-C reporting. W&I agrees that a central customer service phone number is acceptable on Form 1099-C. In addition, it encourages financial institutions that use a central number to establish procedures to assure that recipients of Form 1099-C are able to readily contact the applicable loan department. W&I will change the 2009 Form 1099-C and instructions to require issuer phone numbers. Issuers will have the option of

providing either a specific individual phone number or a central customer service number.

Moreover, this subgroup discussed the option of including a recourse versus non-recourse debt checkbox on Form 1099-C and the need to provide an explanation of these terms in the Form 1099-A and 1099-C instructions and the instructions for borrowers on the back of Form 1099-C. For example, if you are personally liable for a debt (recourse debt) or if you are not personally liable for a debt (non-recourse debt). It was concluded that a box on Form 1099-C, "Was borrower personally liable for repayment of the debt?" would be the least confusing way to address the Taxpayer Advocate's concerns related to recourse versus non-recourse debt.

With these changes to the forms we believe it is critical that the IRS provide sufficient lead time for financial institutions to make system and procedural changes. In most cases, it is difficult for a bank to capture new reportable information retroactively. It can also take a fair amount of lead time to implement system changes for prospective form changes. We recommend that if these form changes are made for 2008 the payer community should be notified as soon as possible. In addition, no penalties should be imposed for the 2008 filings if the institution makes a good faith effort to comply but is unable to.

Comprehensive Publication

This subgroup supports the Taxpayer Advocate's view that a comprehensive canceled debt publication, and additional guidance and examples related to insolvency would be beneficial to taxpayers and practitioners. The

IRS, working with the Taxpayer Advocate Office, has released Publication 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments for use in preparing 2007 returns. Updates to Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness, have not been released but remain an IRS priority. IRPAC will review the canceled debt publication and related updates to forms and provide feedback to the IRS if needed enhancements are identified.

F. Forms 5498, 5498-ESA and 5498-SA (W&I)

Discussion

Information reporting on Forms 5498, IRA Contribution; 5498-ESA, Coverdell Education Savings Account Contribution and 5498-SA, Health Savings Account, Archer MSA, or Medicare Advantage MSA Information is inconsistent in two areas.

Filing Dates

Participants in IRAs, ESAs and HSA/MSAs are permitted to make prior year contributions from January 1st to April 15th of the subsequent year (e.g., contributions in 2008 for the 2007 tax year). Forms 5498 and 5498-SA are due to the participant by May 31st of the subsequent year. This due date allows trustees ample time to process contributions received through April 15th and to prepare information returns by the May 31st deadline. Form 5498-ESA, however, is due to the participant by April 30th. The accelerated due date burdens the trustee by requiring processing of the Form 5498- ESA contributions and preparation of the information returns in a very short timeframe. A due date change for Form 5498-ESA to May 31st would provide trustees additional

processing time and allow them to consolidate the processing of all Form 5498 participant statements.

Filing Requirements

The instructions for Forms 5498 and 5498-SA are inconsistent on reporting of the FMV and subsequent information return filings. Form 5498 instructions state that trustees must provide participants with a statement of the December 31st value of their account by January 31st of the subsequent year. If there are no reportable contributions for the year, another statement (or Form 5498) is not required to report zero contributions as long as the January statement contains a legend designating which information is being furnished to the Service.

Form 5498-SA instructions state that trustees may, but are not required to, provide participants with a statement of the December 31st value of their account by January 31st of the subsequent year. However, there is no option to eliminate the Form 5498-SA filing if there are no reportable contributions for the year.

Recommendation

Filing Dates

This subgroup and IRS W&I representatives discussed the recommended due date change for participant Form 5498-ESA. The IRS explained that a change to the participant Form 5498-ESA due date would burden the taxpayer responsible for the minor's ESA account. Coverdell ESAs have an annual contribution limit of $2,000 for each designated beneficiary, however, there is no limit to the number of persons who can make contributions to the ESA. Excess

contributions and related earnings that are not distributed by June 1st of the subsequent year are subject to a 6% excise tax. A due date of May 31st for participant regarding Forms 5498-ESA does not allow sufficient time to determine and withdraw excess contributions and earnings. This subgroup agrees that the due date for the participant of Form 5498-ESA can not be extended as long as the excess contributions and related earnings are required to be distributed by June 1st.

Filing Requirements

This subgroup recommends that the January statement of account value for Form 5498-SA remain optional. However, if a trustee chooses to file the January statement and there are no reportable contributions for the year, the trustee should be given the option to eliminate the Form 5498-SA filing. If the trustee chooses to follow this procedure, the January statement must include a legend designating which information is being furnished to the IRS. W&I agrees that the inconsistency between Forms 5498 and 5498-SA should be corrected and will include this change with the release of the 2009 forms and instructions.

G. IRS 63C Letter (W&I)

Discussion

The purpose of the IRS 63C Letter is to inform an employer or payer that a taxpayer contacted the IRS stating that they received income from the employer or payer but either did not receive Form W-2 or Form 1099-R or received an incorrect form. The 63C letter instructs the employer or payer to determine the correct Form W-2 or Form 1099-R and forward it to the taxpayer within 10 days.

An increasing number of financial institutions have received the 63C letter citing other Forms (1098 or 1099) or referencing Form W-2 or 1099-Rs for entities that do not issue them; for example, a mortgage company that only files Form 1098s receives notice about Form 1099-R. This subgroup asked the IRS the following questions related to the 63C letter:

1. Many times a financial institution receives the IRS 63C letter without having received any direct contact from the customer. When the customer calls the IRS are they asked if they have contacted the payer? Direct communication between the customer and the financial institution would result in a faster response than the issuance of the IRS 63C letter.

2. If the customer address on the IRS 63C letter is not the same address the bank has on file, then the bank is being asked to send confidential information (i. e., Form 1099) to an address they do not know is correct. Typically, the financial institution would send a letter to the customer requesting address confirmation before mailing the information requested in the 63C letter. This process may take more than 10 days. If the bank mails the address confirmation request within 10 days does this avoid the $50 penalty referenced in the 63C letter?

3. Can the IRS share the guidelines for issuing the 63C letter so that Financial Institutions have a better understanding of the process?

Recommendations

W&I provided the following responses to these questions:

1. IRS representatives are instructed to refer callers back to their financial institution to obtain missing or corrected Forms 1099. Representatives advise the taxpayer if they are unable to obtain the information they should file their returns estimating payments received and Federal income tax withheld.

2. According to the IRS, the taxpayer's address information is systemically inserted into the 63C letter from the taxpayer's IRS address of record. Customer Service Representatives (CSRs) are required to perform disclosure and validate that the taxpayer is authorized to receive information which includes asking the taxpayer for their current address. If the taxpayer's address is incorrect, the CSR is required to take action to correct the address.

3. The 63C letter states "FAILURE TO PROVIDE THIS INFORMATION COULD RESULT IN A $50 PENALTY." The 10-day timeframe is not included in this statement. The information should be supplied in the 10-day timeframe, if possible.

4. IRM procedures are very clear that employees should not reference any forms other than Forms W-2 or 1099-R in the 63C letter. IRS states that the problem occurs because there are open paragraphs on the 63C letter (paragraphs D & E) where employees could insert any

form reference. However, the IRM states that the 63C letter is to be used for Forms W-2 and 1099-R only. The IRS recently revised the 63C letter to remove any references to Form 1098 and changed all Form 1099 references to Form 1099-R. In addition, the IRS is investigating whether they can restrict paragraph D and E open form fields to Forms W-2 and 1099-R and whether they can change the name of the letter to only show Forms W-2 and 1099-R.

These changes to the 63C letter would facilitate a more efficient process for payers and taxpayers.

H. W&I Issue: Proposed Form W-4 NR (Income Withholding for Non-Resident Aliens)

Discussion

The IRS asked us to review reporting requirements for Non-Resident (NR) employees, specifically working immigrants. In reviewing the issue it became obvious that employees classified as non-resident aliens (NR), have a wide and confusing range of instructions, forms and publications to follow to correctly complete Form W-4. Traditional manual and electronic on-boarding processes do not accommodate for these exceptions by supplying the various withholding instructions referenced at the top of the Form W-4. Without proper instruction and documentation, NR employees are likely to incorrectly complete Form W-4. This burdensome documentation can unintentionally lead to noncompliance through underwithholding. The challenge then is:

1. Providing adequate information and documentation to educate

employers on determining which employees qualify as NR.

2. Providing non-burdensome instructions to employees to ensure proper Form W-4 completion.

Publication 15 provides employers with the details needed to properly process NRs. However, documentation for employees needs to be concise, convenient and easy to follow. At present, an NR employee is instructed to go from the Form W-4 to the instructions for the Form 8233 (Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Non-resident Alien Individual). The instructions for this form are completely unrelated to the completion of Form W-4. Further, guidance for completion of Form W-4 is not provided until page 2 of the instructions. This placement increases the likelihood of noncompliance.

From Form 8233: Instructions on the top section describe when you must use the Form W-4 instead of Form 8233.

From Instructions for Form 8233: Page 2 of the instructions details the way non-resident aliens should complete the Form W-4 on lines 2 through 6.

To make this process the least burdensome, the instructions for these two forms could be consolidated onto one form entitled the Form W-4 NR. The reference on the top of the standard Form W-4 should direct non-resident aliens to the Form W-4 NR instead of the 8233. The decision tree in the instructions for Form 8233 could also be included on the Form W-4 NR directing ineligible users

to Form 8233 instead. The non-resident alien instructions referenced by the Form W-4 included in the Form 8233 instruction booklet could be removed and placed with the Form W-4 NR.

The form itself would look exactly like the Form W-4 in lines 1 and 2. Line 3 would include only a single filing status with a short description of the reason. Line 4 stays the same. Line 5 would have a check box certifying that the individual is a non-resident alien as defined in the attached instructions to the form. Line 6 is still valid, but line 7 would be deleted. The same jurat statement can be included.

The new form designed specifically for this type of taxpayer will ensure that the proper filing status is reported to the employer for payroll purposes. It also consolidates instructions to reduce confusion and burden to the employee. The employer will then be more likely to withhold properly at the time of the paycheck. Without this change, too many employees in this filing status will complete the standard Form W-4 incorrectly causing an underwithheld situation. Because NRs can be in the United States only temporarily, correct withholding at the source will reduce the need for overseas collection. This can also lead to a potential reduction to the tax gap through increased compliance at the source.

An alternative suggestion that does not involve creation of a new form would be to create a specific separate instruction document for those in the non-resident alien status that would be referenced in the Form W-4 instructions. This document could have a decision tree very similar to what exists on Form 8233.

Then, if the NR needs to complete the Form 8233, the document would instruct the reader to go there and its instructions would contain only information relating to that form. If the individual truly needed to complete the Form W-4, all relevant instructions would be included in that document in one location. This would increase the level of compliance with employees who would no longer need to reference irrelevant documents for assistance.

Recommendations

Create a new Form W-4 NR that is specifically designed for the Non-Resident alien status. Reference to the new form can be placed on the existing Form W-4 where the instructions are currently located for NRs. The new form will contain all instructions that are currently housed in multiple locations that are not related to this form.

An alternative would be to enhance current Form W-4 to more easily accommodate the NR status. This could be done through development of a specific instruction document for the NR employee or through better placement of the existing instructions through the use of an index in the existing Form 8233 instructions.

IRPAC will carry over this issue for resolution in 2009. The American Payroll Association (APA) will continue to survey its members to solicit comments on this proposed form. APA will also seek statistical evidence of the total numbers of this type of employee in the U. S.

workplace.

I. Redesigned Form 990, Return of Organization Exempt From Income Tax (TEGE)

Discussion

In reaction to statements from Congress[2] and as part of an internal initiative to revise the Form 990[3], the IRS redesigned this form last year by requiring significantly more information than previously. The purpose was threefold: to enhance transparency, to promote tax compliance and to minimize the burden on the filing organization. This form is to be filed for the 2008 tax year (returns filed in 2009).

On April 7, 2008, the IRS released for public comment a draft of the instructions to accompany the Form 990 and in response, this subgroup held a conference call with a representative from the TEGE division in late May to discuss our concerns. Accordingly, after considering approximately 120 comments received during this comment period, the IRS released on August 19th the final instructions to accompany this form.

The Form 990 is a document that is open to public disclosure and impacts many interested parties such as financial institutions, credit rating companies, various media, state regulators and other members of the community. Accordingly, the information reported on the form must provide an accurate

[2] On May 29, 2007, the Senate Finance Committee sent a detailed letter to the Secretary of the Department of Treasury requesting major revisions to the form 990 as a means to gather more information and foster greater transparency than previously reported.

[3] With the release of the Form 990, Kevin Brown, Acting IRS Commissioner, made the statement that "[t]he tax-exempt sector has changed markedly since the Form 990 was last overhauled more than a quarter of a century ago."

understanding of an organization's operations to avoid any confusion or misinterpretation. Also, the information must be meaningful to the IRS with a balance that minimizes the burden to the filer. It is estimated that the completion of this new form will cost certain exempt organizations, on average, an additional full-time administrative position simply to coordinate data collection and track the IRS reporting preparation throughout the year.[4]

In our discussion, we raised concerns with respect to the following points:

1. We asked the IRS to provide guidance on defining the standard or expectations in obtaining information from third parties. For example, what is the degree of due diligence that the exempt organization must use to determine whether the board member or trustee is independent, i. e., having received material financial benefits from the organization during the year.

2. We asked the IRS for clarity when reporting compensation and when completing the schedules for hospitals (Schedule H) and tax-exempt bonds (Schedule K). For instance, the definition of the term key employee is broad and may include employees not intended to be reported. Also, that part of the Schedule H that reports charity care and certain other community benefits needs certain terms clearly defined such as subsidized health services and research for the purposes of accurate and consistent reporting. Further, administrative burdens to the filer can be minimized by excluding from reporting those refunding

[4] Comments on the redesigned form 990 submitted by National Association of College and University Business Officers (NACUBO) dated September 14, 2007.

bonds issued post-2002 for bonds issued pre-2003 with respect to expenditure and investment of proceeds, and private business use.

3. We asked the IRS to conduct outreach programs and other continuing educational efforts to assist the nonprofit filers on preparing this form, in particular the Schedules H and K, large portions of which are not required to be completed until the 2009 year (returns filed in year 2010).

Recommendation

The IRS responded accordingly:

1. A standard of reasonable efforts was established when gathering information from third parties. For example, the organization need not engage in more than a reasonable effort to obtain the necessary information to determine the independence of members of the governing body and may rely on information provided by such members.
2. A more narrow definition of key employee was given with a cap on the number of employees to report. The percentage for the responsibility test to report such individuals was increased from 5% to 10% and no more than 20 key employees are to be reported. Also, terms specific to the Schedule H were defined clearly. For example, the term research includes, in addition to that research funded by tax-exempt organizations or government entities, those costs of any internally funded research that the organization conducts. Further, the exempt

organization on Schedule K may forego the reporting of refunding bonds issued post-2002 for bonds issued pre-2003 when completing Part III, Private Business Use.

We recommend that in addition to the traditional means of promulgating a new form, that the IRS continue its outreach and educational efforts through Frequently Asked Questions, (FAQs) posted on the website, a phone forum to address specific concerns, and a task force that focuses on providing continued quality improvement with opportunities to give feedback and further suggestions.

J. LMSB; Form 8886, Reportable Transaction Disclosure Statement Discussion

The taxpayer is required to file this form when engaged in a reportable transaction. This form is relatively recent, as of January 1, 2003[5], and, in essence, replaces the Form 8271, Investor Reporting of a Tax Shelter Registration Number. Historically, the IRS required the taxpayer to report information regarding tax shelters, but in the last few years has substantially broadened this scope to require the taxpayers to report information on transactions that are considered legitimate but may have little or no purpose other than to generate tax or financial statement benefits.

The current version of Form 8886 includes six categories of transactions that must be reported as an attachment to the taxpayer's return for each tax year the transaction occurs and a separate filing for the initial year with the Office of Tax Shelter Analysis (OTSA). The six categories of transactions include listed

[5] This form was made available when the temporary regulations for reportable transactions became effective.

transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a brief asset holding period (only for such transactions entered into prior to August 3, 2007) and transactions of interest.[6] The term 'listed transaction' is broadly defined to include a transaction that is the same or substantially similar to one of the types of transactions the IRS has determined to be a tax avoidance transaction.[7]

The American Jobs Creation Act of 2004 added significant penalties in an effort to ensure compliance. The penalties for failure to disclose the information properly for listed transactions is $100,000 for natural persons and $200,000 for other entities, and for other reportable transactions, the penalties are $10,000 and $50,000 respectively.[8] Per the instructions to the form, these penalties apply if the taxpayer fails to attach the form to the tax return, fails to file with the OTSA, or fails to include all the information required. Further, an article reported that approximately 70,000 taxpayers submitted Form 8886 in the 2005 tax season.[9]

In light of these recent developments, this subcommittee asked to meet with a representative with the LMSB division to discuss the following: (1) consider minimizing the forms filed with the OTSA, and (2) add an example to the instructions on 'loss' transactions which should help to minimize the tax burden to the taxpayer while improving compliance efforts.

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[6] These transactions have changed over the past five years. Notice 2006-6, I.R.B. 2006-5, concluded that 'significant book-tax differences' is no longer a category as of January 6, 2006, and Final Regulations on Reportable Transactions, T.D. 9350 (8/1/07), Section 1.6011-4, determined that the 'brief asset-holding period' is no longer a category for transactions entered into on or after August 3, 2007. These regulations also added 'transactions of interest' as a new category.
[7] Regulations Section 1.6011-4(b)(2).
[8] IRC Section 6707A(b).
[9] Article on "Privacy Impact Assessment – OTSA" found at ww.irs.gov/privacy/article/0,,id=15534,00.html.

These forms are sent initially to the OTSA to analyze these transactions in a timely manner or, in other words, to allow OTSA to learn as much as it can about these reportable transactions as soon as it can. However, to require every taxpayer to file this form can result in excessive and unnecessary filings that are burdensome to the taxpayer and can clutter compliance efforts carried out by the OTSA. For instance, the regulations require that both flow-through entities, such as, partnerships, S corporations and trusts, and their partners, members and beneficiaries, file this form with the OTSA.[10] Thus, given a limited partnership with 99 limited partners and one general partner, the OTSA will receive 101 forms (100 from the owners and 1 from the partnership) for the same transaction, arguably a case of 'overkill' which can overwhelm the review and analysis process. Although the regulations require these additional filings, the preamble mentions that the IRS recognizes this concern and added a provision that the Commissioner in his discretion may issue in published guidance other provisions for disclosure requirements.[11]

Also, specific guidance in the instructions regarding reporting 'loss' transactions may prevent unnecessary filings. The final regulations specifically provide that if a taxpayer is a partner in a partnership, member in an S corporation, or beneficiary of a trust and a loss flows through from the entity to these owners, then that owner has participated in a loss transaction if the amount of the loss that flows through to it equals or exceeds the threshold amounts

[10] Regulations Section 1.6011-4(c)(3)(ii),
[11] Regulations Section 1.6011-4, II. Pass-through owners; Section 1.6011-4(e).

applicable to that taxpayer.[12] The regulations provide an example that clearly illustrates that a loss that requires disclosure as a reportable transaction at the entity level may not result in a reportable transaction for certain owners once this loss is allocated among them.[13] However, flow-through entities inadvertently report to their partners, members or beneficiaries the amount of the entities' losses rather than the amount of owners' losses. The result is that these owners (who are oftentimes less familiar with the reporting requirements but are experiencing 'angst' regarding the penalties) file this form when it may be unnecessary.

Recommendations

This subgroup proposes the following recommendations:

(1) The IRS should consider providing a functional threshold that excludes certain owners from filing Form 8886 with the OTSA. For instance, limited partners in a partnership with 25 or more limited partners are excluded from this filing requirement. Alternatively, the form may include a de minimis standard that excludes certain owners from filing, such as owners with interests of 5% or less.

(2) The instructions should include the example discussed above or a similar example to illustrate to the flow-through entities how best to report the disclosure of 'loss' transactions to their owners.

[12] Regulations Section 1.6011-4(c)(3)(i)(D).
[13] Regulations Section 1.6011-4(c)(3)(ii), Example 3.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

EMERGING COMPLIANCE ISSUES SUBGROUP REPORT

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ISSUES

A. Guidance for Taxpayers Regarding Receipt of Schedules K-1 and Forms 1099 or 1042-S for Income from Interest in a Foreign Partnership

Discussion

Certain income paid to foreign partnerships is reported twice under current information reporting rules. Since taxpayers generally expect their income to be reported only once on an information return, the duplicate reporting is causing confusion.

Under the Section 1441 regulations, payers are not permitted to treat foreign flow-through entities (nonwithholding foreign partnerships, nonwithholding foreign grantor trusts, and nonwithholding foreign simple trusts) as payees. As a result, payments to a foreign flow-through entity are deemed to be payments to the entity's partners, grantors or beneficiaries; and such payments are required to be allocated and reported at that level.

If the partner, grantor or beneficiary is a U.S. person, the regulations under Chapter 61 of the Code apply; and all payments of interest, dividends, or broker proceeds are required to be reported on Forms 1099-INT, 1099-DIV and 1099-B. If the partner, grantor or beneficiary is a nonresident alien, all "amounts subject to reporting" under Treasury Regulation Section 1.1461-1(c)(2) are required to be reported on Forms 1042-S.

Under Treasury Regulation Section 1.6031(a)-1(b), an entity classified for U.S. tax purposes as a foreign partnership is required to file a U.S. partnership

return for any taxable year in which it has either (1) gross income which is effectively connected with the conduct of a U.S. trade or business (effectively connected income or "ECI") or (2) gross income derived from sources within the U.S. (U.S.-source income). While there are certain exceptions to this filing requirement, no exceptions are available if the foreign partnership has U.S. partners. Further, under Treasury Regulation Section 1.6031(b)-1T a partnership that is required to file a U.S. partnership return must also provide Schedules K-1 to its partners.

As a result, where a U.S. payer is acting as custodian, and makes (or collects) a payment to a foreign partnership, the partners may receive Forms 1099 (or 1042-S) and Schedules K-1 for the same income. Further, the tax information as provided by the partnership may not match the Form 1099 (or 1042-S) tax information furnished by the U.S. payer that made payments to the partnership. For example, a partner of a nonwithholding foreign partnership could receive tax information from the U.S. payer showing their allocable share of gross amounts paid to the partnership on a cash basis, and tax information from the partnership showing their share of income required to be recognized by the partner on an accrual basis.

The dual reporting described above often causes confusion for the taxpayers that receive it. Such taxpayers often believe that the Forms 1099 (or 1042-S) received from the U.S. payer is incorrect and will cause them to be subject to tax twice on the same income. They are concerned that the IRS may

reject their return if they fail to include all items reported on Forms 1099 (or 1042-S) and Schedules K-1, but don't know how to treat the dual reporting on their returns.

Recommendation

The Instructions to Schedule E of Form 1040 should be amended to make it clear that taxpayers may receive Forms 1099 (or 1042-S) in addition to Schedules K-1 for the same partnership income; and to provide guidance regarding the reporting of such income.

IRS Response / Action

The IRS has agreed that Schedule E of Form 1040 will be amended as follows:

1) On page E-5, change title of "Partnerships" to "Domestic Partnerships"
2) On page E-6, make "Foreign Partnerships" a freestanding heading and add the following text at the beginning:

> Follow the instructions below in addition to the instructions for Domestic Partnerships beginning on page E-5.
>
> If you are a U.S. person, you may have received Forms 1099-B, 1099-DIV,and 1099-INT reporting your share of certain partnership income because payers of income to the foreign partnership generally are required to allocate and report payments of that income directly to each of the partners of the foreign partnership. If you received both Schedule K-1 and Form 1099 for the same type and source of partnership income, report only the income shown on Schedule K-1 in accordance with its instructions.

If you are not a U.S. person, you may have received Forms 1042-S reporting your share of certain partnership income, because payers of income to the foreign partnership generally are required to allocate and report payments of that income directly to each of the partners of the foreign partnership. If you received both Schedule K-1 and Form 1042-S for the same type and source of partnership income, report the income on your return as follows:

- For all income effectively connected with the conduct of a trade or business in the United States, report only the income shown on Schedule K-1 in accordance with its instructions.
- For all income not effectively connected with the conduct of a trade or business in the United States, report on page 4 of Form 1040NR only the income shown on Form 1042-S (if you are required to file Form 1040NR).

3) Delete the existing first paragraph under "Foreign partnerships" and replace it with:

Requirement to file Form 8865: If you are a U.S. person, you may have to file Form 8865 if any of the following applies.

[Resume existing instructions text]

B. To obtain written guidance on whether Treasury Regulation § 31.3406(d)-1(b)(2)(iv)(A) requires an acquiring payer to resolicit taxpayer identification numbers ("TIN") from each affected account holder when it acquires accounts from a third-party payer who has been making reportable payments subject to the Form W-9 certification requirements. For purposes of this issue "acquires accounts" means accounts acquired by voluntary and involuntary means (e.g., merger and acquisitions, change of transfer agents, change of plan administrators for employee plans, etc.).

Discussion

Generally, Treasury Regulation §31.3406(d)-1(b)(2)(iv)(A) provides that if a payer acquires accounts of another payer, the acquiring payer must treat the affected account holders as being required to furnish a TIN.

In past years, and today, it appears that the industry practice in the financial services sector is not to resolicit TINs from the holders of the accounts that have been either purchased or transferred from another payer. This practice is not based on published IRS guidance, although Treasury Regulation § 35a.9999-3 Q&A 101 allows it to the extent that regulation remains in force. In practice, it appears, the selling payer will "certify" to acquiring payer that the TINs on the sold/transferred accounts are accurate. In light of current financial accounting standards that require disclosure of certain liabilities, financial services payers often need to reevaluate the industry practice since the regulation is not clear.

Many financial institutions are now choosing to undertake the costly and time-consuming expense of resoliciting Forms W-9 from the holders of the accounts that the payer has acquired. This action protects a financial institution from (a) making a tax liability disclosure that will negatively impact its financial statements, and (b) taking the risk that industry practice could be challenged in the future, thus subjecting the entity to IRS penalties and other accounting regulatory penalties.

Other Consideration:

If guidance is issued, the B and C Notice requirements to the acquiring entity will be affected. If a Form W-9 is not required to be resolicited, does the acquiring payer "step into the shoes" of the selling payer?

Recommendation

We recommend that guidance is published, whether via an IRS Notice or through the forms and instructions, so that payers have a clear understanding of their responsibilities when accounts receiving dividends and/or interest are acquired.

We suggest that the guidance provide that:

1. A certified TIN is not required to be resolicited by the acquiring payer;
2. The selling payer provides the acquiring payer written notification of
   (a) all pre-1984 accounts and their corresponding TINs, and
   (b) all post-1983 accounts and corresponding TINs;
3. With respect to B and C Notices, the acquiring payer "steps into the shoes" of the selling payer with respect to B and C Notice history. The selling payer will provide the acquiring payer with the first and second B Notice history for each acquired account to enable the acquiring payer to properly use the 2 in 3 rule; and
4. With respect to post-acquisition B and C Notices, the selling payer is not required to forward B and C Notices received to the acquiring

payer. Consideration should be given to the responsibilities of the selling payer when B and C Notices are received around the effective date for an acquisition.

IRS Response / Action

The IRS understood the need for clarification and offered good suggestions on ways to clarify the issue. IRPAC was requested to submit a formal request to have the resolicitation issue added to the IRS' Guidance Priority List, which IRPAC did in April 2008.

C. Procedures for complying with Second B Notices appear outdated and should be coordinated with the Social Security Administration's current policies.

Discussion

Payees are experiencing unnecessary burdens and delays when attempting to comply with IRS mandated procedures for resolving B Notices[14].

When a payer receives two B Notices within a three year period (referred to as a "Second B Notice") with respect to the same payee, the payer is required to perform the following functions:

1. Send the Second B Notice to the payee within 15 business days after receiving notification from IRS;
2. Inform the payee to have his or her social security number validated on Form SSA-7028[15], and have the SSA send the completed Form SSA-7028 to the payer; and

[14] A "B Notice" is a notification from the IRS (pursuant to Internal Revenue Code Section 3406(a)(1)(B)) to a payer that the name / TIN combination on an information return does not match the records of the Social Security Administration or the IRS. Upon receipt of a B Notice from the IRS, a payer is required to notify the payee that their name / TIN combination is incorrect, provide instructions to the payee to resolve the error, and commence backup withholding if the error is not resolved within a prescribed time period.

3. Commence backup withholding within 30 business days after the date of Second B Notice if the payer does not receive Form SSA-7028 from the SSA.

Payees are consistently reporting undue hardship with the requirement that SSA send Form SSA-7028 to payers in a timely manner to resolve their B Notices. The inability to timely resolve B Notices via Form SSA-7028 is causing excessive backup withholding and financial hardship to payees that are attempting in good faith to comply with the B Notice rules promulgated by the IRS. During our interviews with IRS personnel, there appeared to be an inconsistency between the expectations of the IRS and the ability of the SSA to execute the Form SSA-7028 procedure in a timely manner to resolve Second B Notices.

Recommendation

IRPAC recommends that the IRS more closely coordinate B Notice procedures with the SSA. IRS should validate, at least annually, that all SSA field offices are prepared to process requests to issue Form SSA-7028 in a timely manner. IRS should also consider allowing payers to rely on alternative documentation issued by SSA to prevent or cease backup withholding due to a Second B Notice. IRS should commence a dialogue with SSA as soon as possible to make certain that SSA is prepared to process requests to issue Form SSA-7028, and to study whether alternative documentation issued by SSA would be suitable for resolving Second B Notices.

[15] Form SSA-7028 (Notice to Third Party of Social Security Number Assignments) is a form issued by the Social Security Administration to inform third parties of a person's social security number.

IRPAC notes that the procedures for handling B Notices are generally working well. Final regulations on B Notice procedures were issued on April 10, 1992, and then subsequently modified on April 28, 2003[16]. The procedure for resolving Second B Notices with a Form SSA-7028 from the SSA dates back to an agreement reached with the SSA in 1991[17].

Since 17 years have lapsed since that agreement has been reached with the SSA, it is appropriate at this juncture to validate that the Form SSA-7028 procedure is operating as expected, and to increase coordination with SSA to make certain that the procedure operates well on an ongoing basis.

D. Reporting Nonqualified Deferred Compensation Benefits Following Employee's Death

Discussion

There are conflicting directions with respect to distributions from a nonqualified deferred compensation plan after the death of an employee. Such amounts paid after death are clearly wages (although not subject to income tax withholding). These distributions should be treated exactly like wages paid after the death of an employee as discussed in the instructions to Form W-2 and Form 1099-MISC. However, the instructions to Form 1099-R indicate that distributions after death from nonqualified deferred compensation plans should be reported on Form 1099-R. The 1099-R reporting creates confusion surrounding Code

[16] See Treasury Decisions 8409 (April 10, 1992) and 9055 (April 28, 2003).

[17] See Treasury Decision 8365, 1991-2 CB 373 (September 18, 1991): "Pursuant to an agreement reached with the Social Security Administration ("SSA"), however, the Service is issuing a revenue procedure (Rev. Proc. 91-58[1991-40 I.R.B 119]) that provides that, in these circumstances, the payee must contact the SSA with respect to an incorrect social security number ("SSN") or contact the Service with respect to an incorrect employer identification number ("EIN"). The SSA or the Service will, in turn, provide the required notification to the payer. This Treasury decision conforms the temporary and proposed regulations to the procedures agreed to by the SSA and the Service."

section 3405 withholding and rollover treatment, neither of which applies to these distributions. Taxpayers would benefit from instruction changes to clarify the 1099-MISC and W-2 reporting of nonqualified deferred compensation plan distributions after death.

A report was published by IRPAC in 1998 on this very issue. As explained in that report, Rev. Rul. 86-109 is the cited authority for information reporting of death benefits and compensation payments made after an employee's death, even though there have been numerous law and forms changes since its issuance in 1986. Before 1992, employers were required under Rev. Rul. 86-109 to report payments of wages or other regular compensation of a deceased employee to the employee's estate or beneficiary in Box 7 of Form 1099-MISC, whether the payments were made in the calendar year of death or in a subsequent year. Although income tax reporting is still required on Form 1099-MISC, the specifics of how to do it, as set forth in Rev. Rul. 86-109, were overridden by the instructions to the 1992 version of Form 1099-MISC, which required the payments to be reported in Box 3.

Rev. Rul. 86-109 is also cited as the authority for the Form 1099 series' instructions that distributions from nonqualified deferred compensation plans must be reported on Form 1099-R, even though nonqualified deferred compensation payments are wages and would never be reported on Form 1099-R before the employee's death. Consistent with the treatment of post-death wages, these payments should be reported on Form 1099-MISC. Payers report that the recipients of Forms 1099-R issued with respect to nonqualified plan

distributions often erroneously conclude that these amounts qualify as eligible rollover distributions.

This IRPAC recommendation does not affect the FICA treatment of nonqualified deferred compensation plan distributions. Rev. Rul. 86-109 continues to be correct in its directive that wages or other regular compensation paid in the year of the employee's death are considered wages for FICA purposes and should be reported on the employee's final Form W-2. Whether a post-death nonqualified plan distribution is reported on Form 1099-R or 1099-MISC, it continues to be treated as FICA wages if the distribution occurs in the year of death. In that case, W-2 reporting is required (in addition to the 1099-MISC reporting) for the FICA wages only. If the distribution occurs in a year subsequent to the year of death, no W-2 reporting is required.

The payer community will benefit from this instructions change by gaining a clear understanding of their reporting obligations as they pertain to post-death wage payments, including nonqualified deferred compensation distributions. The recipients of nonqualified deferred compensation distributions will benefit from correct Form reporting and a better understanding of the ramifications (employment tax, withholding rules, and ineligibility for rollover treatment) of the payment of wages.

Recommendation

Eliminate the inconsistency between the instructions for Forms 1099-R and 1099-MISC by clarifying that payments to a death beneficiary from a nonqualified deferred compensation plan are wages and as such are reportable

on Form 1099-MISC. The payments may also be reportable on Form W-2, in accordance with the instructions for Form W-2, if the payment is made in the calendar year of death.

IRS Response / Action

The IRS has indicated that the Instructions to the 2009 Forms will incorporate the suggested changes.

E. Clarification of Form W-9 and the Corresponding Instructions Regarding the Entity Classification Box for Limited Liability Companies

Discussion

The most recent version of the Form W-9, issued in October 2007, requests all limited liability companies ("LLC's") to designate their entity types. The Form W-9 now provides a specific entity box for an LLC and a tax classification letter ("D" for disregarded entity, "C" for corporation, and "P" for partnership).

For an LLC classified as a partnership or a corporation, the instructions for completing the form are clear. The LLC's name goes on the "Name" line and the taxpayer checks the LLC box with the appropriate tax classification ("P" or "C"). The rules are clear for an LLC that is disregarded for tax purposes as long as the ownership structure is simple. Per the "LLC" instructions, the taxpayer should enter the owner's name on the "Name" line and the disregarded LLC's name on the "Business Name" line. The instructions also state that the taxpayer should enter the owner's SSN (or the employer identification number ("EIN") of the owner), not the LLC, on the form. The "Note" in the instructions seems to imply that the owner should check an entity box because it states, "You are requested

to check the appropriate box for your status (individual/sole proprietor, corporation, etc.)." The instructions, however, do not clearly state which entity box (or boxes) should be checked when the LLC is disregarded. Does the owner designate its status or should the LLC's status be designated? The current instructions direct the person completing the form to check the LLC box and to write in the code "D" for the tax classification.

Proper completion of the Form W-9 with complex ownership structures becomes more problematic, for example, consider where the single owner of a disregarded LLC is another LLC that is a partnership or corporation for U.S. federal income tax purposes. Following the current instructions, it would be correct for the taxpayer to select either the owner-LLC's tax classification or that of the disregarded LLC. This leaves the payer unable to determine if the entity classification marked on the form applies to the owner-LLC or the disregarded LLC.

Recommendation

Taxpayers need expanded guidance on how the Form W-9 should be completed for disregarded LLC's, which will allow payers to more easily determine whether the forms are valid with respect to the entity on the "Name" line. IRPAC submitted the following suggestions to the IRS:

1. On the Form W-9 eliminate the "D" code for LLC's since the entity (the owner) providing and signing the form should not be a disregarded entity.

2. Revise the instructions to provide specific guidance on how to complete the form for an entity that is a "sole proprietor", "LLC with 2 or more members", "single-member LLC treated as a corporation", "disregarded single member LLC with a domestic owner", "disregarded single-member LLC with a foreign owner" and "other entities".

3. In accordance with the above point, the "Specific Instructions, Name, section on Page 2 of the Form W-9 instructions could be revised as follows:

Specific Instructions
Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

Limited liability company (LLC). An LLC with 2 or more members may be treated as a corporation or a partnership; and an LLC with a single member may be treated as a corporation or an entity disregarded from its owner.

LLC With 2 or More Members. If the LLC is domestic and has two or more members, check the “Limited liability company” box only and enter the appropriate code for the tax classification (

"C" for corporation, or "P" for partnership) in the space provided. Provide the taxpayer identification number of the LLC. If the LLC is foreign and has two or more members, do not use Form W-9. Instead use the appropriate Form W-8 (see Publication 515.)

Single-Member LLC Treated as a Corporation. For a domestic single-member LLC that has elected to be treated as a corporation, check the "Limited Liability Company" box only and enter "C" for corporation in the space provided. Provide the taxpayer identification number of the LLC. If the LLC is foreign and treated as a corporation, do not use Form W-9. Instead use the appropriate Form W-8 (see Publication 515.)

Disregarded Single Member LLC With Domestic Owner. For a single-member LLC (including a foreign LLC) with a domestic owner that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the box appropriate to the owner's classification, and provide the owner's taxpayer identification number.

Disregarded Single-Member LLC With Foreign Owner. For a single-member LLC with a foreign owner that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, do not use Form W-9. Instead use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

If the LLC (or its single owner) is classified as a corporation, also check the "Exempt Payee" box if applicable for the type of payments the LLC will receive (such as interest and dividends) and refer to the Exempt Payee instructions below.

Other entities. If not specifically listed, check the "other" box and enter the type of entity in the blank space. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

IRS Response / Action

The IRS understood the need for clarification, offered suggestions on ways to clarify the instructions and is considering incorporating the

suggestions noted above when Form W-9 is next revised; with the exception of item 1 (to eliminate the “D” code for LLC’s) citing disregarded as one of three possible tax classifications for an LLC and the benefit to small business payer/filer community.

GENERAL REPORT

APPENDIX

May 28, 2008

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2008-47)
1111 Constitution Avenue, NW
Washington, PA 20044

To Whom It May Concern:

The IRPAC is pleased to take this opportunity to submit the following three items for consideration and inclusion on the 2008-2009 Guidance Priority List. The first two items have been worked by IRPAC for a number of years. The last item was initiated last year with a recommendation made to the Commissioner at our October Public Meeting. We are hopeful that focused resources will be allocated to these issues so that guidance can be published to help clarify the ambiguity, promote compliance and help to curtail identity theft.

FORM W-9 RE-SOLICITATION

Issue:

To obtain written guidance on whether Treas. Reg. § 31.3406(d)-1(b)(2)(iv)(A) requires an acquiring payer to resolicit taxpayer identification numbers ("TIN") from each affected account holder when it acquires accounts from a third-party payer who has been making reportable payments subject to the Form W-9 certification requirements. For purposes of this issue "acquires accounts" means accounts acquired by voluntary and involuntary means (e.g., merger and acquisitions, change of transfer agents, change of plan administrators for employee plans, etc.).

Background:

In past years (and today) it appears the industry practice in the financial services sector is not to resolicit certified TINs from account holders when their accounts are purchased/transferred from another payer. This practice is not based on published IRS guidance, although Treas. Reg. § 35a.9999-3 Q&A 101 allows it to the extent that regulation remains in force. In practice, it appears, the selling payer will "certify" to acquiring payer that the TINs on the sold/transferred accounts are accurate. In light of FAS 5 (accounting for uncertainties) and other recent regulatory changes which require potential tax liabilities to be disclosed, many financial services taxpayers are rethinking the industry practice since the regulation is not clear.

Many financial institutions are now choosing to undertake the costly and time consuming expense of re-soliciting Forms W-9 when accounts making reportable payments subject to the Form W-9 certification requirements are acquired. This action will protect the financial institutions from (a) making a tax liability disclosure that will most likely negatively impact the entity and (b) taking the risk that industry practice could be challenged in the future and subjecting the entity to IRS penalties and other accounting regulatory penalties.

Other Matters to be considered:

The IRS' determination will affect the B and C Notice requirements to the acquiring entity. If a Form W-9 is not required to be re-solicited, does the acquiring payer "step" into the same shoes as the selling payer?

Recommendation:

a. Publish written guidance (perhaps via an IRS Notice or through the forms and instructions) on this issue so taxpayers will have a clear understanding of their responsibilities when accounts paying interest and/or dividends are acquired.

b. We recommend that the guidance provide :

- A certified TIN is not required to be solicited by the acquiring payer.
- The selling payer should provide the acquiring payer with written notification of all pre-1984 accounts and their corresponding TINS and all post-1983 accounts and corresponding certified TINs.
- With respect to B & C Notices, the acquiring payer will step into the shoes of the selling payer with respect to B and C Notice history. The selling payer will provide the acquiring payer with the 1st and 2nd B Notice history for each acquired account to enable the acquiring payer to properly use the 2 in 3 year rule.
- With respect to post acquisition B & C Notices, the selling payer is not required to forward B & C Notices received to the acquiring payer.
    - Consideration should be given to the responsibilities of the selling payer when B & C Notices are received around the effective date for an acquisition.

QUALIFIED PAYMENT CARD AGENT PROGRAM

REG-163195-05 and proposed revenue procedure (Notice 2007-59)

Issue:

The paper-based rules for reporting transactions under IRC section 6041 do not work well in an electronic environment. IRS and industry have spent many years developing modifications that provide the IRS with "payment card" transaction information but take into account industry structure and data flow. Revisions to and finalization of proposed guidance issued in 2007 is necessary before the industry can begin to implement changes required to meet the filing requirements.

Background:

Under IRC section 6041, anyone in a trade or business that pays a merchant at least $600 in a calendar year must file an information return. Regulations generally limit these requirements to payments for services and, except for federal government agencies, for payments to non-corporations (except medical and legal corporations.) These rules apply equally to payments by cash, check or credit card. However, these rules, including solicitation of TINs and backup withholding, were designed for a paper-based payment world and do not work in an electronic environment.

Industry has been working with IRS for many years to develop rules that would provide IRS with accurate information returns yet fit within the structure of the electronic payment industry. IRPAC first raised this issue in the fall of 1993. A white paper was issued in January 1996. In that paper IRPAC recommended, among other things, that an exception from backup withholding be provided.

IRS finally put the project on its 2002-2003 business plan and issued proposed regulations in January 2003 along with a notice of proposed revenue procedure. Together the regulations and revenue procedure provided rules for the "Qualified Payment Card Agent" (QPCA) program whereby a card organization could enter into an agreement with IRS to TIN match its merchants' data and regularly provide that data in reports to cardholders to be used in filing information returns. In return, a limited exception from the backup withholding rules was provided.

The guidance was finalized in 2004 (T.D. 9136 and Rev. Proc. 2004-42) but the program has yet to be implemented. Problems with the requirements made it impossible to implement the program. IRS agreed to revisit the requirements and in July 2007 issued

new proposed regulations and a new proposed revenue procedure. A hearing was held in November 2007.

The main issues to be resolved at this point are the standards for use of electronic delivery of the required reports, and the "opt-out" procedures for merchants. IRS has been very cooperative through this long journey toward issuance of workable rules, but

since the hearing, the project appears to have been set aside. In the meantime, another year is passing without workable rules for electronic payments under IRC section 6041. It is critical that work resume and the guidance finalized.

Recommendation:

Finalization of REG-163195-05 and the proposed revenue procedure (Notice 2007-59) should be placed on the 2008-2009 Guidance Priority List so that the QPCA program may be activated as soon as possible.

MASKING TINs on INFORMATION RETURNS

Issue:

Filers are required to send statements to payees showing name, address and social security number. The payee statements are mailed in an envelope with the legend "Important Tax Document Enclosed". This combination is an invitation to identity theft, an issue of great concern to both payers and payees. Last year IRPAC recommended the IRS continue to study the concept of masking TINs on information returns. Based on additional discussions with the Service during 2008, IRPAC is recommending the Service permit filers to mask the TIN by using only the last four digits.

Background:

In an effort to combat the rising problem of Identity theft, the ultimate recommendation is to have the recipient's taxpayer identification number (TIN), masked on all information returns that are sent to the payee. (i.e. Forms 1099, 1098, 5498, and W-2). This would be a pro-active measure towards aiding privacy and thwarting identity theft efforts. We believe this proposal will satisfy all purposes of information reporting with no harm to IRS processing or the filing of tax returns, and will greatly benefit the taxpayers by reducing the likelihood of identity theft.

The Office of Privacy is working on several projects that identify usage of taxpayer identification numbers in an effort to reduce the usage of these numbers on IRS correspondence. The service has started masking TINs (by only using the last four digits of a TIN) on several types of correspondence. The recommendation to allow payers to mask the tax payer identification number on information returns mailed to recipients would fit in nicely with the current activity being undertaken by the Office of Privacy and this concept is fully supported by the Office of Privacy. The Office of Privacy has agreed take ownership of this recommendation.

Section 6109 of the IRC requires provision of identifying numbers when required by the Secretary. IRC 6109(a)(1). (emphasis added.) For this purpose, for individuals the

identifying number is the individual's social security number. Subsection (d) further states that the social security number shall be used "except as shall otherwise be specified under regulations." As a result, the consensus of the Modernization subgroup is that since the use of an identifying number is left to the Secretary, IRS could deem use of the last four digits to meet the requirement in section 6109 through issuance of guidance by IRS. and that no legislative changes are needed.

Financial institutions would like to see this happen as soon as possible; the earlier the better. If done by August some may be able to make the change for the 2008 filing season.

Recommendation:

Add to the IRS Guidance Priority List a project to develop guidance which would allow filers to display only the last 4 digits of the tax payers identification number on Forms 1099, 1098, 5498, and W-2 sent to the recipient beginning with the 2008 tax year reporting.

Should you have any questions after reviewing any of these issues, please do not hesitate to contact me. I can be reached at (610)503-6770 or by email at Karen_Botvin@Vanguard.com.

Thank you in advance for your interest in IRPAC and its issues.

Sincerely,

/s/ Karen Botvin

Karen Botvin

OPR APPENDICES

APPENDIX A-1

OPR ALLEGATION LETTER

CONFIDENTIAL

Date

Mr. John Q. Practitioner
Certified Public Accountant
123 Main Street
Anytown, XX 12345-6789

Dear Mr. Practitioner:

This letter is in regard to your eligibility to practice before the Internal Revenue Service and is being sent pursuant to section 10.60 of Treasury Department Circular No. 230 (31 CFR Part 10, effective September 26, 2007), a copy of which is enclosed.[18]

This office has received information raising questions of your violation of Subpart C, section 10.51(a)(6) (formerly known as section 10.51(f)) of the regulations governing practice before the Internal Revenue Service as contained in Circular 230.

A review of your personal tax filing history reveals that …[specific facts are inserted here]. This pattern of non-compliance on your personal [and business] returns suggests a violation of section 10.51(a)(6) of Circular 230.

- Disreputable conduct for which a practitioner may be censured, suspended, or disbarred from practice before the Internal Revenue Service includes section 10.51(a)(6), "Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax."

Further action with respect to the above information will be held in abeyance for a period of 30 days from the date of this letter. Within that time, you are afforded an opportunity to submit a written response to this letter with your explanation of the foregoing matters. You may request a conference at this office after your written response has been submitted for review. If you wish a conference, please provide alternative dates and times that would be convenient for you. A power of attorney must be submitted should you engage the services of a representative.

[18] These regulations were amended effective September 26, 2007, and certain substantive provisions apply prospectively to conduct that occurred after that date. Conduct engaged in prior to September 26, 2007, will be judged by the regulations in effect at the time the conduct occurred as set forth in Circular 230. Subpart B, subsections 10.33, 10.35, 10.36, and 10.37 apply to conduct engaged in on, or after June 20, 2005. A pre-publication version of the new applicable regulations is attached to this letter as reference.

Your response is requested within 30 days. Should you have any questions, please contact [Name of OPR Attorney], Enforcement Attorney, by phone at (202) 622-XXXX, by fax at (202) 622-XXXX, by email (non-secure) at [name.of.attorney@irs.gov], or by correspondence at: Internal Revenue Service, Office of Professional Responsibility, Attn: SE:OPR, 1111 Constitution Avenue, N.W., Room 7238/IR, Washington, DC 20224.

`

Sincerely,

Michael R. Chesman
Director
Office of Professional Responsibility

Enclosure

APPENDIX A-2

ALLEGATION LETTER - RECOMMENDATIONS

Date

NOTICE OF POTENTIAL DISCIPLINARY ACTION

John Q. Practitioner
Certified Public Accountant
123 Main Street
Anytown, XX 12345-6789

Dear Practitioner:

This letter is being sent pursuant to section 10.60 of Treasury Department Circular No. 230 (31 CFR Part 10, effective September 26, 2007), a copy of which is enclosed.[19]

This office has received information sufficient to raise questions as to whether there has been a violation of Subpart C, section 10.51(a)(6) (formerly known as section 10.51(f)) of the regulations governing practice before the Internal Revenue .

A review of your personal tax filing history reveals that [specific facts are inserted here]. This pattern of non-compliance with respect to your individual [and business] tax returns suggests there is a violation of section 10.51(a)(6) of Circular 230.

- Disreputable conduct for which a practitioner may be censured, suspended, or disbarred from practice before the Internal Revenue Service includes section 10.51(6), "Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax."

[19] These regulations were amended effective September 26, 2007, and certain substantive provisions apply prospectively to conduct that occurred after that date. Conduct engaged in prior to September 26, 2007, will be judged by the regulations in effect at the time the conduct occurred as set forth in Circular 230. Subpart B, subsections 10.33, 10.35, 10.36, and 10.37 apply to conduct engaged in on, or after June 20, 2005. A pre-publication version of the new applicable regulations is attached to this letter as reference.

Any action with respect to the above information will be deferred for a period of 30 days from the date of this letter. Within that time, you may submit a written response to this letter with any detail or additional information you believe will assist us in making a determination as to whether a violation has in fact occurred. You also may include a request for a conference with a representative from this office along with your written response. The conference may be by phone or in person. If you wish to avail yourself of the opportunity for a conference please indicate your preference for a telephonic or in person conference and provide alternative dates and times that will be convenient for you. You may engage the services of a representative at any juncture during this process, please submit a power of attorney if you will be represented.

We urge you to respond to this allegation letter within the 30 day period. By responding, you have the opportunity to present your side of the case. OPR will carefully consider whatever you may choose to submit. OPR routinely considers the circumstances surrounding the alleged violation, and even after verifying that the violation has occurred, may, depending upon the response received, reduce the sanction sought. Additionally, if you were able to provide exculpatory evidence, your case could be closed.

Please note, section 10.20(a)(1) of Circular 230 requires you to submit records or information upon a proper and lawful request of the Service.

A failure to respond to this letter may result in disciplinary action being taken both on the merits and for failure to cooperate.

Should you have any questions, please contact [Name of OPR Attorney], Enforcement Attorney, by phone at (202) 622-XXXX, by fax at (202) 622-XXXX, by email (non-secure) at [name.of.attorney@irs.gov], or by correspondence at: Internal Revenue Service, Office of Professional Responsibility, Attn: SE:OPR, 1111 Constitution Avenue, N.W., Room 7238/IR, Washington, DC 20224.

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Sincerely,

Michael R. Chesman
Director
Office of Professional Responsibility

Enclosure

Appendix B-1

OPR Consent Letter

[OFFER OF CONSENT TO CENSURE IN PRACTICE BEFORE THE INTERNAL REVENUE SERVICE]

[OFFER OF CONSENT TO (SUSPENSION OR DISBARMENT) FROM PRACTICE BEFORE THE INTERNAL REVENUE SERVICE]

To the Office of Professional Responsibility (OPR), Internal Revenue Service (IRS):

1. I, , [print or type practitioner's name] hereby offer my consent to [censure in practice before the IRS] [suspension or disbarment from practice before the IRS)] in lieu of a proceeding being [instituted or continued], ("Offer"), such Offer to be subject to the following terms and conditions.

2. I submit this Offer pursuant to section 10.61(b) of the regulations governing practice before the IRS, which are set out at 31 C.F.R. Part 10, and are published in pamphlet form as Treasury Department Circular No. 230, as revised [September 26, 2007 or other revision date] ("Circular 230").

3. By letter(s) dated [date(s)], receipt of which I acknowledge, OPR alleged that I had violated certain sections of Circular 230.

4. If this offer is accepted, I hereby admit to the following violation(s) of Circular 230:

[For all admissions include the Circular 230 section number, section title, and a brief description of the misconduct using the section's language where possible. The section title, or the brief description of misconduct, or both are return information if they indicate, with respect to the practitioner, the existence, or possible existence, of liability under the Internal Revenue Code for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense; e.g., 10.31, Negotiation of taxpayer checks (title); Willful failure to make Federal tax returns (description of misconduct). If the section title or description of misconduct is return information, include the type of return or type of return information and taxable year(s) covered by the return or return information. Indicate type of return by form number. If the misconduct involves a third party (such as a client), the description of the third party's tax situation should be as general as possible; e.g., Lack of due diligence in preparing client's tax return; not, understating client's income by $20,000.]

[Examples]

a.
[Circular 230 section number and title: 10.22, Diligence as to accuracy
Misconduct: Lack of due diligence in preparing client's tax return
Type of return information: Liability for preparer penalty

Taxable year covered by the return information: 2006]

b.
[Circular 230 section number and title: 10.29, Conflicting interests
Misconduct: Representation of one client was directly adverse to representation of another client]

c.
[Circular 230 section number and title: 10.51, Incompetence and disreputable conduct
Misconduct: Willful failure to make Federal tax returns
Type of returns: Forms 1040
Taxable years covered by the returns: 2005 and 2006]

This statement of misconduct is conditional and applies only if the offer is accepted and, if not accepted, such statement of misconduct shall be inadmissible at the option of the undersigned in all future proceedings.

5. [Include only one of the following.]

[A censure is a public reprimand. I will be under censure for a term of (number of months or years months.]

[I will be suspended for a term of (number of months or years). At the expiration of such term, I will again be eligible to practice before the IRS.]

[I will be suspended for a term of at least (number of months or years). No sooner than 30 days prior to the expiration of such term, I may file a petition for reinstatement to practice before the IRS, and OPR will then entertain my petition.]

[I will be disbarred for a term of at least five years. No soon than 10 days prior to the expiration of such term, I may file a petition for reinstatement, and, pursuant to section 10.81 of Circular 230, after the expiration of such term OPR will entertain my petition.]

6. I understand that during my term of [suspension or disbarment], I will be prohibited from engaging in practice before the IRS as that term is defined in section 10.2 of Circular 230 (including any revision thereto occurring during the term of my [suspension or disbarment]).

[Include all of these standard conditions for reinstatement. The standard conditions do not refer to the practitioner's particular tax situation.]

7. OPR may grant my petition for reinstatement, provided that:

a. I file within six months any Federal and/or State tax returns now due and owing and I pay, or arrange with the IRS, or State taxing authorities, to pay, any outstanding Federal or State tax liabilities;

b. During the term of my [suspension or disbarment], I file timely any Federal and/or State returns that become due and owing and I pay, or arrange with the IRS, or State taxing authorities, to pay, any Federal or State tax liabilities;

c. During the term of my [suspension or disbarment], I do not engage in practice before the IRS or make any attempt to do so;

d. During the term of my [suspension or disbarment], OPR does not contact me concerning any alleged violations of Circular 230;

e. At the time I submit my petition, I am otherwise in compliance with Circular 230; and

f. I submit with my petition documentary evidence that, if my petition is granted, I will be eligible, as defined in Circular 230, to practice before the IRS as [e.g., an attorney, certified public accountant, enrolled agent].

8. I understand that this Offer does not limit, or otherwise alter, the IRS' authority to disclose, as authorized by law, records and information concerning the violations to which I have admitted in this Offer.

I understand that such disclosures will include publication in the Internal Revenue Bulletin of a notice of my [censure, suspension, disbarment], including notice of the violations to which I have admitted in this Offer, and that such disclosures may include other disclosures to the general public, including a response to any inquiry from the general public concerning my disciplinary status.

I understand that such disclosures may also include disclosure of this Offer, and other records related to the violations to which I have admitted in this Offer, to any public, quasi-public, or private professional authority, agency, or organization that has granted, or hereafter considers granting, or grants me a license to practice law or accountancy, to represent taxpayers before any public authority, or to prepare tax returns; and to any public, quasi-public, or private professional association that has accepted, or hereafter considers accepting, or accepts me as a member. Such authorities, agencies, organizations, and associations will include, but will not necessarily be limited to, those specifically listed below in this Offer.

[If the violations include return information include paragraph 9, if not, move on to paragraph 10.

9. Pursuant to 26 U.S.C. 6103(c), I consent to the disclosure, by the IRS, of my return information contained in this Offer to the persons identified below:

To the general public, which will include publication in the Internal Revenue Bulletin of a notice of my [censure, suspension, disbarment], including notice of the violations to which I have admitted in this Offer, and which may include other disclosures to the general public, including a response to any inquiry from the general public concerning my disciplinary status.

As listed below, to any public, quasi-public, or private professional authority, agency, or organization that has, at present, granted me a license to practice law or accountancy, to represent taxpayers before any public authority, or to prepare tax returns; and to any public, quasi-public, or private professional association that has, at present, accepted me as a member; also to any public, quasi-public, or private professional authority, agency, organization, or professional association to which I apply, or may apply, for such license or membership within five years from the effective date of my [censure, suspension, disbarment].

10. Under penalties of perjury, I certify that the following is a complete list of all public, quasi-public, or private professional authorities, agencies, or organizations that have, at present, granted me a license to practice law or accountancy, to represent taxpayers before any public authority, or to prepare tax returns; and to any public, quasi-public, or private professional associations that have, at present, accepted me as a member:

a.
[Name of authority, agency, organization, or association
State or jurisdiction
Bar number, license number, or member number]

b.
[Name of authority, agency, organization, or association
State or jurisdiction
Bar number, license number, or member number]

c.
[Name of authority, agency, organization, or association
State or jurisdiction
Bar number, license number, or member number]

11. The signature of the Director, OPR, or his representative, on this Offer will constitute acceptance of this Offer, effective as of the date entered on this Offer by the Director or his representative. The effective date invokes all of the terms and conditions in this Offer and begins the term of [censure, suspension, or disbarment].

[Practitioner's signature]

[Practitioner's name; type or print]

Date signed:

Practitioner's SSN:

Practitioner's address:

[Signature of Director, OPR, or representative]

[Name of Director, OPR, or representative; type or print]

Title: [Director, OPR, or representative's title]

Effective date:

Appendix B-2

Consent Letter - Recommendations

[OFFER TO CONSENT TO CENSURE IN PRACTICE BEFORE THE INTERNAL REVENUE SERVICE]

[OFFER TO CONSENT TO (SUSPENSION OR DISBARMENT) FROM PRACTICE BEFORE THE INTERNAL REVENUE SERVICE]

To the Office of Professional Responsibility (OPR), Internal Revenue Service (IRS):

1. I, , [print or type practitioner's name] hereby offer to consent to [a censure] [suspension or disbarment] with respect to my practice before the IRS in lieu of a proceeding being [instituted or continued], ("Offer"); such Offer to be subject to the terms and conditions contained herein.

2. I submit this Offer pursuant to section 10.61(b) of the regulations governing practice before the IRS, as set out at 31 C.F.R. Part 10, and as published in pamphlet form as Treasury Department Circular No. 230, as revised [September 26, 2007 or other revision date] ("Circular 230").

3. By letter(s) dated [date(s)], receipt of which I acknowledge, OPR has alleged that I have violated certain sections of Circular 230.

4. Contingent on acceptance of this Offer, I hereby admit to the following violation(s) of Circular 230:

[For all admissions include the Circular 230 section number, section title, and a brief description of the misconduct using the section's language where possible. The section title, or the brief description of misconduct, or both are return information if they indicate, with respect to the practitioner, the existence, or possible existence, of liability under the Internal Revenue Code for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, e.g., 10.31, Negotiation of taxpayer checks (title); Willful failure to make Federal tax returns (description of misconduct). If the section title or description of misconduct is return information, include the type of return or type of return information and taxable year(s) covered by the return or return information. Indicate type of return by form number. If the misconduct involves a third party (such as a client), the description of the third party's tax situation should be as general as possible; e.g., “Lack of due diligence in preparing client's tax return”; <u>not</u>, “understating client's income by $20,000.”]

[Examples]

[Circular 230 section number and title: 10.22, Diligence as to accuracy
Misconduct: Lack of due diligence in preparing client's tax return
Type of return information: Liability for preparer penalty

Taxable year covered by the return information: 2006]

[Circular 230 section number and title: 10.29, Conflicting interests
Misconduct: Representation of one client was directly adverse to representation of another client without making requisite disclosures and securing requisite consents.]

[Circular 230 section number and title: 10.51, Incompetence and disreputable conduct
Misconduct: Willful failure to make Federal tax returns
Type of returns: Forms 1040
Taxable years covered by the returns: 2005 and 2006]

5. [Include only one of the following.]

[I agree to a censure and fully understand and agree that a censure is a public reprimand involving disclosure of all information relevant to such discipline.

[I accept a suspension for a period of (number of months or years) and fully understand and agree that a suspension is public discipline involving disclosure of all information relevant to such discipline. At the expiration of the suspension period, I will be eligible again to practice before the IRS without further terms or conditions.]

[I will accept a suspend ion for a period of at least (number of months or years) and fully understand and agree that a suspension is public discipline involving disclosure of all information relevant to such discipline. No sooner than 30 days prior to the expiration of the suspension period, I will be eligible to submit a petition to OPR for reinstatement to practice before the IRS which petition will be processed in due course.]

[I will accept disbarment for a period of(number of months or years) . No sooner than 10 days prior to the expiration of the disbarment period, I will be eligible to submit a petition to OPR for reinstatement, and, pursuant to section 10.81 of Circular 230, after the expiration of the disbarment period, OPR will consider my petition.]

6. During the period of [suspension or disbarment], I will not engage in practice before the IRS, as that term is defined in section 10.2 of Circular 230 (including any revision thereto occurring during the term of my [suspension or disbarment]).

[Include all of these standard conditions for reinstatement. The standard conditions do not refer to the practitioner's particular tax situation.]

7. I understand and agree that OPR may grant my petition for reinstatement, provided that:

a. Within six months of the date this Consent becomes effective, I file any Federal tax returns now due and owing, and I pay, or make arrangements acceptable to the IRS to pay, any outstanding Federal tax liabilities;

b. During the period of my [suspension or disbarment], I file timely (including any extensions) any Federal returns that become due and owing, and I pay, or make arrangements acceptable tithe IRS to pay, any Federal tax liabilities;

c. During the term of my [suspension or disbarment], I do not engage in, or attempt to engage in, directly or indirectly, practice before the IRS as that term is defined in section 10.2 of Circular 230 (including any revision thereto occurring during the term of my [suspension or disbarment];

d. During the term of my [suspension or disbarment], OPR does not contact me concerning any additional newly alleged violations of Circular 230;

e. At the time I submit my petition for reinstatement, I am otherwise in compliance with all the provisions of Circular 230 in effect at that time; and

f. I submit with my petition for reinstatement documentary evidence that, if my petition is granted, I will be eligible, as defined in Circular 230 section 10.2, to practice before the IRS as [an attorney, a certified public accountant, an enrolled agent, an actuary, an appraiser].

8. I understand that this Offer does not limit, or otherwise alter, the OPR's authority to disclose, as authorized by law, records and information concerning the violations to which I have admitted in this Offer.

I understand that such disclosures will include publication of a notice of my [censure, suspension, disbarment] in the Internal Revenue Bulletin which will include notice of the violations to which I have admitted in this Offer; and that such disclosures may include other disclosures to the general public, including a response to any inquiry from the general public concerning my disciplinary status.

I understand that such disclosures may also include disclosure of the terms of this Offer, and other facts relating to the violations to which I have admitted in this Offer, to any public, quasi-public, or private professional authority, agency, or organization that has granted, or hereafter considers granting, or grants me a license to practice as a [lawyer, accountant, actuary, appraiser, enrolled agent, licensed tax preparer] to represent taxpayers before any public authority, or to prepare tax returns; and to any public, quasi-public, or private professional association that has accepted, or hereafter considers accepting, or accepts me

as a member. Such authorities, agencies, organizations, and associations will include, but will not necessarily be limited to, those specifically listed below in this Offer.

[If the violations include return information include paragraph 9, if not, move on to paragraph 10.

9. Pursuant to 26 U.S.C. 6103(c), I consent to the disclosure by OPR, of my return information as contained in this Offer to the persons identified below:

To the general public, which will include publication of a notice of my [censure, suspension, disbarment] in the Internal Revenue Bulletin, including notice of the violations to which I have admitted in this Offer, and which may include other disclosures to the general public, including a response to any inquiry from the general public concerning my disciplinary status.

As listed below, to any public, quasi-public, or private professional authority, agency, or organization that has, at present, granted me a license to practice [law, accountancy etc], to represent taxpayers before any public authority, or to prepare tax returns; and to any public, quasi-public, or private professional association that has, at present, accepted me as a member; also to any public, quasi-public, or private professional authority, agency, organization, or professional association to which I apply, or may apply, for such license or membership within a period of five years from the effective date of my [censure, suspension, disbarment].

10. Under penalties of perjury, I certify that the following is a complete list of all public, quasi-public, or private professional authorities, agencies, or organizations that have, at present, granted me a license to practice [law or accountancy, tax preparation, as an actuary, as an appraiser], to represent taxpayers before any public authority, or to prepare tax returns; and to any public, quasi-public, or private professional associations that have, at present, accepted me as a member:

a.
[Name of authority, agency, organization, or association
State or jurisdiction
Bar number, license number, or member number]
[Repeat as needed for each agency]

11. The signature of the Director, Apron this Offer will constitute acceptance of this Offer, effective as of the date entered on this Offer by the Director. The effective date invokes all of the terms and conditions in this Offer and begins the period of [suspension, or disbarment].

[Practitioner's signature]

[Practitioner's name; type or print]

Date signed:

Practitioner's SSN:

Practitioner's address:

[Signature of Director, OPR]

[Name of Director, OPR]

Title: [Director, OPR,]

Effective date:

APPENDIX C -1(A)

APPRAISAL HYPOTHETICAL

APPRAISAL HYPOTHETICAL

Basic Facts

Appraiser X delivers an appraisal for the Estate of Y for purposes of Form 706, the decedent's estate tax return. Y owned a controlling interest in ABC Company, a manufacturing company. ABC, started by Y fifty years ago, had revenues of $100 million, was very profitable, had little debt and was growing steadily. Y's interest in ABC constituted the bulk of his personal net worth.

Scenario 1

During the audit of the estate, the IRS examiner reviewed the appraisal. In reviewing the company files, he found various drafts of the appraisal report. The value determined in the first draft was more than double the value reported on Form 706. In addition, there were notes written by the company's president to the chief financial officer directing the CFO to "tell the appraiser to reduce the value". Later on in the process of the audit, a review of the company's e-mails uncovered a series of conversations between the CFO and the appraiser. In response to the CFO's request that the value be lowered, Appraiser X complied by explaining to the CFO what steps he would take to reduce the value. No economic explanation or justification was ever discussed. In response to interrogatories, the appraiser could offer no credible evidence that his lowering of the value was caused by either an error in the draft that needed to be corrected or a change in the economic facts supporting the appraisal.

Proposed OPR Response

Appraiser X, in addition to violating his appraisal society's ethical rules against bias and advocacy, has demonstrated incompetence and disreputable conduct in violation of Circular 230 §10.51(a)(13). Incompetence and disreputable conduct includes "giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws." [OPR suggested penalty here.]

Scenario 2

During the audit of the estate, the IRS examiner reviewed the appraisal. The examiner noticed the appraiser's work was not done in conformance with Revenue Ruling 59-60, resulting in clear methodological errors. Further, Appraiser X made several arithmetic mistakes which had a material effect on value. Upon questioning, the appraiser indicated this was the way he had always valued such businesses but admitted he had not reviewed Revenue Ruling 59-60 and had not attended any valuation conferences or classes in "a long time." He also indicated that he had been in a hurry when he prepared the report and had not checked his work nor had anyone else review it. While his report indicated he

was a member of an appraisal society, he had actually let his membership lapse many years before.

Proposed OPR Response

Appraiser X has demonstrated incompetence and disreputable conduct in violation of Circular 230 §10.51(a)(13). Incompetence and disreputable conduct includes "giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws." "Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client." In addition, Appraiser X has violated §10.22(a)(1) which specifies that a practitioner must exercise due diligence in preparing or assisting in the preparation of returns. Appraiser X's work did not reflect adequate competence and was prepared in a careless manner. Mitigating the violations was the fact that the appraiser had not intentionally committed the errors. [OPR suggested penalty here.]

Scenario 3

During the audit of the estate, the IRS examiner reviewed the appraisal. The examiner thought the value seemed low. Appraiser X followed proper valuation procedure and methodology, including close adherence to Revenue-Ruling 59-60. The report included a detailed explanation of the appraiser's assumptions and conclusions. The supporting documentation was thorough and the report contained no arithmetic errors. The examiner strongly disagreed with the appraiser's judgment on several issues. For example, in the Market Approach to value, the examiner took issue with Appraiser X's selection of comparable companies. In the examiner's opinion, the comparables selected resulted in the use of multiples for income and cash flow that were too low for the subject company. In addition, under the Income Approach to value, the examiner believed the discount rate selected by the appraiser was far too high, resulting, again, in a value that was unreasonably low. Based primarily on these differences, the value the examiner determined for Y's interest in ABC Company was far higher than that determined by the appraiser and a notice of deficiency was prepared.

Proposed OPR Response

Appraiser X has not violated IRS Circular 230 . The dispute here is a matter of judgment and opinion. The valuation controversy will be settled in the IRS appellate process or in Tax Court.

APPENDIX C -1(B)

BOND COUNSEL HYPOTHETICAL

National Association *of* Bond Lawyers

PUBLIC FINANCE BOND COUNSEL

CIRCULAR 230 HYPOTHETICALS

1. Abandoned Project

Counsel is engaged to serve as bond counsel to a general purpose local government (Issuer) in connection with a tax-exempt bond financing for a major, public-private infrastructure project. Counsel knows that the project is controversial.

As bond counsel, Counsel will deliver an unqualified opinion in connection with the issuance of the bonds to the effect that the interest on the bonds is exempt from federal and State income tax. Substantially prior to the bond sale, Counsel sends a preliminary tax document (which may be in the form of a memorandum, questionnaire, checklist, or draft closing tax matters certificate) to representatives of the Issuer and to the private participant in the project. The preliminary tax documents relate to, among other items, (i) the project to be financed with the bonds, (ii) the expected status of commencement and completion of construction, (iii) the expected investment of proceeds of the bonds pending application to project costs, (iv) the expected sources of repayment of the bonds and (v) the expected use of the project during the life of the bonds. The recipients respond appropriately to the preliminary tax documents, and any questions raised by the responses are resolved by discussions between Counsel and the representatives of the Issuer or the private party. Counsel reviews underlying documents, either transactional or general, which bear specifically and importantly on relevant facts. Counsel does not establish documentation for facts when Counsel believes this documentation to be unnecessary. Counsel incorporates factual material from the preliminary tax documents and clarifying discussions into the closing tax matters certificates for execution by an authorized official of the Issuer and an officer of the private party. The Issuer's in-house attorney tells Counsel that the project, while controversial, is legal and fully authorized by the Issuer and that the in-house attorney will deliver an opinion to this effect at the bond closing; Issuer's in-house attorney does so. Counsel delivers an unqualified opinion as to tax exemption and validity of the bonds at the closing.

Some days after the bonds are issued, the private party announces it is withdrawing from participation in the project, citing lack of public support. The

withdrawal does not violate any legal obligation of the private party in an underlying transaction document but is contrary to previous public statements of the private party's chief executive officer and conflicts with tax covenants and represented expectations in the closing tax matters certificate of the private party. The Issuer is unable to find an alternative participant for the project, the project is abandoned before expenditure of the proceeds, and the bond proceeds are used to redeem the bonds. Regardless of whether in a subsequent examination of the bonds the Internal Revenue Service might conclude that it was unreasonable for the Issuer to expect to spend the proceeds of the bonds on the project, Counsel acted professionally and in accordance with the standards provided in Circular 230 in delivering a bond counsel opinion at the issuance of the bonds that the interest on the bonds was tax-exempt. Moreover, actions taken by the Issuer and/or the private party after the issuance of the bonds and the delivery of Counsel's opinion have no effect on the determination that Counsel acted professionally and in accordance with the standards provided in Circular 230.

2. No Specific Projects

Counsel is engaged to serve as bond counsel to a general purpose local government (Issuer) in connection with a tax-exempt financing. Counsel informs Issuer's chief financial officer (CFO) that Counsel's opinion on the tax exemption of the bonds will be based, in part, on certifications of CFO on behalf of Issuer that, as of the issue date of the bonds, Issuer reasonably expects to expend at least 85 percent of the net sale proceeds of the bonds on capital projects within 3 years of the issue date and that completion of the capital projects and expenditure of the net sale proceeds will proceed with due diligence. CFO responds that Issuer has no specific capital projects planned, and that significant opposition exists from members of Issuer's governing board to commence new capital projects in the foreseeable future. Several members of Issuer's governing board confirm to Counsel that no specific capital projects are planned. CFO states that the lack of specific projects is not a concern, because the proceeds of the bonds will be invested in a guaranteed investment contract with a yield exceeding the yield on the bonds, and because the Issuer will qualify for an exception from arbitrage rebate for small issuers. Further, CFO states that the bonds can be retired using proceeds of the bonds (including investment earnings thereon), and the remaining arbitrage profit can be retained by Issuer. Counsel provides CFO with a closing tax matters certificate that includes certifications that Issuer reasonably expects to expend at least 85 percent of the net sale proceeds of the bonds on capital projects within 3 years of the issue date and that completion of the capital projects and expenditure of the net sale proceeds will proceed with due diligence. Counsel accepts the closing tax matters certificate executed by CFO and renders its opinion on the tax exemption of the bonds. Counsel does not ask any follow-up questions regarding prior statements by CFO and members of Issuer's governing board that contradict the closing tax matters certificate and does not obtain any further information about potential capital projects. Under provisions in Circular 230, a practitioner may not give written

advice concerning one or more federal tax issues if the practitioner unreasonably relies upon representations of the taxpayer or any other person or does not consider all relevant facts that the practitioner knows or should know. Counsel's reliance upon the closing tax matters certificate executed by CFO was unreasonable in light of prior statements to Counsel by CFO and members of Issuer's governing board about the lack of planned capital projects and in light of Counsel's failure to obtain any other information supporting the statements in the closing tax matters certificate.

3. Reliance on 501(c)(3) Opinion

Statewide health care agency issues qualified 501(c)(3) bonds for the benefit of nonprofit hospital. Counsel is engaged to serve as bond counsel and delivers an unqualified bond opinion to the effect that interest on the bonds is not includible in gross income of the holders for federal income tax purposes. In performing its tax analysis, Counsel has performed due diligence with respect to hospital's expected use of the property to be financed, including hospital's contracts concerning the property, and various other matters which could affect hospital's 501(c)(3) status; Counsel has not investigated all facts or analyzed all issues which could affect hospital's 501(c)(3) status. Counsel's bond opinion explicitly relies on the opinion of the hospital's attorney for the conclusion that hospital is a 501(c)(3) organization. This reliance is noted in the public offering document in the initial sale of the bonds. Counsel discussed the substance of the 501(c)(3)opinion with hospital's attorney, and Counsel has no reason to believe that the opinion should not be relied upon or that the opinion is incorrect or inconsistent with an important fact or assumption. Counsel in good faith relies on the opinion of hospital's attorney without further investigation or verification.

After the bonds are issued, the Internal Revenue Service revokes hospital's 501(c)(3) status because of certain matters unrelated to the bonds or the financed property, and about which Counsel had no knowledge or reason to know. Counsel reasonably relied on the opinion of hospital's attorney with respect to hospital's 501(c)(3) status, and therefore Counsel will be considered to have exercised due diligence with respect to hospital's 501(c)(3) status for purposes of Circular 230.

4. Projections

Counsel is engaged to serve as bond counsel to a general purpose local government (Issuer) in connection with tax-exempt lease revenue bonds for the purchase of an office building. The bonds are scheduled to mature in 20 years. The tax-exemption on the bonds is dependent upon the Issuer's reasonable expectation that the office building will be leased to State government agencies and departments. On the date of issuance of the bonds, approximately 93% of the building is occupied by a State department (Department) under a lease scheduled to expire within 4 years of the date of issuance of the bonds (Lease). Counsel reviews the Lease with Department and another lease in place with a private business at issuance. Counsel and a representative of Issuer also participate in discussions with the State's general services agency in charge of leasing governmental space (GSA). GSA confirms that Department would

not be extending the Lease, as its permanent building is scheduled to be completed before the expiration of the Lease. Counsel and Issuer inquire about potential future leases with other State agencies and departments to replace the Lease, but they are told by GSA that at most it might have a need for additional short-term, temporary space needs. GSA could make no commitments or guarantees that its State agencies would have leasing needs for the office space. Counsel reviews projections of Issuer's financial advisor showing that the Lease would extend throughout the term of the bonds. Department vacates the office building upon the expiration of the Lease. The bonds go into default when the State does not lease any additional temporary space and Issuer secures private business tenants for only a portion of the vacated space. The projections are attached as an exhibit to the closing tax matters certificate prepared by Counsel and executed by Issuer; the projections are cross-referenced in Issuer's stated expectation that the project would be occupied by the State and proceeds would not be reasonably expected to be used for private business use. Under provisions in Circular 230, a practitioner may not give written advice concerning one or more federal tax issues if the practitioner unreasonably relies upon representations of the taxpayer or any other person or does not consider all relevant facts that the practitioner knows or should know. Counsel's reliance upon projections which it knew to be incorrect and incomplete was unreasonable in light of information from GSA regarding the Lease and the State's future leasing plans and in light of Counsel's failure to obtain any other information supporting the statements in the closing tax matters certificate.

Version 2. The facts are the same, except Department's lease at issuance of the bonds is for a term in excess of the term of the bonds, but due to financial difficulties, the State fails to appropriate funds for rental payments. As a result, Department vacates the building and the bonds default. Counsel's reliance on the projections was reasonable because the facts of the lease term were correctly included in the projections upon which Counsel relied. Actions taken by the Department after the issuance of the bonds and the delivery of Counsel's opinion have no effect on the determination that Counsel acted professionally and in accordance with the standards provided in Circular 230.

Appendix C -1(c)

Noncompliance Hypothetical

HYPOTHETICAL - NONCOMPLIANCE

Basic Facts:

X is a federally authorized tax practitioner. X has a practice which includes preparation of individual and entity tax returns and tax planning for individuals and businesses. X has been in practice for 8 years and has grown his Schedule C business sufficiently to require employment of three other federally authorized tax practitioners and four administrative staff. X insures that he and the practitioners he employs obtain the minimum requisite amount of continuing education credits, including ethics credits, as required by their respective licensing agencies. Neither X, nor any of his professional employees, have ever been the subject of inquiry by their state licensing authority or by OPR.

Scenario 1

X had a particularly difficult 2005 both on a personal and professional level. His marriage disintegrated mid-year, and he lost a major family group as clients. The family group represented 25% of X's billings in 2004. X was too distracted by these events to file his own 2004 tax return in April 2005 so he put himself on extension and made a substantial payment with the extension voucher (in addition to the "safe" estimated tax payments he made in each of the four quarters) . He believed he had paid whatever tax liability would be reflected on his return when eventually filed. Matters didn't improve by the extended due date so X obtained an additional extension of time to file until October 15, 2005. X then failed to file his 2004 return by the October 15 due date. Over the next two years X continued to be distracted by his personal and financial pressures and expended additional time and effort attempting to replace the lost business income resulting from the loss of a major client. In 2006 and 2007, X followed the same pattern as 2005: he extended his 2005 and 2006 returns for the maximum period, having full-paid the tax he believed to be due, and then failed to file the returns by the extended due dates. In 2008, X came to OPR's attention just as he had taken steps to correct his failure to file by preparing and filing his 2004-2006 returns, all of which show modest overpayments of tax for each year without regard to carryover credits.

Proposed OPR response: X violated Circular 230 §10.51(a)(6) by failing to timely file his personal income tax returns. He did, however, take steps to correct the failure prior to being contacted by OPR and his failure to file did not result in any financial harm. In addition, willfulness is mitigated by extenuating circumstances. Therefore X should receive [insert recommendation regarding appropriate range of sanctions].

Scenario 2

X had a particularly difficult 2005 both on a personal and professional level. His marriage disintegrated mid-year, and he lost a major family group as clients. The family group represented 25% of X's billings in 2004. X was too distracted by these events to file his own 2004 tax return in April 2005 so he put himself on extension and made a substantial payment with the extension voucher (in addition to the "safe" estimated tax payments he made in each

of the four quarters). He believed he had paid whatever tax liability would be reflected on his return when eventually filed. Matters didn't improve by the extended due date so X obtained an additional extension of time to file until October 15, 2005. X then failed to file his 2004 return by the October 15 due date. Over the next two years X continued to be distracted by his personal and financial pressures and expended additional time and effort attempting to replace the lost business income resulting from the loss of a major client. In 2006 and 2007, X followed the same pattern as 2005: he extended his 2005 and 2006 returns for the maximum period, having full-paid the tax he believed to be due, and then failed to file the returns by the extended due dates. In 2008, X's failure to file came to OPR's attention.

Proposed OPR response: X violated Circular 230 §10.51(a)(6) by failing to timely file his personal income tax returns. Willfulness is mitigated by extenuating circumstances. In addition, X's failure to file did not result in any financial harm. If X's returns are subsequently promptly prepared and filed, and show no tax due in any year, X should receive [insert recommendation regarding appropriate range of sanctions].

Scenario 3

X had a particularly busy 2005 both on a personal and professional level. She got married mid-year and her practice has been growing by leaps and bounds. X was too distracted by these events to file her own 2004 tax return in April 2005 so she put herself on extension assuming that her estimated tax payments were sufficient to cover any tax due. When the distractions didn't subside by the extended due date, X obtained an additional extension of time to file until October 15, 2005. X then failed to file her 2004 return by the October 15 due date. Over the next two years X continued to be distracted by her marital relationship and her frantic business schedule. In 2006 and 2007, she extended her 2005 and 2006 returns for the maximum period and then failed to file the returns by the extended due dates. She failed to make estimated tax payments for her 2005 and 2006 returns and sent no payments with her extension requests. In 2008, X's failure to file came to OPR's attention just as she had taken steps to correct the failure to file and failure to pay by preparing and filing her 2004-2006 returns and paying all tax and interest due.

Proposed OPR response: X violated Circular 230 §10.51(a)(6) by failing to timely file her personal income tax returns and failing to timely pay any tax due. She did, however, correct the failure prior to being contacted by OPR and her failure to file did not result in any financial harm. In addition, willfulness is mitigated by extenuating circumstances. X should receive [insert recommendation regarding appropriate range of sanctions].

Scenario 4

X had a particularly busy 2005 both on a personal and professional level. She got married mid-year and her practice has been growing by leaps and bounds. X was too distracted by these events to file her own 2004 tax return in April 2005 so she put herself on extension assuming that her estimated tax payments were sufficient to cover any tax due. When the distractions didn't subside by the extended due date, X obtained an additional extension of time to file until October 15, 2005. X then failed to file her return by the October 15 due date. Over the

next two years X continued to be distracted by her marital relationship and her frantic business schedule. In 2006 and 2007, she extended her 2005 and 2006 returns for the maximum period and then failed to file the returns by the extended due dates. She failed to make estimated tax payments for her 2005 and 2006 returns and sent no payments with her extension requests. In 2008, X's failure to file came to OPR's attention. After contact from OPR, X promptly filed and paid all the tax, penalty and interest due with respect to each of the three delinquent tax years.

Proposed OPR response: X violated Circular 230 §10.51(a)(6) by failing to timely file her personal income tax returns and failing to timely pay all tax due. She did, however, correct the failure after being contacted by OPR. Willfulness is mitigated somewhat by extenuating circumstances. X should receive [insert recommendation regarding appropriate range of sanctions].

Scenario 5

X had a particularly busy 2005 both on a personal and professional level. She got married mid-year and her practice has been growing by leaps and bounds. X was too distracted by these events to file her own 2004 tax return in April 2005 so she put herself on extension assuming that her estimated tax payments were sufficient to cover any tax due. When the distractions didn't subside by the extended due date, X obtained an additional extension of time to file until October 15, 2005. X then failed to file her return by the October 15 due date. Over the next two years X continued to be distracted by her marital relationship and her frantic business schedule. In 2006 and 2007, she extended her 2005 and 2006 returns for the maximum period and then failed to file the returns by the extended due dates. She failed to make estimated tax payments for her 2005 and 2006 returns and sent no payments with her extension requests. In 2008, X's failure to file came to OPR's attention. After contact from OPR, X promptly filed each of the three delinquent tax year's returns. However, she was unable to pay the accumulated liabilities in full and submitted an offer in compromise to the IRS for consideration.

The offer is accepted.

Proposed OPR response: X violated Circular 230 §10.51(a)(6) by failing to timely file her personal income tax returns and failing to timely pay all tax due. She did, however, correct the failure after being contacted by OPR. Willfulness is mitigated somewhat by extenuating circumstances. X should receive [insert recommendation regarding appropriate range of sanctions].

The offer is rejected.

Proposed OPR response: X violated Circular 230 §10.51(a)(6) by failing to timely file her personal income tax returns and failing to timely pay all tax due. She did, however, partially correct the failure after being contacted by OPR. Willfulness is mitigated somewhat by extenuating circumstances. X should receive [insert recommendation regarding appropriate range of sanctions].

Scenario 6

X has several entrepreneurial clients who are always pushing the envelope of risky investments and highly leveraged business transactions. The clients all work for business entities from which they receive W-2's for tax reporting purposes. The investment and business activities are reported on Forms 1099 or K-1. In 2006, one of these clients became embroiled in a business dispute and failed to get X his tax materials in time to timely file, even after a maximum extension of time. X met with the client and advised the client that since he has been "overwithheld" every year that she has prepared his return, there should be no consequences for his failure to file his 2006 tax return and he should get his data to her as soon as possible.

Proposed OPR response: X violated Circular 230 §10.51(a)(7) by suggesting there should be no consequences for the client's failure to file. Since the misconduct involved a single incident, X should receive [insert recommendation regarding appropriate range of sanctions].

Different result if client in Scenario 6 has missed the filing deadline several years in a row with the same advice given by X?

Proposed OPR response: X violated Circular 230 §10.51(a)(7) by suggesting there should be no consequences for the client's failure to file. Since there are no apparent mitigating factors, X should receive [insert recommendation regarding appropriate range of sanctions].

Different result if X has several clients to whom she gave advice similar to that in Scenario 6 in multiple years?

Proposed OPR response: X violated Circular 230 §10.51(a)(7) on multiple occasions by suggesting to clients that there should be no consequences for the client's failure to file. Since there are no apparent mitigating factors, X should [insert recommendation regarding appropriate range of sanctions].

APPENDIX C -2(A)

COVER LETTER – EXAMPLE 1

Dear :

On behalf of the OPR subcommittee of IRPAC, thank you for submitting [a hypothetical] [hypotheticals] developed by [insert name of organization]. Your organization's participation in this important effort is greatly appreciated.

Our committee has received hypotheticals from a number of different organizations in a variety of formats. In order to achieve some consistency in format, we have created a sample hypothetical for organizations to use as a guide in developing hypotheticals. A copy of this sample hypothetical is enclosed for your organization's review. I'd appreciate it if you would review the format of the sample hypothetical and then revise your hypothetical(s) as necessary.

Each hypothetical should generally include the following:

- A fact pattern
- A statement regarding the applicable sections of Circular 230
- An opinion as to whether or not the conduct is actionable (along with the reason why or why not)

If you have an opinion regarding the appropriate range of sanctions for a particular violation, you may also include that with your submission. Also, if you are aware of scenarios where the facts may be such that it could be difficult for the practitioner to determine the appropriate conduct, you may submit those scenarios without providing an opinion as to whether or not the conduct is actionable.

Our committee has been working with OPR for several months and now has a better understanding how these hypotheticals may be used by OPR. It is anticipated that OPR will use the hypotheticals:

- to educate practitioners regarding what conduct violates Circular 230 and what conduct does not;
- to provide guidance to practitioners in situations involving difficult ethical issues where it may be difficult for practitioners to determine what conduct is appropriate; and/or
- to illustrate how OPR views various aggravating and mitigating factors and the range of sanctions OPR might impose in different situations.

This is an ongoing effort so additional hypotheticals may be submitted at any time.

We are particularly interested in hypotheticals involving the following sections of Circular 230, but all submissions are welcome:

- §10.20 Information to be furnished
- §10.21 Knowledge of a client's omission
- §10.22 Diligence as to accuracy
- §10.29 Conflicting interests
- §10.30 Solicitation
- §10.34 Standards with respect to tax returns and documents, affidavits and other papers (particularly 10.34(d) – Relying on information furnished by clients)

Thank you again for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

Enclosure

Appendix C -2(b)

Cover Letter – Example 2

Dear :

I am a member of a new OPR subcommittee of IRPAC that is working with the Office of Professional Responsibility (OPR) to provide guidance to the practitioner community on Circular 230 issues. One of our primary tasks is to solicit and develop hypotheticals OPR can use in published guidance:

- to educate practitioners regarding what conduct violates Circular 230 and what conduct does not;
- to provide guidance to practitioners in situations involving difficult ethical issues where it may be difficult for practitioners to determine what conduct is appropriate; and/or
- to illustrate how OPR views various aggravating and mitigating factors and the range of sanctions OPR might impose in different situations.

To ensure we develop hypotheticals that address the topics most relevant to the practitioner community as a whole, we are soliciting input from a variety of professional organizations such as the ABA, AICPA, AAA-CPA, NAEA, NATP, NSA, NSTP, etc. If your organization is interested in submitting hypotheticals for consideration, please send them to me [via email]. This is an ongoing project so your input is welcome at any time.

Our committee is particularly interested in hypotheticals involving the following sections of Circular 230, but all submissions are welcome:

- §10.20 Information to be furnished
- §10.21 Knowledge of a client's omission
- §10.22 Diligence as to accuracy
- §10.29 Conflicting interests
- §10.30 Solicitation
- §10.34 Standards with respect to tax returns and documents, affidavits and other papers (particularly 10.34(d) – Relying on information furnished by clients)

Each hypothetical should generally include the following:

- A fact pattern
- A statement regarding the applicable sections of Circular 230
- An opinion as to whether or not the conduct is actionable (along with the reason why or why not)

If you have an opinion regarding the appropriate range of sanctions for a particular violation, you may also include that with your submission. I've attached a sample hypothetical so you can see how your hypotheticals should generally be formatted.

If you are aware of scenarios where the facts may be such that it could be difficult for the practitioner to determine the appropriate conduct, you may also submit those scenarios without providing an opinion as to whether or not the conduct is actionable.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,

Enclosure

APPENDIX D -1

"SOFT" LETTER

"SOFT" LETTER DRAFT
Date

John Q. Practitioner
Enrolled Agent
123 Main Street
Anytown, XX 12345-6789

Dear Mr. Practitioner:

This letter is being sent pursuant to section 10.53 of Treasury Department Circular No. 230 (31 CFR Part 10, effective September 26, 2007), a copy of which is enclosed.

This office recently received information which raised questions as to whether there had been a violation by you of Subpart B, or Subpart C section 10.51, of the regulations governing practice before the Internal Revenue Service. A summary of the alleged facts, and of the specific provisions allegedly violated, is attached hereto for your reference.

Upon review, this office has determined that the allegations, deemed to be true for purposes of our analysis, do not currently demonstrate behavior, or a pattern of behavior, which warrants further investigation or action by the Office of Professional Responsibility. This letter is being sent to you solely for the purpose of advising you of the allegations, and of our determination not to pursue the matter further at this time. No response is required.

Pursuant to Section 10.53(c), the allegation report will be retained by the Office of Professional Responsibility for a period of ten years, as permitted under the applicable records control schedule approved by the National Archives and Records Administration, and as designated in the Internal Revenue Manual section 1.15.11-1(4). Because the allegation report will be retained for a period of time, and because there is the possibility that the allegations contained therein will be viewed as cumulative conduct should any future referrals to this office occur, you are invited to provide a written response to the allegation report. Any written response you provide will be maintained with the allegation report for the period referenced above but **will not** receive a response in any form from OPR at this time.

It is important that you understand that the decision not to pursue the allegations against you at this time is based upon the determination that a single incident does not reflect the requisite willfulness required to justify a full investigation. However, the conduct alleged, if true, and absent any mitigating factors, does constitute a technical violation of the provisions of Circular 230 at section(s) [insert appropriate section(s)]. Should there be future allegations of the same, or of a different nature, which constitute violations of Circular 230 provisions, it is likely that an investigation and disciplinary action would ensue, and that the enclosed allegation report would become a part of that

investigation. Consequently, we urge you to consider the allegations contained in the enclosed summary objectively, and take steps to understand their nature and basis, in order to modify your future conduct accordingly.

Should you wish to submit a written response to the allegations, please address them to: [Name of OPR Attorney], Enforcement Attorney, by fax at (202) 622-XXXX, by email (non-secure) at [name.of.attorney@irs.gov], or by correspondence at: Internal Revenue Service, Office of Professional Responsibility, Attn: SE:OPR, 1111 Constitution Avenue, N.W., Room 7238/IR, Washington, DC 20224.
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Sincerely,

Michael R. Chesman
Director
Office of Professional Responsibility

Enclosures: as stated

APPENDIX G-1

OPR Public Relations

OPR Public Relations

Outreach

- Continue to liaise with various professional and educational groups (ABA/AICPA/State CPA Societies/EAs/NASBA) to work together on getting the word out re OPR to their members
- Continue to have an active presence at the IRS Nationwide Tax Forums by staffing an exhibitor booth, making various presentations, and perhaps conducting workshops or discussion forums
- Continue to have an active presence at the ABA Tax Conferences by staffing an exhibitor table and making various presentations
- Have an active presence at CPA conferences by staffing a table or booth and making various presentations
- Consider preparing a periodic (quarterly?) OPR electronic newsletter or update which focuses on introducing OPR to the practitioner community (particularly CPAs) and also providing various updates and other information (a really good model for this is the monthly electronic update from IRS EO)
- Consider preparing "canned" introductory materials which can be disseminated to the practitioner community for use in their internal training programs (for instance, some firms conduct monthly educational sessions for their personnel on a wide range of topics, the firm could easily undertake an hour presentation on OPR and Circular 230 with “canned” materials or modules from OPR)
- Utilize presentations from the stakeholder-liaison library
- EO has issued many informative fact sheets which help get the word out re various issues; try to get links on the monthly IRS e-news
- Liaise with law schools (e.g. LLM programs and MBT programs) and the Big 4 (internal training classes) to see if they can add classes on IRS practice and procedures (with substantive modules addressing OPR)
- Aim to get more mentions and references in publications such as Tax Notes Today
- Liaise with tax software developers and companies to explore ways that they can help tax preparers become aware of the Circular 230 rules and what OPR is also about
- Try to get news releases in magazines such as Practical Accountant and Accounting Today

Brochure (General)

- Design and disseminate an inexpensive tri-fold promotional brochure to hand out at conferences and other gatherings of practitioners (should be colorful and easy to read); should be similar to the existing "How to Become an Enrolled Agent" brochure, however, should be focused on providing general information regarding OPR and Circular 230 to all practitioners
- At this juncture, the information contained within the brochure should be focused on introductory information regarding OPR as opposed to providing too much detail regarding Circular 230 or other more technical topics

Education

- Liaise with the state CPA societies to attempt to get OPR modules added to their practitioner state ethics CPE/CLE presentations (an ethics course through the California CPA Society contains scant mention of OPR or Circular 230)
- Liaise with the administrators for the LLM and MBT programs across the United States to make sure that OPR and Circular 230 are part of the IRS procedures courses which are given at their schools
- Initiate programs to "teach the teachers" to leverage on existing professionals to get the word out re OPR
- Conduct webinars/conference calls on Tax Talk Today and conduct phone forums
- Prepare and issue easy-to-read materials (perhaps a comic book similar to what the Federal Reserve issued) to get information to the college students and new CPAs; or perhaps produce and post a piece on YouTube in an effort to reach the younger practitioners
- Consider the creation of an interactive educational web site similar to stayexempt.org
- Educate the practitioner community regarding the difference between §6694 of the Internal Revenue Code and Circular 230
- Consider changing the name of "Circular 230" when referencing such in any published materials (for example, "Practitioner Ethics Code")

OPR's Internet Site

- Present more basic and introductory information on OPR's web site
- Update the web site on a more regular basis
- Try to obtain a separate tab on the Internal Revenue Service web page (the OPR web page is probably more "important" to find easily than the Tax-Exempt Bond Community, for instance)
- The OPR web site needs to be far more user friendly to facilitate easily locating information posted there
- Consider adding a Circular 230 FAQs on the web site
- Need to have more “positive” information on the web site (e.g. letting the practitioner know what they should be doing)

Karen Botvin

Ms. Botvin is a Senior Manager with Vanguard Group, Inc., Investor Tax Services in Malvern, PA. She provides technical consulting and support services related to tax reporting and withholding for Vanguard's retail, institutional and brokerage clients. Ms. Botvin is also responsible for monitoring legislative, regulatory and judicial developments related to federal tax reporting and withholding matters. She is a member of the AICPA, the Pennsylvania Institute of Certified Public Accountants and the American Society of Pension Professionals and Actuaries. She is a CPA, a Qualified Pension Administrator and has an MS in Taxation from Widener University in Chester, PA. **(IRPAC Chair)**

Holly Carlin

Ms. Carlin has been the owner of Holly A. Carlin, CPA, Inc. in Park City, UT since 1998. Her business includes tax, accounting, financial planning, business consulting, IRS representation and mediation. Ms. Carlin is a member of AICPA, UACPA, NAEA, NATP and NSTP. She has a CPA License from the state of Utah and is also an enrolled agent. She received a BS in Education from Indiana University, a BS in Accounting from Weber State College, a post graduate certificate in Conflict Resolution from the University of Utah and an MS in Taxation from Washington School of Law. **(Modernization)**

Mark Castro

Mr. Castro is the Tax Support Manager with Orrtax Software Solutions in Bellevue, WA. He has worked 17 years in the tax software field developing individual and business tax software as well as federal and state electronic filing programs. He is a member of the board of the National Association of Computerized Tax Processors (NACTP) and a member of the Council of Electronic Revenue Communication Advancement (CERCA). He has a BS in Business Administration (Accounting) from California State University, Northridge and has been a Certified Public Accountant since 1989. **(OPR)**

Lisa M. Chavez

Ms. Chavez is a Senior Attorney in the Corporate Legal department of The Northern Trust Company in Chicago, IL. She has spent five years advising the company and its global subsidiaries with respect to tax matters, and supporting new business and global product development, with a focus on US tax withholding and tax information reporting issues. She also advises business units regarding the development of tax policies and procedures, and is responsible for monitoring tax

regulatory and legislative developments. She is a member of the American Bar Association, the Hispanic Lawyers Association of Illinois and the American Bankers Association. Ms. Chavez is a CPA and holds a BA in Accounting from St. Ambrose University in Davenport, Iowa, and a JD from the University of Chicago Law School in Chicago, Illinois. **(Emerging Compliance Issues)**

Conrad Davis Mr. Davis is a partner in the firm of Ueltzen & Company, LLP in Sacramento, CA. He has been preparing tax returns for over 17 years. He is the co-chair of the AICPA taskforce updating the Statements on Standards for Tax Services. Mr. Davis is also a board member and Treasurer of the California Society of Certified Public Accountants He has a BS in Agricultural Science and Management from the University of California and an MS in Taxation, from the Golden Gate University. **(OPR)**

Thomas J. DeGeorgio Mr. DeGeorgio is the Head US Tax, Director of Tax Assurance and Operations for Shell Oil Company in Houston, TX. He has over 30 years experience in taxation including Excise Tax, State and Local tax, Federal Income Tax Compliance, and Federal Income Tax audits **&** appeals. He is a member of the Tax Executives Institute and currently represents the Houston Chapter on their International Board of Directors. He is a member of AICPA and Texas Society of CPAs. He has a BS in accounting from the Philadelphia University and a MBA with a concentration in taxation from the University of Houston. **(OPR)**

Erica L. Dinner Ms. Dinner has been with Hartford Life Insurance Company in Simsbury, CT since 1998. She is currently the Director, Tax Information Reporting which does centralized tax reporting for the entire company as well as preparing tax forms of their customers. She is a CPA and has a BS in Accounting from Simmons College, Boston, MA, and has a Masters in Professional Accountancy from Barry University, Miami Shores, FL. **(Chair, Modernization)**

Teresa Douglass Ms. Douglass is the Industry Operations Manager for H&R Block's World Headquarters in Kansas City, MO. She is a CPA and licensed attorney with over 15 years of experience in tax practice that includes tax planning, tax return preparation and representation of taxpayers in IRS matters. Ms. Douglass serves as H&R Block's subject matter expert on representation and Circular 230 issues. She is a member of the Missouri Bar and serves on its taxation, probate and trust law and elder law

committees. She is also admitted to practice before the US Tax Court. Ms. Douglass has a BS in Accounting and a JD from the University of Missouri-Kansas City and an LLM in taxation from the University of Florida. **(OPR)**

James Driver Mr. Driver works in the Office of the Controller as the State Social Security Program Manager for Kentucky. He administers the Section 218 agreement with the Social Security Administration for the Commonwealth of Kentucky and works with IRS, Social Security and the Commonwealth's political subdivisions (State, local, counties, and cities). Mr. Driver is a member of the National Conference of State Social Security Administrators and is serving his second term as the President of the organization. He has a BA in Psychology, a Masters of Arts in Education from Western Kentucky University and a Masters of Divinity from Southern Theological Seminary. (Ad hoc)

William Frazier Mr. Frazier is Senior Managing Director and owner of Howard Frazier Barker Elliott, Inc. in Dallas, TX. He has thirty years of experience in business valuation and corporate finance. He is a member of the American Society of Appraisers (ASA) and is a member of their Business Valuation Committee. Mr. Frazier has a BS in Commerce from Spring Hill College and a Master of International Management from the American Graduate School of International Management. **(OPR)**

Lonnie Gary Mr. Gary is a Director of RSM McGladrey in Mountain View, CA. He has been a professional tax practitioner for 20 years, fifteen as an enrolled agent. He has qualified as a non-attorney to practice before the US Tax Court. He is a member of the National Association of Enrolled Agents and is presently on their Board, the California Society of Enrolled Agents and the East Bay Association of Enrolled Agents. He has a BS in Electrical Engineering with a business minor from the Illinois Institute of Technology. **(OPR)**

Larry Gray Mr. Gray is owner and partner of AGC-Alfermann, Gray & Co., CPAs LLC in Rolla, MO. Mr. Gray has been a tax professional for 30 years as well as a seminar instructor and tax author. He is a member and past-president of the National Association of Tax Professionals, a member of the American Institute of CPAs, the National Society of Accountants, the Missouri Society of Certified Public Accountants, Accreditation Council for Accounting and Tax, the National Association of State Board of Accountancy and the Missouri State Board of Accountancy. He has a BS in Business

Administration from the University of Missouri-Columbia. **(OPR)**

Karen Hawkins Ms. Hawkins is an Attorney with Taggart & Hawkins, PC in Oakland, CA. She has 30 years experience as a tax attorney. She is chair-elect of the American Bar Association, Taxation Section and serves as that Section's Liaison to the Office of Professional Responsibility. Ms. Hawkins is a past chair of the State Bar of California Tax Section Executive Committee and a current member of the American College of Tax Counsel. Ms. Hawkins has a BA from the University of Massachusetts, Amherst; a M.Ed. from the University of California; a JD and an MBA–Taxation from Golden Gate University Schools of Law and Tax. **(OPR)**

Richard Hollingsworth Mr. Hollingsworth is the Manager of Tax Information Returns and Cost Basis departments for H&R Block Financial Advisors, Inc. located in Detroit, MI. He manages client and government reporting for a broker dealer that is a wholly owned subsidiary of the largest tax preparer in the country. He is a member of the AICPA, the Michigan Association of Certified Public Accountants and the National Association of Form 1099 Filers, Inc. and the Securities Industry Association. Mr. Hollingsworth earned his MBA in finance from Indiana University. **(Chair, Emerging Compliance Issues)**

Nadine K. Hughes Ms. Hughes is a Vice President of Agency Services of CompuPay, Inc. in Miramar, FL. She has been working in the payroll service provider industry for the past 20 years. Ms. Hughes is a member of the Reporting Agent Forum (RAF) for over 10 years and is a member of the American Payroll Association. She has a BS in Education and has taught study classes for the national certification of payroll professionals (CPP). **(Burden Reduction)**

Edward J. Jennings Mr. Jennings is the Corporate Tax Manager at the University of Michigan in Ann Arbor, MI. He serves as a tax consultant on various tax issues, including unrelated business income tax, employment taxes, excise taxes, retirement plans and fringe benefits, bonds, charitable giving, and state and local tax matters. He is a member of the National Association of College and University Business Officers (NACUBO) Tax Council since 2001 and recipient of the 2007 NACUBO Tax Award. He graduated with a B.S. in accounting from St. Joseph's University (Philadelphia, PA) and has a CPA license. He received his JD from Wake Forest School of Law in Winston-Salem, NC. **(Chair, Burden Reduction)**

Samuel W. Kerch

Mr. Kerch is a CPA and Controller/Tax Research Director with Symmetry Software in Scottsdale, AZ. He directs all corporate accounting and payroll, financial reporting and preparation of withholding and income tax returns. In addition he does payroll tax law research for software program development and customer support. Mr. Kerch is a member of the American Payroll Association and the Association of Certified Fraud Examiners. He has a Master of Accounting and Financial Management from Keller Graduate School of Management. **(Burden Reduction)**

Philip Kirchner

Mr. Kirchner is Director of Product Development at Greatland Corporation in Green Bay, WI. He leads a staff in the development of software and services related to Information Reporting. He also leads the compliance and development for the electronic document product line. He has 20 years of experience in the field of electronic commerce related to taxation and information reporting. Mr. Kirchner is a member of the NACTP (National Association of Computerized Tax Processors) and has previously served as Electronic Filing Committee Chair and Vice President of the association. He has a BA in Business Management from Concordia University. **(Modernization)**

Jon Lakritz

Mr. Lakritz is a Vice President with JPMorgan Chase & Co. in New York, NY. He has responsibility for the firm's tax information reporting and withholding for a wide variety of transactions and clients. He is a certified public accountant, and is a member of the AICPA and the New York State Society of CPAs. He currently serves on the Tax Compliance and Administration Committee of the Securities Industry and Financial Markets Association (SIFMA). Mr. Lakritz holds a BS in Accounting from the State University of New York, and an MS in Taxation from Pace University. **(IRPAC Vice-Chair, Emerging Compliance Issues)**

Ronald Larson

Mr. Larson is an attorney in Sun City, AZ. He has concentrated over the past twenty-five years in estate planning, probate and estate/gift taxation. He is a member and past president of the National Society of Tax Professionals (NSTP) and is the Technical Editor of NSTP's monthly publication, *The Federal Tax Alert*. Mr. Larson is currently serving as Treasurer of the Central Arizona Estate Planning Council. He received a BS with Honors from the University of Wyoming and a JD *magna cum laude* from Arizona State University College of Law. He has been listed in *The Bar Register of Preeminent Attorneys* since 2001. **(OPR)**

Stephen LeRoux Mr. LeRoux is an IRA Consultant with Wolters Kluwer Financial Services in St. Cloud, MN. He has over 20 years experience complying with the reporting procedures for employer retirement plans both defined contribution and defined benefit. In addition he is responsible for custodian/trustee compliance with regard to traditional, Roth, SEP and SIMPLE IRAs; Coverdell Education Savings Accounts; and Health Savings Accounts. He has a BS in finance from St. Cloud State University. **(Ad hoc)**

Joan LeValley Ms. LeValley is the owner of JCL and Company in Park Ridge, IL. She has been an accountant, tax preparer and financial consultant for more than 30 years. She is a member of the National Society of Accountants and Chaired the Federal Taxation Committee the past two years and was a member of the IRS Advisory Council (IRSAC) 2005-2007. She is the recipient of the "2008 NSA Accountant of the Year" award and the "2008 Person of the Year" award by the Independent Accountants Assn. of IL. Ms. LeValley has a BA in Business Administration and Accounting from Manchester College. **(OPR)**

Constance Logan Ms. Logan is a Senior Tax Manager at Iacopi, Lenz & Company in Stockton, CA. Her work includes all aspects of taxation including unique issues for individuals, partnerships, limited liability companies, S corporations, C corporations, estates and trusts. She is a member of the California Society of Certified Public Accountants. Ms. Logan has a BA in Psychology from California State University, an MS in taxation from Golden Gate University and a JD from the University of the Pacific, McGeorge School of Law, with a concentration in tax. **(Modernization)**

Barbara McArthur Ms. McArthur is a Vice President and the Director of Corporate Tax for Comerica Incorporated in Detroit, MI. She is responsible for day-to-day operations of the tax department in Detroit, including compliance, information reporting, research and tax controversy and oversees a staff of eight tax professionals. She is a member of the Information Reporting Roundtable, American Bankers Association Information Reporting Advisory Group, Tax Reporting Institute Advisory Board, SE Michigan Multi-State Tax Executive Roundtable and the Michigan Association of Certified Public Accountants. Ms. McArthur has a BA in Psychology and a Master of Accountancy with a tax concentration from Southern Illinois University at Carbondale. **(Burden Reduction)**

Timothy McCutcheon Mr. McCutcheon is the President of Fort William LLC in Milwaukee, WI. Fort William LLC is a provider of software tools for the employee benefits professional. The firm offers government forms software as well as retirement/welfare plan document software. He is a member of the American Society of Pension Professionals and Actuaries (ASPPA), and the Wisconsin Bar. Mr. McCutcheon has a JD from the University of Wisconsin Law School and an MBA from Northwestern University. **(Ad hoc)**

Maria Murphy Ms. Murphy is the Director, Washington National Tax Services at PricewaterhouseCoopers LLP in Washington, DC. She works on domestic and international tax matters specializing in information reporting. Ms. Murphy is an adjunct professor at Howard University School of Business. She is a member of the American Bar Association, AICPA and the National Association of Black Accountants. Ms. Murphy received her Juris Doctorate from Widener University School of Law and a Masters of Laws in Taxation from Georgetown University Law Center. **(Emerging Compliance Issues)**

Mark Naretti Mr. Naretti is a Director – Information Reporting Practice with KPMG LLP in New York, NY. He provides advisory and compliance related services to financial institutions located worldwide with respect to the Qualified Intermediary (QI) regime. From 2000 – 2006 he was a leading member of the British Banker's Association QI Working Party. He holds a BEC National Diploma in Business Studies from Thurrock Technical College, Essex. **(Emerging Compliance Issues)**

Paula Porpilia Ms. Porpilia is the Principal of TIN Compliance Consultants in Great Cacapon, WV. Her consulting firm specializes in information reporting and withholding issues. In addition to working with clients she has spoken at numerous seminars and conferences, has created videotapes and presented several webinars on reporting issues. Ms. Porpilia was a member of the original IRPAC committee in 1991. She is a member of the DC Bar. She has a BA in history from the State University of New York at Binghamton and a JD from the University of Chicago. **(Modernization)**

Susan Segar Ms. Segar is a Partner at Burt, Staples, & Maner LLP in Washington, DC. She provides counsel to mid- and large-size financial institutions, including qualified intermediaries, on matters involving domestic and nonresident alien

withholding and reporting. Ms. Segar has been admitted to the Louisiana Bar and the DC Bar and has a BS in accounting, a JD from Louisiana State University and an LLM in Taxation from Georgetown University Law Center. **(Emerging Compliance Issues)**

Suzanne Sullivan Ms. Sullivan is a Senior Vice-President and Senior Financial Manager at the Bank of America in Providence, RI. She advises businesses enterprise-wide on any information reporting and withholding issues. She is also a business partner to the Human Resources Department providing advice on payroll, executive compensation and other tax-related compensation issues. She is a member of the Rhode Island Bar Association, and the Bank of America representative to The Clearing House and to the Securities Industry Financial Markets Association. Ms. Sullivan received her B.A. from Amherst College and her JD from Harvard Law School. **(Emerging Compliance Issues)**

Ron Whitney Mr. Whitney is CEO of the Barter Network Inc. in Chadds Ford, PA. He was the founder of the Philadelphia region's largest barter exchange with over 1,100 participating businesses. He is responsible for negotiating complex barter transactions with participating businesses. Mr. Whitney is a member of the National Association of Trade Exchanges, the International Reciprocal Trade Association, the Chadds For Business Association, and the Chester County, New Castle County and Southern Chester County Chambers of Commerce. He received his JD from the Widener University School of Law. **(Chair, Ad hoc)**

Brian Yacker Mr. Yacker is a Partner with Green Hasson & Janks in Los Angeles, CA. He has practiced as a tax attorney/CPA for the past 15 years focusing upon corporate, individual, and tax-exempt organization clients. He is a member of the AAA-CPA and is currently a member of their IRS Tax Liaison Committee. He also is an instructor for the CalCPA Education Foundation. Mr. Yacker has a BS from McIntire School of Commerce, University of Virginia and JD from Indiana University School of Law. **(OPR)**

Ralph Zerbonia Mr. Zerbonia is a Tax Principal at UHY Advisors, Inc. in Southfield, MI. He works with all tax returns, researches tax problems, does tax planning with clients, tax accrual review of certified financial statements and has worked with IRS on all tax matters. He is a member of the AICPA and the Michigan

Association of Certified Public Accountants. He received a Master of Science in Taxation from Walsh College. **(Burden Reduction)**