INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

EMERGING COMPLIANCE ISSUES SUBGROUP REPORT

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A. IRC §6050W and Form 1099-K Reporting

Recommendations

As discussed in our 2012 Public Report and our 2013-2014 Guidance Plan IRPAC Comment Letter (See Appendix A), and our March 28, 2011, comment letter in Appendix D to the 2011 Report, IRPAC makes a number of recommendations related to IRC §6050W and Form 1099-K, Payment Card and Third Party Network Transactions. Most of the recommendations continue to relate to the need for additional guidance. These recommendations are set forth below as numbered items.

1. IRPAC recommends that the IRS provide additional official guidance (*e.g.*, revenue rulings, notices, revised regulations) to further address open questions regarding IRC §6050W. Official guidance is necessary to address open questions regarding the meaning and scope of the terms in the statute and Treasury Regulations. FAQs, while sometimes helpful, do not constitute official guidance, may be withdrawn by the IRS without notice, and therefore are not subject to the same careful reflection and review as official guidance. Accordingly, IRPAC believes that official guidance, rather than FAQs, should be issued.

2. Key terms integral to the meaning of "third party payment network" have still not been defined in official guidance in order for reporting organizations to reasonably apply the rules. These terms include "central organization," "guarantee," and "substantial number of providers of goods or services." IRPAC's detailed recommendations related to the definition of these terms can be found in its March 28, 2011 comment letter in Appendix D to the 2011 Report. During meetings with the IRS in 2013, IRPAC reminded the IRS that it had delivered draft definitions of certain key terms and reiterated the need for the IRS to define these key terms. IRPAC also continued to recommend that additional official guidance regarding the meaning of "aggregated payee" is needed as well as clarification of whether or not the definition should be applied to third party payment networks that do not meet the reporting threshold.

3. It continues to be true that the definition of "third party payment network" can be interpreted broadly to include transactions not apparently considered by Congress when it drafted the statute. IRPAC continues to recommend that official guidance be issued to clearly set forth the IRS's understanding of the scope of the statutory and regulatory language to various arrangements that involve three parties but may not constitute a "third party payment network." This has resulted in significant confusion among parties participating in three-party arrangements. Thus, guidance should be issued that allows a reasonably informed reader to understand when IRC §6050W reporting is required and delineate between three-party arrangements that are subject to reporting under IRC §6050W and ones that are not subject to reporting

under IRC §6050W. IRPAC continues to urge the IRS to provide guidance to distinguish when specific arrangements currently used in the marketplace must be reported under IRC §6050W, including the promulgation of ordering rules when concepts such as third party payment network and aggregated payee both apply to the same transactions.

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

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

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

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

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

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

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

Discussion

Over the past year, IRPAC met on a number of occasions with IRS personnel regarding the law under IRC §6050W and practical reporting issues for the Form 1099-K. These discussions were substantive and productive, and IRPAC recognizes the thoughtfulness and seriousness with which the IRS approached these discussions. IRPAC also recognizes that reporting under IRC §6050W is in its infancy, is inherently challenging, and that the marketplace is constantly evolving. All of this makes the process of developing rules under IRC §6050W challenging. Based upon the substance of the discussions, however, IRPAC believes that the IRS is moving in the right direction. One topic discussed extensively during 2013 was the potential issuance of CP2100 Notices (B Notices) related to Form 1099-K, and when such a process would commence due to concern regarding the commencement of backup withholding related to the B Notices. During the year, IRPAC recommended that the IRS delay issuance of the B Notices until 2014. In Notice 2013-56, the IRS responded to that request and announced that this process would not begin until 2014. IRPAC is grateful to the IRS for discussing this issue with us during 2013, and believes that the IRS made the right decision by deferring issuance of these B Notices until 2014.

IRC §6050W and the related Treasury Regulations require the reporting of two significant classes of transactions, payment card transactions and third party network transactions, on the Form 1099-K. Payment card transactions are any transactions in which a payment card (or any account number or other indicia associated with a payment card) is accepted as payment. Payment cards include credit cards and stored value cards, which are cards with a prepaid value including gift cards. Third party network transactions are any transactions settled through a third party payment network. A third party payment network is any agreement or arrangement that (a) involves the establishment of accounts with a central organization by a substantial

number of providers of goods or services who are unrelated to the organization and who have agreed to settle transactions for the provision of the goods or services to purchasers according to the terms of the agreement or arrangement; (b) provides standards and mechanisms for settling the transactions; and (c) guarantees payment to the persons providing goods or services in settlement of transactions with purchasers pursuant to the agreement or arrangement.

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

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

B. Cost Basis Reporting

Recommendations

1. Timing of Guidance**:** Implementation of reporting for cost basis and associated adjustments to basis such as bond premium require substantial systems modification and enhancement. Although information returns will not be due until early 2015, the processes to capture, store and prepare these amounts must be in place. IRPAC, therefore, recommends that any modification to requirements based on its recommendations or those of other industry participants be quickly disseminated to avoid unnecessary programming efforts.

2. Withholding on interest income**:** Temporary regulations with regard to reporting bond premium allow brokers to report interest income for covered lots either as an amount that has been reduced by the applicable bond premium or as the gross amount with the premium separately stated. IRPAC strongly recommends that the IRS provide guidance indicating that any required withholding may be applied on the net amount even if the presentation on the information return consists of gross interest and premium.

3. Substitute payee statements**:** Firms that use substitute payee statements should be given the latitude to vary the labeling of the boxes containing interest to indicate explicitly when the reported amount is net of premiums.

4. Report current inclusion of market discount on Form 1099-INT, Interest Income**:** The current draft 1099-MISC, Miscellaneous Income, for 2014 contains a box for reporting market discount. However, there are a variety of reasons that make it more practical and efficient to report market discount on the same form as interest and bond premium (i.e., Form 1099-INT). [Note that IRPAC's comment letter of July 17, 2013 (See Appendix B), suggested treating the market discount as interest. Here, we more accurately specify reporting market discount on the same form as interest and bond premium, keeping its characterization as market discount.] These reasons are:

- This reporting provides good balance with the treatment of bond premium;
- All bond income would be found on the same form; and
- Publication 550, Investment Income and Expenses, consistently instructs taxpayers to treat market discount as interest income. Additionally, Treas. Reg. §1.1272-3(b)(2)(ii), the "all OID" election, makes it clear that market discount is treated as income.

5. If market discount is not moved to Form 1099-INT, IRPAC further recommends that amounts of market discount be permitted in the 1099-MISC portion of a substitute composite statement. The protocols for such statements are governed by an annual revenue procedure, traditionally republished as Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns. Currently, presentation of any amounts other than substitute payments and royalties are forbidden on a substitute composite statement. We take this opportunity to also reiterate recommendations from prior years that all income categories from Form 1099-MISC be permitted on a substitute composite statement.

6. Use the final regulations under Treas. Reg. §1.6049-9 to provide detailed guidance for market discount: Market discount income is a natural complement to bond premium. As such, providing guidance for reporting market discount would allow for development efforts across all the income components for fixed income.

7. Eliminate broker support of the "all Original Issue Discount (OID)" election**:** Because support of taxpayer elections for yield based computation of premium and discount as well as current inclusion of market discount will produce results substantially similar to the "all OID" approach, IRPAC recommends elimination of Treas. Reg. §1.6045-1(n)(4)(iv). This will remove the significant systems development burden for a feature that provides no material benefit to taxpayers and would rarely, if ever, be used.

8. Tax-exempt Original Issue Discount (OID**):** A substantial outcome of the development of cost basis regulations has been the alignment of income reporting with cost basis. One area where this remains unclear is for tax-exempt (OID). IRPAC recommends that any change with regard to IRS Notice 2006-93 be implemented with very substantial lead time for the industry.

9. Form 1099-INT**:** IRPAC notes that tax-exempt OID is reported on Form 1099-INT. Therefore, a new box will be required on that form for acquisition premium on tax-exempt issues in addition to bond premium.

Discussion

Withholding, premium and the variability of payee statements**:** Recipients of Form 1099-INT will be dealing with a mixed bag of information for many years due to the many variables influencing the presentation of information. The Form 1099-INT presents aggregate numbers from which certain details (such as which lots' income has been adjusted for premium) may not be discernible for the following reasons:

- Some brokers may provide supplemental information such as premiums on noncovered tax lots while others do not. Additionally, only some brokers' annual tax statements also include security and payment level detail to support the reported totals.
- Premiums and market discount for noncovered lots may not be available even from brokers that ordinarily provide supplemental information.
- The phase-in of more and less complex tax lots as covered over time will be confusing.
- The impact of premiums may be displayed either as a net number or as a gross amount that must be adjusted for a separately reported amount of premium. Investors will conceivably maintain accounts at firms that employ both reporting styles.

Additionally, a firm that provides the amount of bond premium amortized for noncovered tax lots as a supplement to Form 1099-INT reporting will not be permitted to report the interest income net of premium. Therefore, for the sake of consistency, it would be expected to also report premium on covered lots in the same manner. For this reason, it is imperative that withholding be applicable to the net amount even if the display on the Form 1099-INT consists of gross interest and the amount of premium.

Current inclusion of market discount**:** §Section 1.6045-1(n)(6)(ii) of the Treasury Regulations directs brokers to report amounts of market discount accrued during the calendar year to taxpayers who have made a current inclusion election under IRC §1278(b). The current draft of Form 1099-MISC for 2014 includes an accommodation for reporting these amounts. While IRC §1278 makes clear that, for purposes of IRC §6049, market discount is not interest, there is nothing that precludes reporting it on Form 1099-INT as IRPAC has recommended.

While IRC §1278(b)(1) specifies that market discount should not be treated as interest for purposes of several sections of the Internal Revenue Code, including IRC §6049, the inclusion of market discount as a reportable item on Forms 1099-INT and 1099-OID, does not imply in any way that market discount is interest, contrary to IRC §1278(b)(1), especially with instructions to those forms clarifying the tax treatment of market discount.

Moreover, IRC §6049 does not prohibit the inclusion of other relevant information on the same form where interest would be reported. We note that Forms 1099-INT and 1099-OID currently include certain reportable items that are not interest, such as foreign taxes.

For similar reasons, the inclusion of market discount on Forms 1099-INT and 1099-OID would not suggest that market discount is interest subject to withholding under IRC §§ 871, 881, 1441, or 1442. The withholding language in those sections of the Internal Revenue Code does not tie the withholding to what is reported on Forms 1099-INT or 1099-OID, but is instead tied to what is treated as interest or OID under those sections. This can also be made abundantly clear by instructions to the forms.

Reporting market discount on Form 1099-MISC creates a confusing situation for the recipients, whereas including all relevant information from a debt instrument on one form would facilitate more accurate tax reporting by taxpayers. Separating the reporting of interest and market discount from the same debt instrument onto two different forms creates confusion to taxpayers and increases the possibility of income omission and inaccurate reporting.

Requiring reporting of market discount on Form 1099-MISC increases the burden on payers. Most payers (brokers and issuers) ordinarily do not need to issue Form 1099-MISC for most bonds or securities transactions. If they would be required to issue Form 1099-MISC just for the reporting of market discount, they would face a significant increase in their tax-reporting burden, including programming changes and extra costs of producing and mailing an extra form. Moreover, as many brokerage firms already print supplemental detail for their accountholders, making the income from a single instrument span two forms will further contribute to increases in print costs.

Adding an additional reporting item on Form 1099-MISC may also confuse small business owners currently issuing Form 1099-MISC. They would have to understand

what market discount is (or to distinguish it from merchandise discount or early payment discount) and how it may not be applicable to their businesses.

The “all OID” election under Treas. Reg. §1.1272-3**:** Under the new final Treas. Reg. §1.6045-1(n)(4)(iv), pursuant to existing Treas. Reg. §1.1272-3, a taxpayer may elect to recognize income on a debt obligation by treating all interest as OID, and brokers are required to support this election at the request of the accountholder. Fulfilling this request requires treating the given tax lot as a unique debt obligation for which the taxpayer’s original basis is the issue price, the purchase date is the issue date and the periodic payments of interest are nonqualified stated interest. IRPAC recommends that brokers not be required to support this election because taxpayers can get substantially similar results by choosing other available elections and its implementation will be extraordinarily costly and disruptive, for what are expected to be a very small number of instances. As part of the final regulations for cost basis reporting for debt instruments, support of various elections available to taxpayers was made part of a broker’s responsibility. Following an accountholder’s written instructions, brokers are to compute market discount, bond premium, acquisition premium, and cost basis in accordance with the chosen elections and report the corresponding values on information returns beginning in 2014. Among the specified taxpayer elections is one available under Treas. Reg. §1.1272-3 that treats all income on an investment as OID.

The language of Treas. Reg. §1.1272-3 indicates that other taxpayer elections are implicit in its selection. The only difference between using the “all OID” approach and the other elections is that with “all OID” the value of cash interest payments becomes recognizable on an accrual basis rather than a cash basis, which is detrimental to the taxpayer. The table below shows the near equivalence that may be achieved with the other available elections.

Purchase condition	Elections Implicit in the Treas. Reg. §1.1272-3 Election
Premium	IRC §171(c)(2) - recognition of bond premium (broker default)
Discount	IRC §1278(b) - current recognition of market discount IRC §1276(b)(2) - computation of market discount on a constant yield

For tax information reporting, the existing infrastructure in the financial services industry routinely handles income computations for a variety of fixed income attributes along with the implications of nonqualified stated interest (NQSI). However, extending this capability from the bond level to attributes of individual tax lots is beyond the currently available functionality. Consider the current handling of a bond which (based upon its issuance features) makes periodic NQSI. It is understood that all the interest payments are not reported as income since, as part of the redemption price, the income is captured in the accrual of OID. Information reporting programs customarily report the OID income and do not included interest payments on 1099-INT. This processing

decision with regard to how to treat the interest payment is driven by an indicator maintained centrally at the CUSIP number level. When applying this approach based on a taxpayer election, the same process cannot be used because the required indicator would have to be maintained at the ACCOUNT-CUSIP-TAX LOT level. This is a fundamental change of granularity and data location and requires far more computation "on the fly" than for other lots.

A further complication arises from the fact that cash distributions such as interest payments are credited to an account on an individual security level. This means that no matter how many tax lots have been established for the same CUSIP number, only the amount appropriate to the entire aggregated position is credited to the account. If for some of the constituent tax lots the "all OID" election has been made, an allocation of that payment must be made to determine which portion is reportable on Form 1099-INT and which is not. The functionality to maintain NQSI at the tax lot level or to allocate interest payments does not currently exist in the industry.

Tax-exempt OID: Since 2006, income reporting for tax-exempt OID under IRC §6049 has not been required (see Section 5 of Notice 2006-93). Presumably, this is an acknowledgement of several of the difficulties of fulfilling this obligation, namely:

- The *de minimis* rule of IRC §1273(a)(3) does not apply to tax-exempt issues, making tiny amounts of income potentially reportable without measurable benefit.
- Rates of OID accrual for these instruments are not available in IRS Publication 1212, Guide to Original Issue Discount (OID) Instruments.

Cost basis reporting requiring the amount of OID accrual has, since 2006, been acknowledged as a substantial challenge. Nevertheless, the cost basis regulations do not contain a carve-out equivalent to Notice 2006-93. Assuming the long term intent is to harmonize income and capital reporting, it is imperative that very substantial lead time is provided so that the industry properly prepares for the data identification, collection and computation that is required for this market segment that exceeds 200,000 debt instruments.

Partial Retirements**:** The definition of a sale in Treas. Reg. §1.6045-1(a)(9) includes partial retirement attributable to a principal payment. Additionally, Treas. Reg. §1.6045-1(n)(7)(v) directs that payments other than qualified stated interest should be treated as reductions in basis to the basis of a debt instrument. For the transactions that are considered sales, a Form 1099-B, Proceeds from Broker and Barter Exchange Transactions, must be filed and will require basis. Since this represents both a reduction to basis and a transaction that itself has a basis, IRPAC recommends that the IRS publish illustrations of the basis determination for the payment and basis adjustment for a bond purchased under various conditions (premium, discount, etc.) that has amortizing payments. Although the two citations above describe periodic payments other than qualified stated interest differently, presumably both conform to the definition of a sale. Therefore, the recommended illustrations should also include bonds with

original issue discount at least in part attributable to non qualified stated interest. Otherwise, clarification of any intended differences in the two sections should be specified.

Taxpayer Outreach and Expansion of Online Resources: Instructions to the recipients of payee statements should stress that although the forms have been enhanced to provide additional useful information, the taxpayer should now exercise even more care to identify amounts that do not appear on the statements but must be considered when completing the tax return. It should additionally be noted that the responsibility of the reporting broker is limited to events occurring within a given account even though that might not adequately describe the taxpayer's overall situation.

Cost basis resources**:** IRPAC recommends that the IRS substantially upgrade its cost basis related resources on the IRS web site. This will serve as an informative destination for taxpayers. Moreover, a broker can recommend the site for authoritative guidance, independent of the broker, which specifies the responsibilities of the various parties and the limitations of information returns. Among other points, the IRS web site should specify the following:

- The instructions provided to the broker by the taxpayer do not constitute effective election or revocation under the applicable rules for the election.
- The taxpayer is responsible for the accurate completion of his/her tax return regardless of what is contained in the information return. Provide examples, such as wash sale situations resulting from acquisitions in accounts held with other brokers that would not be reflected on an information return.
- The extent of information contained in an information return may vary based on whether a tax lot is covered or noncovered, and although an information return might be insufficient for completing a tax return, it is not necessarily incorrect.
- Inconsistent elections across multiple accounts will ultimately require additional reconciliation by the taxpayer.
- What constitutes a covered security by asset type and by complexity of fixed income instruments?
- The implications of various elections, including, for example, when an election must apply to all tax lots or may not be revoked.

The implementation of information reporting changes related to cost basis has created a heightened expectation on the part of taxpayers. To a large extent, the inclusion of more information suggests that their brokers are now required to and capable of providing everything needed to complete their tax returns. Unfortunately, such an expectation is not accurate.

Through the many discussions and comments that have taken place between IRPAC and the IRS, there have been numerous scenarios identified in which correct information returns do not necessarily consider all facts that are relevant to the taxpayer's situation. In fact, some situations such as constructive sales and events occurring outside the account are explicitly beyond the responsibility of the broker.

The addition of holder elections in the final regulations for debt go further to create the impression that the broker is responsible for advising and managing the taxpayer's relationship with the IRS. However, the regulations make clear that the broker is required to follow the taxpayer's instructions, not provide advice. Considering the impression that these changes will make and the fact that there are many known situations in which information returns will be insufficient for the taxpayer's purpose, a centrally accessible resource that serves as an adjunct to information returns would be very valuable.

Recognizing that Publication 550 has a discussion of some elections a taxpayer can make with respect to debt instruments, it would still be helpful to include all applicable elections in one place on an IRS web page with the focus on how those elections can be made or revoked with the IRS and the brokers, and how such elections would affect income inclusion and tax basis.

C. Taxpayer Identification Number (TIN) Truncation

Recommendations

IRPAC recommends that the IRS permit payers to truncate Employer Identification Numbers (EINs) on payee statements. IRPAC does not believe a distinction between EINs and Social Security Numbers (SSNs), Individual Taxpayer Identification Numbers (ITINs) and Adoption Taxpayer Identification Numbers (ATINs) for truncation is necessary since EINs can still be the target of identity theft and other abuses. Even if the risk of misuse with EINs is less than that with the other identifying numbers, we do not see the downside of also making EINs eligible for truncation.
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IRPAC also strongly recommends that the regulations be drafted to include all information returns unless they are explicitly excluded in the regulations (due to existing limitations cited in the preamble) or, in the case of a newly introduced form, in the form's instructions. By doing so, the protection against identity theft becomes a standard for information returns rather than a concept that must be applied explicitly by regulation for each new form series that is introduced.

Discussion

Beyond the fact that EINs have the same level of risk of misuse as the other identifying numbers, our research to date also indicates that most payers do not have fields to clearly distinguish individual TIN types from EINs. Therefore, some payers have not been able to utilize the pilot program and assist their customers and the IRS with the prevention of identity theft. Including EINs in the TIN truncation program would make the program more effective and eliminate additional programming costs.

In addition, during the course of the pilot program, Form 1097-BTC, Bond Tax Credit, was introduced. Because it is not in the 1099 or 1098 series of forms, it was

ineligible for the pilot program and it is not being considered in the proposed regulations. Additionally, other forms outside the 1099, 1098 and 5498 series, such as Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, are currently not included in the program, and should be included. Addressing this issue in a more global, sustainable way is more beneficial to taxpayers, and now is the appropriate time to establish that foundation.

These recommendations were made in our February 14, 2013 comment letter (See Appendix C).

D. Stripped Tax Credits

Recommendations

1. Do not require aggregation of stripped components into a synthetic instrument: Notice 2010-28 put forth the idea of brokers treating a collection of stripped components originating from the same instrument and purchased on the same day as a single instrument. This approach is unworkable within the current operating structure of the brokerage industry and would be computationally intensive as later sales of constituents of the synthetic instrument would require new evaluation of the remaining pieces as a new instrument. This approach should be discarded in favor of treatment of each stripped component as a unique instrument.

2. Provide penalty relief for firms not reporting OID for stripped components: Computation of OID requires the initial basis of the stripped tax credit. The process of stripping the bond does not routinely provide allocation of basis among the stripped components. Since brokers would not know the basis of the stripped components, IRPAC recommends that there be penalty relief for failure to report accruals of OID in such circumstances unless the IRS provides an alternative means of estimation. As there are already stripped tax credits in the marketplace, IRPAC recommends that this relief be announced immediately.

3. Provide an interim alternative approach: IRPAC recommends that the IRS devise and publish for comment an alternative method of estimating OID for stripped tax credits. One possible approach is to use the model of Treasury STRIPs as covered by IRS Publication 1212. There, a table of estimated income corresponding to possible maturity dates is used. This method would have to be available for newly stripped tax credits and would have to remain available after further guidance was published under Treas. Reg. §1.6045-1(o) to afford continuity for positions established before final guidance.

Discussion

Mechanics of stripping tax credits: Positions in tax credit bonds are held in book entry form at the Depositary Trust Company (DTCC). Beneficial ownership of such

bonds is reflected on a brokerage account statement. The broker's aggregated position at DTCC is shown in its participant statement. Any stripping transactions are done at the instruction of the beneficial owner through its broker and transacted between DTCC and the agent for the specific issue. Bonds are delivered by DTCC to the transfer agent who, in return, delivers all the stripped components, each identified by CUSIP number, back to the depository. The account of the beneficial owner ultimately reflects these deliveries, receipts and subsequent changes of position.

Implications of the unavailability of cost basis for assets after a stripping transaction: Cost basis regulations, specifically the reserved Treas. Reg. §1.6045-1(o), do not provide any guidance as to how the basis in the surrendered instrument is allocated to the stripped components, nor do they indicate whether the transfer agent has an obligation to perform such a calculation and provide a corresponding transfer statement. As a result, two things cannot be done:

- Original issue discount income cannot be computed, and
- Basis is not available to report when the stripped components are sold.

When the stripping has taken place, if none of the components is removed from the account, there is no material change to the beneficial owner's circumstance from a tax perspective. Procedurally, however, the ability of the brokerage firm to fulfill its information reporting obligations changes dramatically. This is because systems are not equipped to evaluate the collection of stripped components as a single obligation that is equivalent to the unstripped instrument. Rather, each component (the bond corpus, stripped coupon and stripped tax credit) is seen as a separate obligation that is subject to OID reporting. Consequently, this otherwise inconsequential event produces the following disparity due to the lack of basis.

Asset(s) Held	Income Reporting	Tax Credit Reporting
Bond with all tax credits attached (known on the books and records by a single identifying CUSIP number.)	The value of the tax credit vested on each credit allowance date reporting as interest on Form 1099-INT annually.	The value of the tax credit on each credit allowance date reported on Form 1097-BTC quarterly.
Bond corpus and all separated tax credits (each known on the books and records by a unique identifying CUSIP number.)	NO REPORTING DONE because the accrual of OID cannot be computed without the cost basis or an alternative method of approximation.	The face value of each individual tax credit vesting on its allowance date reported on Form 1097-BTC.

OID computation for a collection of stripped components: Notice 2010-28 described a regime in which stripped components from the same original bond acquired at approximately the same time would, for information reporting, be handled as single instrument for which all the interest payments and tax credits are treated as non-qualified stated interest. This approach differs dramatically from the functionality that exists in the industry. Essentially, based on the unique CUSIP identifier, a lookup to the instrument's features and precomputed table of accruals is referenced to evaluate income for an individual holding. There is no notion of an assortment of separately identified assets (retained at the time of stripping) being tracked collectively, nor is there a commercially available source that would provide an indication of origin that is required for the envisioned aggregation.

With the availability of cost basis (or an alternative computation method) OID could be computed and reported for each separately identified stripped tax credit.

E. Form 1098-T

Recommendations

IRPAC recommends that the IRS clarify terms in IRC §6050S(b)(2)(B)(ii) that are used by colleges and universities to determine whether or not to report certain amounts in box 5 of Form 1098-T, Tuition Statement. Specifically, colleges and universities need clarification regarding the meaning of "costs of attendance" and "administered and processed." Guidance is also needed regarding the proper reporting of payments in box 5 when those same payments must also be reported as income on other forms such as Form 1099-MISC, and Form W-2, Wage and Tax Statement.

Discussion

IRC §6050S(b)(2)(B)(ii) requires colleges and universities to report the aggregate amount of grants received by their individual students for payment of costs of attendance that are administered and processed by the institution during each calendar year. IRS Notice 2006-72, Q&A number 8, provides some very limited guidance. It provides that a student's cost of attendance may include both qualified fees (such as tuition and required fees) and non-qualified expenses (such as room and board), and that the institution should report these amounts in box 5. It also provides that a qualified tuition reduction described in IRC §117(d) is not a scholarship or a grant and, accordingly, should not be reported in box 5; but such a reduction is relevant in determining the net amount reported in box 2 if the institution elects to report amounts billed.

The term "administered and processed" is not defined in the Internal Revenue Code. The term "cost of attendance" is not defined in the Internal Revenue Code but is defined in §472 of Title IV of the Higher Education Act of 1965 (20 USC 1087II) part of which provides, as follows:

§1087ll. Cost of attendance

For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, the term “cost of attendance” means—

> (1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;
>
> (2) an allowance for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the institution on at least a half-time basis, as determined by the institution;
>
> (3) an allowance (as determined by the institution) for room and board costs incurred by the student which—
>
> > (a) shall be an allowance determined by the institution for a student without dependents residing at home with parents;
> >
> > (b) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;
> >
> > (c) for students who live in housing located on a military base or for which a basic allowance is provided under section 403(b) of title 37, shall be an allowance based on the expenses reasonably incurred by such students for board but not for room; and
> >
> > (d) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board;

IRPAC recommends that the IRS adopt or reference the definition of “cost of attendance” in §472 of Title IV of the Higher Education Act of 1965 since this is a workable definition already familiar to colleges and universities. IRPAC also recommends that the IRS define the term “administered and processed,” as it is used in IRC §6050S(b)(2)(B)(ii) and IRS Notice 2006-72.

IRPAC further recommends that the IRS provide guidance on whether or not payments that are reported on Form 1099-MISC or Form W-2 and either (i) are considered financial aid under the Title IV rules or (ii) meet the definition of “administered and processed” should be reported in box 5 of Form 1098-T.

AmeriCorps payments are one example of payments that may be classified as being “administered and processed” by an institution and are, thus, specifically required by the IRS to be reported on Form 1098-T but are also specifically required by the IRS to be reported on Form 1099-MISC. The IRS has published FAQs for Individuals on IRS.gov that address Form 1099-MISC reporting as follows:

> Question: My child has joined AmeriCorps and has received an income statement. Are these payments taxable?
>
> Answer: Yes. AmeriCorps Education Awards and living allowances are taxable in the year they are paid. If you receive an award, you should receive a Form 1099-MISC. The 1099-MISC will show your award dollar amount in box 3, Other Income, with no withholding. Report these amounts on line 21 for Other Income on the Form 1040.

An example of income that may be reported on both Form W-2 and Form 1098-T is a payment made from an IRC §127 plan for educational assistance. Colleges and universities may "administer and process" a corporate IRC §127 educational assistance plan where amounts were included on Form W-2 as taxable income by the student’s employer. Students may pay a university directly for educational expenses that will be reimbursed by their employer pursuant to a corporate IRC §127 educational assistance plan. Colleges and universities may also provide educational assistance to their own employees under a university IRC §127 plan. It is not clear whether or not educational assistance provided *via* a university IRC §127 plan is similar to an IRC §117(d) waiver that should be netted in box 2 of Form 1098-T (for institutions reporting amounts billed) according to IRS Notice 2006-72, Q&A number 8.

In sum, there are thousands of colleges and universities in the U.S. that struggle with tax information reporting issues involving Form 1098-T. IRPAC has attempted to address some of the challenges in its recommendations over the past few years and makes the recommendations contained herein in order to improve tax information reporting by these thousands of colleges and universities to millions of students.

F. Form 8300

Recommendation

IRPAC recommends the IRS clarify whether or not public universities that do not have “dual status” exemptions (recognized as both a charitable organization under IRC §501(c)(3) as well as an agency or instrumentality of, or owned or operated by a governmental entity) must file Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business, Clarification should include clear guidance concerning filing differences among public, private and “dual status” colleges and universities.

Discussion

IRC §6050I and 31 USC §5331, enacted as part of the Bank Secrecy Act (BSA) require that certain information be reported to the IRS and the Financial Crimes Enforcement Network (FinCEN). A single IRS/FinCEN Form 8300 satisfies both the IRS and BSA filing requirements.

IRC §6050I(a) provides that "[a]ny person - (1) who is engaged in a trade or business, and (2) who, in the course of such trade or business, receives more than $10,000 in cash in one transaction (or two or more related transactions), shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe." The BSA also requires reporting by any person, who in the course of a nonfinancial trade or business in which that person is engaged, receives currency in excess of $10,000 in one transaction (or two or more related transactions). Nearly the entire language of IRC §6050I was enacted in the BSA as 31 USC §5331.

FAQs #2 and 10 in the section entitled "Reportable Transactions" of "FAQs Regarding Reporting Cash Payments of Over $10,000 (Form 8300)" on IRS.gov indicate that state-supported colleges and universities must file Form 8300 for the receipt of cash payments of tuition, while private colleges and universities (those recognized as exempt under IRC §501(c)(3)) are excluded from filing Form 8300 when carrying on or furthering their charitable missions, which would include collection of tuition. The IRS FAQs read as follows:

> Are state-supported colleges and universities exempt from filing Form 8300?
>
> No, colleges and universities are required to file Form 8300 upon receiving, for one transaction or two or more related transactions, more than $10,000 in cash (for example, a tuition payment) in the course of their trade or business of providing educational products and services, regardless of the fact that the money may be excludable from gross income under section 115 of the Internal Revenue Code. The section 115 income exception is distinct from, and does not relieve an educational institution of, the requirement under section 6050I to file a Form 8300 information report.
>
> If a nonprofit organization is selling a tangible asset like furniture or vehicles and receives cash for it that exceeds $10,000, is there a Form 8300 filing requirement?
>
> Exempt organizations do not need to report the receipt of cash donations over $10,000 because an exempt organization is not, in carrying out its exempt function, considered in the definition of a trade or business under IRC section 162. To fall under this category, an organization must have obtained section 501(c)(3) or other tax-exempt status under the Internal Revenue Code; having in

its possession a determination letter or an approved application for tax-exempt status from the Internal Revenue Service. The proceeds of a sale must be exempt from tax as part of the carrying on of the exempt organization's tax-exempt activities; in which case, Form 8300 reporting is inapplicable. Form 8300 is required for cash received in the conduct of unrelated trade or business activity of the organization.

Standing alone, these FAQs would seem to make it clear that public educational institutions are required to file Form 8300 while private institutions are not. However, a provision in the Internal Revenue Manual (IRM) has caused confusion. Specifically, §4.26.10.6 (07-13-2012) of the IRM provides that "[t]he language of IRC §6050I does not require governmental units to file Form 8300, except for the specific requirement for criminal court clerks." At least one IRS agent has provided advice to a public university (which has been shared in the higher education community) that the exclusion from filing Form 8300 for governmental units in this section of the IRM applies and thus excludes a public university from the Form 8300 filing requirement.

The statement in the IRM is consistent with the plain language of IRC §6050I(a) because IRC §6050I only applies to a “person.” IRC §7701(a)(1) defines a “person” as meaning and including “an individual, a trust, estate, partnership, association, company or corporation.” This definition does not include a public college or university, whether or not it also has tax exempt status under IRC §501(c)(3).

The term "person" is not defined the same way, however, in the BSA, but the applicable regulations explicitly bring the two definitions into conformity using the definition of person at IRC §7701(a)(1). See Treas. Reg. §1.6050I-1(a)(1)(i) and 31 CFR §1010.330(a)(1)(i) (formerly 103.30(a)(1)). "Person," as defined in the BSA, includes an individual, corporation, company, association, firm, partnership, society, joint stock company, trustee, a representative of an estate, and, when the Secretary prescribes, a governmental entity. The applicable regulations specifically provide that "solely for purposes of section 5331 of title 31, United States Code and this section, ‘person’ shall have the same meaning as under 26 USC 7701(a)(1)." 31 CFR 1010.330(a)(1) (formerly 103.30(a)(1)). The end result is that "person" is defined exactly the same way under the BSA and in the Internal Revenue Code (IRC) for purposes of Form 8300.

Although is it clear that the definition of who must file Form 8300 is identical for both purposes of the filing (*i.e.,* IRC and BSA), the IRS has not explained how a public university meets this definition. Since it is the IRS definition being used for both BSA and IRS purposes, it would be within the purview of the IRS to provide guidance on this matter. Unless the IRS provides clear guidance that a public university cannot meet this definition, then, at a minimum, IRPAC requests that the IRS resolve the long-standing confusion among colleges and universities and its own agents concerning the application of the filing requirements to private, public and “dual status” colleges and universities created as a result of the language in the IRM.

The IRS has indicated to IRPAC that there are plans to issue guidance to clarify Form 8300 reporting requirements for colleges and universities before the end of 2013. IRPAC eagerly awaits this guidance.

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

Recommendations

Since 2010, IRPAC has sought clarification and guidance from the IRS regarding the tax information reporting and withholding responsibilities of withholding agents making payments of U.S. source transportation income to foreign beneficial owners. Although the IRS has discussed these issues with IRPAC over the past four years, no appreciable progress has been made to address IRPAC's concerns. The lack of responsiveness to IRPAC's concerns in this area is arguably more problematic than the promulgation of strict guidance would be to withholding agents regarding their responsibilities because it suggests that the IRS is uninterested in withholding agent compliance in this area. IRPAC's 2010 report provided a fairly thorough discussion of the issues, and its 2011 and 2012 reports incorporated the 2010 report and focused on possible form changes to address some of the challenges faced by withholding agents. This 2013 report again incorporates IRPAC's discussion of the issues in 2010, provides an overview of the issues, and urges Treasury and the IRS to directly address IRPAC's concerns regarding withholding agents' compliance obligations, if any, when making such payments. The impending implementation of Foreign Account Tax Compliance Act (FATCA) makes it even more critical that the IRS address these concerns in a timely manner because it appears that Chapter 4 reporting may apply to payments of U.S. source transportation income. Accordingly, IRPAC believes it must continue to request that the IRS address the uncertainty regarding Chapter 3 reporting and withholding previously expressed in its reports over the past four years.

Discussion

U.S. source transportation income is generally generated through the use of aircraft, ships, trains, or trucks, but tax law and the underlying tax issues and compliance issues that withholding agents face differ depending upon whether the income is derived through the use of aircraft and ships or trains and trucks. This occurs because U.S. source transportation income derived from the international use of aircraft and ships is potentially exempt from the 30% withholding tax imposed under IRC §§ 871(a), 881, and 1441 *et seq.* based upon the possible application of several statutory or treaty-based exceptions. In particular, U.S. source transportation income, (1) may be exempt from the 30% gross basis tax under IRC §§ 871 and 881 pursuant to IRC §887(c) if it is subject to the 4% excise tax on U.S. gross transportation income (USGTI) under IRC §887(a);[1] (2) may be exempt from tax under a U.S. income tax

[1] IRC §887(c) provides that "[a]ny income taxable under this section shall not be taxable under section 871, 881, or 882."

treaty, a shipping treaty, or an equivalent tax exemption as described under IRC §883;[2] or (3) may constitute income effectively connected with a U.S. trade or business that is subject to U.S. income tax on a net basis.[3]

U.S. source income derived through the use of trains and trucks is not subject to the 4% excise tax under IRC §887.[4] Nevertheless, certain practical administrative compliance challenges face withholding agents, particularly with respect to determining what portion of payments to foreign railroad or trucking vendors are U.S. source. A discussion of compliance challenges for withholding agents is set forth below for U.S. source transportation income under both categories (aircraft/ships and trains/trucks).

IRPAC's concerns regarding payments of U.S. source transportation income for the use of aircraft and ships relate primarily to whether such income is subject to withholding and reporting under IRC §1441 *et seq*., and what documentation, if any, withholding agents must obtain from the beneficial owners of the income to comply with the law. Generally, under Chapter 3 of the Internal Revenue Code, a withholding agent must obtain a properly executed Form W-8 (*i.e.*, either a Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, which attests to the application of a U.S. tax treaty, or a Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States, which attests that the beneficial owner files a U.S. income tax return for its income effectively connected with a U.S. trade or business) to negate the obligation to withhold at a rate of 30%. Although such approaches are possible with respect to certain U.S. source transportation income, exceptions may apply to income that constitutes USGTI creating additional complexities that the current versions of Forms W-8BEN and W-8ECI and related instructions do not address.[5]

This leaves withholding agents unsure of what they are required to do to comply with Chapter 3 of the Internal Revenue Code. Based upon feedback from IRPAC members and withholding agents, it is clear that a state of confusion exists among

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[2] Rev. Rul. 2008-17, 2008-1 CB 626, provides a nonexclusive list of countries that give U.S. entities equivalent exemptions from tax for income from international operations of ships and planes or that have a treaty in place with the U.S. that includes a shipping and air transport article or a gains article.

[3] IRC §887(b) provides "[t]he term 'United States source gross transportation income' shall not include any income taxable under section 871(b) or 882." IRC §§ 871(b) and 882 provide that income effectively connected with a U.S. trade or business are subject to U.S. income tax on a net basis at graduated tax rates rather than on a gross basis. The definition of "effectively connected income" for purposes of IRC §887 is set forth in IRC §887(b)(4) and is a more robust standard than the standard as it is generally applied under IRC §864(c).

[4] An equivalent exemption also exists for the use of railroad rolling stock of a foreign corporation under IRC §883(a)(3).

[5] For example, the Form W-8BEN does not contemplate the application of the 4% excise tax under IRC §887(a), and it is unclear whether the definition of effectively connected income as applied on both the Form W-8BEN and Form W-8ECI is acceptable for purposes of IRC §887(b)(4).

members of the transportation industry, tax professionals and IRS examiners regarding the proper application of the Chapter 3 rules to payments of U.S. source transportation income derived from the operation of aircraft and ships. It is unclear whether the apparent application of IRC §887(c) simply negates the application of the Chapter 3 rules, although the discussion regarding the issue in IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, related guidance,[6] and limited enforcement activity by IRS field examiners seem to support the conclusion. It is also clear based upon guidance that certain payments of U.S. source transportation income are subject to 30% withholding in the absence of some other exception when the sourcing rule under IRC §863(c)(2) does not apply.[7]

In practice, IRPAC members have observed that the shipping industry often refuses to provide Forms W-8BEN or W-8ECI to withholding agents upon request and instead cites IRC §887(c) and refers withholding agents to the discussion of transportation income under IRS Publication 515 as support for declining to provide the forms. Exasperated by the lack of guidance, many withholding agents have accepted the position of the shipping industry as the appropriate position. Additional confusion exists as to whether withholding agents must somehow document such positions taken by beneficial owners and whether withholding agents must report payments of USGTI on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

Due to the circumstances that currently exist and the anticipated implementation of FATCA, IRPAC believes that the IRS needs to communicate its expectations in this area to withholding agents and to the transportation industry in clear and unambiguous terms.

Because U.S. source income arising from the use of trains and trucks to foreign beneficial owners does not satisfy the definition of USGTI, it is not subject to the 4% excise tax imposed under IRC §887(a). Thus, the issues described in the section immediately above do not apply to income derived from the use of trains and trucks.

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[6] The underlying issue regarding the taxation of USGTI derived by foreign beneficial owners operating aircraft and ships has been addressed by the IRS on a number of occasions. *See*, *e.g.*, Rev. Rul. 2008-17, 2008-1 CB 626; Rev. Proc. 91-12, 1991-1 CB 473; PLR 9042057 (July 26, 1990); PLR 9131051 (May 7, 1991); FSA 3639, Vaughn # 3639 (Jan. 25, 1996); IRS Publication 515 for 2013, p. 28; 2012 Instructions for Schedule V (Form 1120-F). None of these authorities, however, provides any substantive discussion regarding the how a withholding agent must establish the appropriate tax treatment for purposes of withholding and reporting under Chapter 3 of the Internal Revenue Code.

[7] IRC §887(b)(1) provides that USGTI means "any gross income which is transportation income . . . to the extent such income is treated as from sources in the United States under section 863(c)(2)." IRC §863(c)(2) provides that a 50/50 source rule applies (50% U.S. source and 50% foreign source) when the trip either begins or ends in the U.S. *See generally* FSA 3639. When a trip begins and ends in the U.S., then the source would be entirely U.S. source; if a trip begins and ends outside of the U.S., then the source would be entirely foreign source.

Nevertheless, withholding agents face certain compliance challenges regarding how to determine the portion of transportation charges that constitute U.S. source income when delivery is made by train, trucks, or some combination thereof.[8] The source rules under IRC §863(c) apply only to "transportation income," which, as defined under IRC §863(c)(3), applies only to income arising from the use of aircraft and vessels (*i.e.*, ships or boats). Thus, payments to foreign beneficial owners for cross-border rail or trucking services must be sourced for Chapter 3 purposes based upon a method other than the administratively convenient 50/50 rule under IRC §863(c). This approach often requires a detailed analysis of the underlying road and container logs, shipping schedules, maps, etc. Such an approach is extremely difficult and onerous for accounts payable departments to undertake.

As discussed in our 2010 report, IRPAC believes the IRS has broad discretion to develop and expand upon sourcing rules, including the authority to expand or authorize the use of the 50/50 source rule under IRC §863(c), which currently applies only in the context of aircraft and ships, to payments for cross-border services provided through the use of trains and trucks. Accordingly, IRPAC renews its request for such a rule.

H. Revenue Procedure 95-48

Recommendation

IRPAC recommends the IRS add Revenue Procedure 95-48 to the list of documents modified by Revenue Procedure 2011-15. IRPAC believes it is misleading to leave Revenue Procedure 95-48 and Revenue Procedure 2011-15 published with no information linking the two. The IRS agrees with IRPAC and has included this item on the priority guidance plan (Revenue Procedure under §6033 to update and consolidate all non-regulatory exceptions from filing) to put all the exceptions from filing in one revenue procedure.

Discussion

The Pension Protection Act (PPA) of 2006 (Pub. L. 109–280), 120 Stat. 780, amended IRC §6033(a)(3)(B) to remove IRS authority to relieve organizations described in IRC §509(a)(3) (*i.e.*, supporting organizations) from filing Form 990, Return of Organization Exempt from Income Tax. Thus, supporting organizations were required to file Form 990 as of the effective date of the PPA. Prior to this legislative change, the IRS issued Revenue Procedure 95-48, which provided that governmental units and affiliates of governmental units, some of which are IRC §509(a)(3) supporting organizations, which are exempt from federal income tax under IRC §501(a) were not required to file annual information returns on Form 990. After this legislative change, the IRS issued Revenue Procedure 2011-15, which mentions that the PPA removed the Secretary's

[8] The Chapter 3 withholding and reporting rules apply only to payments of U.S. source income. IRC §1441(a).

authority to relieve organizations described in IRC §509(a)(3) from filing an information return as was done in Revenue Procedure 95-48. Revenue Procedure 2011-15 did not include Revenue Procedure 95-48 in the list of rulings it modified and superseded. Consequently, organizations described in IRC §509(a)(3) that are relying on guidance provided in Revenue Procedure 95-48 may not be aware of the need to file Form 990 after the PPA. In addition to clarifying that such filing is required by explicitly including Revenue Procedures 95-48 in the list of rulings modified by Revenue Procedure 2011-15, IRPAC agrees with the IRS plan to consolidate all non-regulatory exceptions from filing in one Revenue Procedure. IRPAC also recommends that the IRS consider highlighting, for the benefit of these filers, that this type of organization can change its public charity classification to something other than an organization described in IRC §509(a)(3) (if it is eligible) and still qualify for the filing exception contained in Revenue Procedure 95-48.