2013 IRPAC Public Report Letter from the Chair

Dear Acting Commissioner Werfel:

At a time when it seems the constant flow of information often results in less communication, the role of the Information Reporting Program Advisory Committee (IRPAC) is more important than ever. IRPAC's charter provides that its purpose "is to provide an organized public forum of relevant information reporting issues of mutual concern as between Internal Revenue Service (IRS) officials and representatives of the public." This is one of the few opportunities for public and government representatives to sit down at a table and talk, watch, listen and learn from each other.

In many instances, that objective, which started over 20 years ago, continues to be accomplished. Meetings related to pending regulations continue to provide a forum where ideas and issues are discussed openly and freely. At other times, particularly when addressing issues involving forms and publications, there is reluctance by IRS officials to allow IRPAC members to review and comment on draft forms and publications early in the process when it is much more efficient and easier to suggest changes.

Both the IRS and the information reporting community are challenged with increasingly complex and difficult compliance and reporting issues. The ability to effectively communicate the complex certification and reporting requirements and their purpose to American taxpayers – and now even to foreign financial institutions – can only be achieved with input from IRPAC. Its members bring years of experience and knowledge dealing with these problems, and they continue to make valuable recommendations about how the IRS could better inform the public and decrease burdens on everyone.

To achieve its objectives, IRPAC currently is comprised of four subgroups that have met during the past year with IRS representatives to discuss the topics briefly described below:

1. Burden Reduction (BR) (Julia Chang, Chair): BR focused this year on many issues related to small business taxpayers, in addition to working on issues previously reported but not yet resolved. One of those pending issues of particular importance that was included in IRPAC's Priority Guidance letters over the past two years was a recommendation to revise the regulations so that Form 1099 corrections resulting in a *de minimis* change (positive or negative) in a reportable amount could be suppressed without incurring a penalty under IRC §§ 6721 and 6722. This recommendation would reduce both the filing burden on taxpayers and processing burden on the IRS with respect to amended returns that result in little or no change in tax liability. The subgroup also recommended changes to Form 1099-MISC, Miscellaneous Income, and Form W-9, Request for Taxpayer Identification Number and Certification (as well as their corresponding instructions) to help taxpayers understand the requirements better and prepare the forms correctly, and expansion of the use of the TIN Matching Program to

information returns not subject to backup withholding. Those recommendations would ensure that more accurate information is provided initially and reduce unnecessary correspondence and inquiries.

2. Emerging Compliance Issues (ECI) (Susan Boltacz, Chair): ECI has engaged in numerous robust discussions with the IRS during 2013. The principal foci of these discussions were merchant reporting and cost basis reporting for debt instruments. Specifically with respect to merchant reporting, ECI continued to request additional guidance on items as basic as definitions. ECI also requested that the IRS delay the issuance of CP2100 Notices for incorrect Name/TIN combinations or that it waive penalties for 2013 for the failure to impose backup withholding on merchant accounts even though "B" Notices are still required to be sent to merchants. (The group is pleased the IRS granted that relief in IRS Notice 2013-56.) With respect to cost basis reporting for debt instruments, ECI assumed this issue in 2013 from the Burden Reduction subgroup. ECI has been painstakingly detailed in providing comprehensive comments to address requirements, practices and capabilities for reporting market premium and discount, and again bringing to the attention of the IRS the handling of tax exempt original issue discount. ECI also shared information with the IRS about requirements contained in the final regulations regarding support of taxpayer elections associated with debt instruments.

3. Employee Benefits & Payroll (EB&P) (Rebecca Harshberger, Chair): EB&P has been primarily focused on the Affordable Care Act (ACA). Some of the concerns related to the new reporting requirements under IRC §6055 and §6056 have been temporarily addressed by IRS Notice 2013-45 that provides transition relief for 2014. Other areas of discussion related to reporting have involved the likelihood of incorrect or missing TINs for employer and insurance reporting and ways to address that problem, the Form W-2, Wage and Tax Statement, reporting issues with qualifying dispositions of stock acquired through an employee stock purchase plan, and third party sick pay filings. Of particular concern has been the lack of educational materials or other guidance related to limited benefit plans that qualify for minimum essential coverage (MEC) and premium tax credits. EB&P was pleased that the IRS adopted the chart it created explaining the fee charged for the Patient-Centered Outcomes Research Trust Fund, which facilitated compliance during the first filing cycle for this new fee.

4. International Reporting & Withholding (IR&W) (Donald Morris, Chair): IR&W has been focused primarily on the Foreign Account Tax Compliance Act (FATCA). The subgroup has engaged in an ongoing dialogue with the IRS and Treasury regarding the final Chapter 4 regulations that were issued on January 17, 2013, as well as the draft Forms W-9, 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, and 8957, Foreign Account Tax Compliance Act (FATCA) Registration. IRPAC is pleased that the IRS listened to the requests for additional time and issued Notice 2013-43 that delayed the initial effective date

until July 1, 2014, and provided a similar 6-month delay to many other provisions. The decision by the IRS to issue that notice in July so that U.S. withholding agents and foreign financial institutions could take a more orderly approach to implementing the requirements that would have started on January 1, 2014 was well received by the information reporting community. IRPAC has recommended that the IRS provide for an additional postponement if final guidance is not released in time for withholding agents and foreign financial institutions to complete the steps necessary to fulfill their obligations under FATCA. This group intends to continue its dialogue regarding FATCA and provide input regarding the additional regulations, associated forms (including their instructions) and the foreign financial institution registration process that is yet to come.

As will be apparent in the more detailed discussions that follow, there are many outstanding issues and concerns yet to be fully addressed. IRPAC appreciates the fact the reductions in funding and staffing at the IRS have had a direct impact on the agency's ability to do so. The IRS should continue to give consideration to the items included in our 2013-2014 Guidance Priority List (see Appendix A), some of which have been requested for many years.

IRPAC is pleased that the IRS appreciates the burden placed on the information reporting community by the complex new requirements by issuing notices over the past few months and by providing additional time for compliance. Unlike the more simple changes of the past, legislation such as ACA, FATCA and Cost Basis Reporting require at least 18 – 24 months after the final regulations and forms are issued for the information reporting community to complete its programming and implementation work and then communicate those changes to the American taxpayer.

There have been victories, losses and stalemates, but my past three years on IRPAC have been extremely valuable. I have gained a much better understanding and appreciation of how challenging it can be to efficiently and fairly administer a very complex tax system, and to communicate that system effectively.

I wish to thank my fellow committee members for their determination, hard work and support. I also want to thank the Office of National Public Liaison, as well as you and everyone at the IRS who have provided assistance and feedback along this journey. I am reminded of an excellent African proverb: "If you want to travel fast, go alone. If you want to travel far, go together."

Respectfully submitted,

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Jeffrey N. Mason
2013 IRPAC Chair