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Information Reporting Program Advisory Committee

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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. <u>Burden Reduction (BR) (Julia Chang, Chair):</u> 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,

/signed/

Jeffrey N. Mason
2013 IRPAC Chair

Executive Summary of Issues

Burden Reduction:

A. Erroneous 1099-MISC Reporting

IRPAC recommends several items that will assist small businesses to better understand the requirements of Form 1099-MISC reporting and become more compliant. These recommendations will also reduce the burden on IRS of processing erroneous tax data reported on erroneous Forms 1099-MISC and by not having to devote resources to what are presumed to be underreporting recipients of income.

B. Form W-9 and Instructions – Revision

IRPAC recommends IRS make the Form W-9 easier to understand by referencing line numbers on the form and providing clearer form instructions. Many small businesses and individuals do not understand the importance of filling out Form W-9 correctly. This results in unnecessary correspondence between requestors of Form W-9 and the payees; and in some cases the IRS has required unnecessary back-up withholding.

C. Business Master File (BMF) – Additional Addresses

IRPAC recommends the IRS consider ways to improve the Business Master File to permit additional addresses. One option discussed was increasing the number of permissible business addresses from just one mailing and one legal address. The IRS is also looking at providing a notification letter to the last known address when there is an address change. Large businesses and financial institutions often have multiple business lines with different addresses for filing returns and making withholding deposits, such as for Forms 941, Employer's Quarterly Federal Tax Return, 945, Annual Return of Withheld Federal Income Tax and 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and those businesses would prefer notices be mailed to the address provided on each type of return. Also, small business owners sometimes prefer to have their Payroll and Corporate Income Tax correspondence mailed to different addresses.

D. *De minimis* Threshold for Form 1099 Corrections

IRPAC recommends again this year that the IRS adopt a *de minimis* dollar threshold for corrections to original information returns in an effort to reduce overall burden to information return filers, taxpayers and the IRS. IRPAC recommends a threshold of $50 be adopted so that net changes of $50 or less (up or down) should be defined as an “inconsequential error” in Reg. §301.6721-1(c)(2) and Reg. §301.6722-1(b)(2) that is not subject to the penalty provisions of IRC §§ 6721 and 6722.

E. Expand Eligibility to Use the Taxpayer Identification Number (TIN) Matching Program to Improve the Accuracy of Information Reporting

IRPAC recommends the eligibility to use the online TIN Matching Program be expanded to include the many information return types currently barred from performing TIN validation prior to information return filing. This will improve the accuracy of non-wage information reporting, and increase the amount of usable valid data for IRS computer matching compliance activity. It will also reduce burdens of cost, staff time, and systems for payers and the IRS in administering the “incorrect TIN” penalty process for payee name-TIN mismatches. Expanded utilization of the TIN Matching Program will result in more accurate Form 1099 reporting and will reduce IRS administrative costs.

Emerging Compliance Issues:

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

IRPAC continues to advocate for more guidance from the IRS on the myriad of unresolved compliance issues associated with Form 1099-K, Payment Card and Third Party Network Transactions, reporting. In addition, IRPAC appreciates the fact the IRS issued Notice 2013-56 that granted additional relief for missing or mismatched TINs from being included on the 2013 B Notices and potentially subject to backup withholding.

B. Cost Basis Reporting

IRPAC continues to request more time, IRS guidance and communications related to cost basis reporting that now must also take into consideration various taxpayer elections. Final cost basis regulations and temporary/proposed regulations have addressed the strong connection between income earned on fixed income holdings and the ongoing adjustments to those amounts and the cost basis of the instruments. As a result, many changes must be made to existing information return forms and specific guidance must be provided.

C. Taxpayer Identification Number (TIN) Truncation

IRPAC recommends that the TIN truncation program be extended to EINs. For calendar years 2009-2012, many filers have taken advantage of the pilot program announced by the IRS in Notice 2009-93, as extended and modified in Notice 2011-38, to truncate individual identifying numbers on specified payee statements. This program has assisted in efforts to protect against payees' identity theft and misappropriation of sensitive personal information. IRPAC is encouraged by and supports the fact that the proposed regulations make the program permanent and applicable to electronically delivered statements.

D. Stripped Tax Credits

IRPAC recommends that IRS Notice 2010-28 be revised to address the potential limitations related to the ability to report the original issue discount (OID) associated with the stripped components.

E. Form 1098-T

IRPAC recommends clarifying terms in “Instructions for Forms 1098-E, Student Loan Interest Statement and Form 1098-T, Tuition Statement,” with respect to information that should be reported by colleges and universities in box 5 of Form 1098-T.

F. Form 8300

IRPAC recommends the IRS clarify whether or not public universities that do not have “dual status” exemptions (recognized as both charitable organizations under IRC § 501(c)(3) as well as a college or university that is an agency or instrumentality of, or is owned or operated by a governmental entity) must file Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business.

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

IRPAC recommends that the IRS issue guidance regarding the proper withholding and reporting treatment of U.S. sourced payments for freight, shipping and other transportation expenses. The interplay between the 4% excise tax payable by shippers on U.S. source Gross Transportation Income (USGTI) in lieu of the 30% NRA tax withholding that would be required under IRC §§871 and 881 by withholding agents creates confusion. In particular, the IRS should explain what documentation or certification is required from the payer regarding the payment of the excise tax that would prevent other withholding. In addition, IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, should be revised to be consistent with that guidance.

H. Revenue Procedure 95-48

IRPAC recommends that the IRS add Revenue Procedure 95-48 to the list of documents modified by Revenue Procedure 2011-15.

Employee Benefits & Payroll

A. Employer and Insurer Reporting Under the Patient Protection and Affordable Care Act

IRPAC provided numerous recommendations in the 2011 and 2012 IRPAC Public Reports on these ACA reporting requirements -- recommendations that are still relevant. We encourage IRS to review these recommendations.

B. Missing TINs for Employer and Insurer Reporting

IRPAC recommends that the IRS issue TIN solicitation requirements and procedures for purposes of satisfying reporting under IRC §§6055 and 6056 and that the IRS explain these rules in plain language on the IRS website pages designed for individuals. IRPAC also recommends that reporting entities should be deemed to have acted reasonably if their conduct conforms to the standard for acting in a reasonable manner under Treas. Reg. §301.6724-1(d) and the solicitation rules for missing TINs under Treas. Reg. §301.6724-1(e).

C. Minimum Essential Coverage

IRPAC recommends the IRS develop examples of limited benefit plans that would constitute minimum essential coverage to assist individuals in understanding the types of coverage that will preclude the availability of premium tax credits.

D. Premium Tax Credit Educational Materials

IRPAC recommends that IRS rework the premium tax credit educational materials to be understandable by non-tax professionals.

E. Third-Party Sick Pay Reporting

Based on ongoing discussions with the IRS, IRPAC recommends that the IRS continue its pursuit of assuming the responsibility of receiving and processing the third-party sick pay filings.

International Reporting & Withholding

A. Notice 2013-43

IRPAC recommends that the IRS continue to take into account the time needed by withholding agents and their customers to implement FATCA in an orderly manner. Notice 2013-43 provides for a postponement in the imposition of FATCA withholding until July 1, 2014. IRPAC recommends that the IRS provide for an additional postponement until January 1, 2015, in order for withholding agents to complete the steps necessary to fulfill their obligations under FATCA.

B. Treatment of Expiring Chapter 3 Documentation

IRPAC recommends that withholding certificates (Forms W-8) and documentary evidence that would otherwise expire on December 31, 2013, should be considered valid until December 31, 2014.

C. Electronic Transmission of Tax Documentation

IRPAC recommends that the electronic transmission provisions of Chapters 3 and 4 be modified to provide that a withholding agent may accept tax documentation (withholding certificates, written statements, withholding statements, documentary evidence) that has been transmitted via e-mail or facsimile, except in the case the withholding agent knows such documentation has been transmitted by a person who does not have the authority to transmit such documentation and, in the case of documentary evidence, the documentary evidence appears to have been altered from its original form. We recommend that all the other authentication requirements with respect to faxed and e-mailed documentation be eliminated.

D. Presumption Rules for Certain Exempt Recipients

IRPAC recommends that an entity that may be treated as an exempt recipient without the need for furnishing a Form W-9, Request for Taxpayer Identification Number and Certification (an “eyeball exempt recipient”) should not be presumed foreign unless there are indicia of foreign status associated with the entity’s account.

E. Treatment of Foreign Branches Located in IGA Countries

IRPAC recommends that foreign branches of U.S. financial institutions (USFIs) and controlled foreign corporations of USFIs located in an IGA (Intergovernmental Agreement) country should be subject only to the IGA with respect to documentation standards and Chapter 4 withholding and reporting requirements.

F. Reason to Know Standards Under Chapters 3 and 4

IRPAC recommends that the “reason to know” standard provided in Chapter 4 (and Chapter 3) be modified to permit additional time to review documentation obtained at the time the account is opened and the results of a know-your-customer review conducted at or following the opening of the account. Additionally, corresponding regulations should be issued to provide that if the result of such review indicates that the tax documentation is unreliable or incorrect, the withholding agent is not obligated to impose withholding tax with respect to payments that occurred during the review period.

G. Coordinated Account System Rules

IRPAC recommends that the final regulations under Chapter 4 be modified to more clearly define, and expand, the circumstances under which a withholding agent, or members of its expanded affiliated group, may rely on shared tax-related documentation furnished by an accountholder or customer for multiple obligations or accounts. IRPAC also recommends that the corresponding regulations under Chapter 3 be similarly modified so that documentation requirements for both purposes are coordinated as closely as possible.

H. New Forms W-8, W-9, 1042 and 1042-S

IRPAC reviewed and discussed with the IRS the May 2013 draft version of the new Form W-8BEN-E. IRPAC recommends that the IRS make modifications to terminology and formatting on the face of the form in order to prevent a high level of errors by those completing the form and, therefore, decrease the number of invalid Forms W-8BEN-E submitted to withholding agents. IRPAC also recommends that the IRS publish instructions to Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting —as well as the forms and instructions for other forms in the W-8 series—as soon as possible in order to provide withholding agents with the necessary time to update their documentation, withholding and reporting systems, and that the instructions provide withholding agents with explicit guidance on how to validate the new Forms W-8 for purposes of both Chapter 3 and Chapter 4 requirements.

I. Reporting Obligations With Respect to Foreign Investment Funds

IRPAC recommends that the Chapter 61 obligations of a “U.S. payer” of distributions and redemptions made by a foreign investment fund which is either classified as a partnership for U.S. federal income tax purposes or treated as a passive foreign investment company under IRC § 1297 be eliminated in the case the FATCA reporting requirements of such investment fund are satisfied.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

BURDEN REDUCTION SUBGROUP REPORT

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A. Erroneous 1099-MISC Reporting

Erroneous Forms 1099-MISC, Miscellaneous Income – information returns filed with the IRS that incorrectly report non-reportable types of payments, payments reported in the wrong field, or payments reported to exempt payees, create a burden on small-business and individual taxpayers and burden the IRS with inaccurate data. The burden on taxpayers and the IRS is further compounded when filers fail to properly file corrections for erroneously filed 1099-MISC forms. The following recommendations address these problems:

Recommendations

1. Establish a free e-service on the IRS website for small-business payers to manually enter on-screen, and electronically file with the IRS, up to 100 Forms 1099-MISC and up to 50 corrected Forms 1099-MISC.

   Electronic filing of 1099-MISC by small businesses would increase accuracy and reduce costs for all parties concerned. Currently, the Social Security Administration (SSA) has a similar service for W-2 forms which has been successful. IRPAC also recommends that this feature be linked to Taxpayer Identification Number (TIN) Matching to reduce or eliminate B notices.

2. Improve the *Instructions for Form 1099-MISC*

   a. Add new basic language about corrections:
      If you need to correct a Form 1099-MISC that you have already sent to the IRS:
      - *For paper forms, see the General Instructions for Certain Information Returns, part H "Corrected Returns on Paper Forms" or for electronic filing of corrections see Publication 1220,* Specifications for Filing Form 1098,1099,5498,and W2-G Electronically*.*
      - *If filing a correction on a paper Form 1099-MISC, do not check the "VOID" box on the form. The "VOID" box on the paper Form 1099 alerts IRS scanning equipment to ignore the form and proceed to the next one. Your correction will not be entered into IRS records if the "VOID" box is checked.*

   b. Add a new bullet point in the "Exceptions" list on page 1 of the Instructions for Form 1099-MISC:
      - *Generally, payments to a corporation (including a limited liability company that is treated as a C or S Corporation). See Reportable payments to a corporation, later.*

   c. Consolidate the instructions that explain what is reportable in box 7. Instructions applicable to box 7 appear in several different sections on different pages of the Instructions for Form 1099-MISC.

d. In addition to the list of examples of payments reportable in box 7, insert a short list of payments that are not reported on the 1099-MISC box 7.

3. Improve the “Instructions for Payer” on the paper Form 1099-MISC

   IRPAC recommends adding a new paragraph titled “Corrections” with a brief explanation of the process; where to find the full explanation on how to make corrections with paper forms, what the “VOID” box is used for, and that a correction to previously filed information should not be marked “VOID”.

4. Add to the Form 1099-MISC information page(s) on the irs.gov website
   IRPAC recommends the following additions to IRS.gov:

   a. An expanded list of the types of payments reportable on the 1099-MISC
   b. A short list of payments that are not reportable and should not be reported on the 1099-MISC
   c. FAQs about 1099-MISC reporting
   d. A flow chart (or charts on jump pages) for 1099-MISC reporting and filing

5. Create a Form 1099-MISC link on the irs.gov home page.
   It is understood that there will be many topics that should be featured from time to time on the irs.gov home page, but a Form 1099-MISC link is particularly recommended during January and February, and rotation at other times of the year.

Discussion

Every year taxpayers receive erroneous 1099-MISCs from small businesses. The following are some real life examples of the incorrect use of box 7, non-employee compensation. The amounts in these examples may be reportable but not in box 7, as reporting in box 7 indicates that these payments will be subject to Self-Employment Tax.

- A company had a construction project next door to a private home. The company paid the homeowner $2,000 for the week they had to live in a hotel because their driveway entrance was obstructed. The reimbursement was reported in box 7 rather than as a rental in box 1.
- A Chamber of Commerce used box 7 on a 1099-MISC for a prize they gave, rather than in box 3.
- A taxpayer passed away and the following calendar year the employer paid his survivors his accumulated sick pay and reported it in box 7 instead of in box 3.
- A taxpayer sold a large piece of land to a developer on a contract. The developer reported the interest he paid on the contract on 1099-MISC. When

asked to correctly report the amount on Form 1099-INT, he sent another 1099-MISC with a zero in box 7 but with the void box marked instead of the corrected box.

- A Taxpayer does volunteer work for a non-profit organization. He turns the expenses in to the organization and receives reimbursement only for out of pocket expenses. He received a 1099-MISC, reporting in box 7, for the reimbursement.

Forms 1099-MISC are also issued to corporations and should not have been issued:

- A property management company who files a Form 1120, U.S. Corporation Income Tax Return received a 1099-MISC for rent on one of the properties they manage from the Veterans Administration. The property management company does not own the property but only manages the property for a landlord.

Entities that incorrectly prepare Forms 1099-MISC are often reluctant to file corrections and uninformed about how to properly do so. This issue is even more evident with small issuers who have neither the knowledge nor resources to interpret 1099 filing instructions. If they fail to correct erroneous 1099 filings, or make the corrections improperly, the problems become worse for the taxpayer and the IRS. Tax practitioners are left to try to explain the error on a client's tax return; or the taxpayer remains vulnerable to IRS systems identifying erroneously reported amounts as taxable income. The resulting correspondence absorbs resources on both sides.

The current method of issuing corrected 1099 forms is time consuming and confusing. Paper Form 1099-MISC filing requires issuers to file a "red ink" paper copy of the Forms 1099 and Form 1096 with their IRS Campus if they are not electronically filing the forms. A small business has four options for compliance:

1. order the "red ink" copies of the Forms 1099 and 1096, Annual Summary and Transmittal of U.S. Information Returns, from the IRS well in advance;
2. purchase a packet of at least 25 forms from a retailer (when they may need only a few 1099s);
3. purchase a program that will electronically prepare and file the forms; or
4. pay a tax professional to prepare the 1099s.

If taxpayers or their representatives could file original and corrected 1099- MISC forms via a free on-line service, the process would be easier and increase accuracy as well as reduce costs for IRS and 1099 issuers.

IRPAC recommends a secure system that allows a payer/filer to register and enter information into a form on the IRS website. An IRS efile feature for 1099-MISC will give small-business Form 1099-MISC filers a service similar to the SSA free filing of W-2s and W-2cs on the ssa.gov website. If supported by public education efforts, a 1099-MISC small-business free efile system will give the IRS a greater amount of usable information, make data available to IRS sooner for matching (compared to hand-written or typed paper forms that must be scanned), increase the number of 1099 efilers, and improve the accuracy of 1099-MISC filings by reducing scanning input errors and linking to FAQs and TIN Matching. This concept may also be scaled up to increase the number of free efile of forms 1099-MISC and to include other 1099 forms in the future.

Accurate information reporting is essential to assist taxpayers in filing correct tax returns, it encourages a greater level of compliance, allows the IRS to more economically and efficiently detect and pursue noncompliant taxpayers who underreport income or do not file tax returns. Incorrect filings of Form 1099-MISC are a burden to taxpayers, the IRS, and the recipients of payments.

Taxpayers who receive 1099-MISCs reporting amounts that are not reportable or 1099-MISCs that report amounts in the wrong field are burdened with time-consuming communications with the issuers of erroneous 1099s attempting to have corrected forms filed. Payers who erroneously file 1099-MISCs often fail to file corrections with the IRS or file on forms marked “VOID” that are never scanned into IRS files. An additional burden falls on the taxpayers and their tax preparers if they are contacted by the IRS about box 7 amounts, assumed by the IRS to be taxable income and subject to self-employment tax, but may be erroneously reported because they were either not a reportable type of payment or a different type of reportable payment.

The IRS is also burdened by erroneous 1099-MISC reporting, both by taking in erroneous tax data and by having to devote resources to what are presumed to be underreporting recipients of income. IRPAC recommends the changes listed above to improve instructions for 1099 issuers.

The recommendations above are intended to help small businesses become compliant with the 1099-MISC requirements. The 1099-MISC can be a confusing form as it serves as a catch-all for a diverse range of payment types. The recommendations above are intended to make it easier for small businesses to find information on what is reportable, what box of the form to use, what is not reportable, and how to report and correct forms.

B. W-9 Revision

Recommendation

1. The subgroup recommends the following revisions to the information area of Form W-9, Request for Taxpayer Identification Number and Certification, to clarify to the small businesses or individual taxpayers what is needed on the form:
    a. add line numbers on the Form W-9;
    b. add corresponding instructions for each numbered line under *Specific Instructions;*

c. add to the caption within the Name line so the caption reads, "(as shown on your tax return) Name is required on this line; do not leave this line blank;"
d. add to the caption for Check appropriate box for federal tax classification so the caption reads, "Check appropriate box for federal tax classification; check only one of the following seven boxes;"
e. add "I =Sole Member" in the options for filling in the dotted line in the Limited liability Company (LLC) line;
f. add "Exemption codes apply only to entities not individuals" in the Exemptions box.

2. The subgroup recommends changing the wording of the first paragraph in *Purpose of Form* at the bottom of the Form W-9 (page 1) to the following:
   a. A person or business (requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN), which may be your social security number (SSN) or employer identification number (EIN), to report on an information return form the amount paid to you. Some examples of these information returns are Form 1099-INT, Interest Income 1099-DIV, Dividends and Distributions 1099-MISC, 1099-B, Proceeds From Broker and Barter Exchange Transactions, 1099-S, Proceeds From Real Estate Transactions, 1099-K, or those that report the amount you paid for home mortgage interest or tuition, or reporting the acquisition or abandonment of secured property, or cancellation of debt, or contributions you made to an IRA.

3. The subgroup may make additional recommendations related to the Form W-9 and the "Instructions for the Requestor of Form W-9" that were released at the end of August 2013 during the writing of this report, based on additional input from IRPAC members.

Discussion

The Form W-9 will be clearer to the person filling out the form, and the information return data filed to the IRS will be more accurate, if the recommended enhanced language is incorporated into the Form W-9. At present, taxpayers or businesses do not always furnish the requested information to the payers or do not fill out Form W-9 properly. Taxpayers all too often look at the first page and decide that they are not required to fill out the Form W-9, and do not read beyond the first page. The results are that the requesters are required to do backup withholding after they receive a "B" notice from Internal Revenue Service because the name or identifying number that the taxpayers have provided do not match the Social Security Administration (SSA) or IRS's Master File.

1. The Form W-9 would be improved if the above recommendations are considered, for the following reasons:

a. Adding numbers to the lines will assist the taxpayers in finding the information needed under the specific instruction for that numbered line
b. The current instructions under Specific Instructions are not detailed enough to assist the average taxpayer in filling out the form.
c. Adding “do not leave this line blank” in the caption for the Name line will reduce the number of forms on which the LLC name of a single-member LLC, or a doing business as (dba) name of a sole proprietor, is written in the second name line, but the first name line, which is the name of the taxpaying individual or entity, is left blank.
d. Adding “check only one of the following seven boxes” to the third line will reduce the number of forms on which a single-member LLC checks two boxes (Individual/sole proprietor and or other LLC checks two boxes (C Corporation and LLC). There is no discussion in the current instructions that the tax classification is related to the taxpayer named in the first line, and that only one box should be checked.
e. The line for theLLC tax classification list creates confusion for taxpayers who are the sole member of a single member LLC that is a disregarded entity. The form should include a line with this box that states the following: *For a single-member LLC that is disregarded, check the appropriate box in the line above for the tax classification of the single member owner.*
f. For the “exempt payee code” information, adding the statement “Exemption codes apply only to certain entities and not to individuals” makes it clear to the individuals they can ignore this box and the Form W-9 will remain valid.
g. For the “exempt from FATCA reporting code” information, adding the statement “This only applies to financial accounts maintained outside the United States” makes it clear that this information is not applicable to most taxpayers who provide this form to payers and withholding agents located inside the United States, and that the form will remain valid for the vast majority of persons who will complete the Form W-9 without providing a FATCA reporting code.

2. The instructions under “Purpose of Form” appear to apply only to businesses and not to individuals. IRPAC recommends changing the wording to make it clear that the Form W-9 applies to both businesses and individual taxpayers.

C. Business Master File – Additional Addresses

Recommendations

IRPAC recommends that the IRS create additional mailing address fields on the Business Master File (BMF) so that a Payer/Filer that files various types of returns will receive IRS notices in a timely manner to the person or group within the company that works directly with that type of return or withholding, and to prevent notices (such as B-notice CDs that include TIN and customer name and account information) from being delivered to an incorrect address that can create privacy issues. Large businesses and financial institutions often have multiple business lines filing different returns and making different types of withholding deposits, such as for Forms 941, 945 and 1042. Small business owners would prefer to have their Payroll and Corporate Income Tax correspondence mailed to different addresses.

As an alternative, IRPAC recommends that the IRS give strong consideration to reinstating the process of issuing a change of address notification letter mailed to the last address when a mailing address on the BMF is updated based on the requirements in Revenue Procedure 2010-16. We understand the IRS is currently analyzing the legal aspects and the mailing costs related to this recommendation.

As a final alternative, the IRS should revise Revenue Procedure 2010-16 to state that an address related to an EIN will only occur after receipt of IRS Form 8822-B ("Change of Address – Business").

Discussion

Pursuant to Reg. §301.6212-2(a) that states a "taxpayer's last known address is the address that appears on the taxpayer's most recently filed and properly processed Federal tax return," the IRS has issued revenue procedures to determine which returns will result in the IRS changing the address based on the address included on the most recently filed return, as well as which notices must be mailed to that "last known address." The current guidance is found in Revenue Procedure 2010-16 (2010-19 IRB 664, dated 04/16/2010). The list of returns that can trigger a change in address includes, but is not limited to, the Form 1040 return series filed by individuals, trust returns, gift tax returns, estate tax returns, and multiple business and withholding tax returns (e.g., Forms 940, 941, 945 and 1120).

As a result of this revenue procedure, filers of information returns have had their address changed when a customer filed an annual return and incorrectly used the TIN (usually an EIN) of the filer or payer that appeared on a Form 1099 provided to the customer. Since no notice of the change of address is mailed by the IRS to the payer/filer, the company or business owner has no knowledge the mailing address has been changed. The result is that subsequent IRS notices are mailed to an incorrect address, increasing the risk of stolen identity in some cases, or penalties and interest being assessed against the information return filer for failure to respond in a timely manner.

Having the ability to include multiple mailing addresses on the BMF could also prevent recent problems created by withholding agents, acting on behalf of a company but not making payroll deposits with the IRS, being the only recipient of inquiries from the IRS about failure to make deposits or file returns.

In addition, many smaller corporate businesses would prefer to have notices and inquiries related to their corporate tax returns mailed to the shareholder's address rather than to the business address where they can be received by an employee. Unlike with the change of address problems discussed above, this problem can be resolved only by additional enhancements of the BMF that will permit multiple mailing addresses based on each type of return filed by the company.

We believe these recommendations would help prevent identity theft, allow companies to be forewarned if their withholding agent is not making payroll deposits, permit businesses to have specific tax correspondence directed to the appropriate group or person, and increase efficiencies by having the IRS receive timely responses to its inquiries and notices without repeated mailings.

D. *De minimis* Threshold for Form 1099 Corrections

Recommendation

IRPAC recommends again this year that the IRS adopt a *de minimis* dollar threshold for corrections to original information returns in an effort to reduce overall burden to information return filers, taxpayers, and the IRS.

IRPAC recommends a threshold of $50 be adopted so that net changes of $50 or less (up or down) do not require the mailing or filing of a corrected information return.

Therefore, changes to the regulatory definitions under IRC §§ 6721 and 6722 should be considered so that filers of Forms 1099 have clear authority for suppressing these immaterial corrections, if they elect to do so. Specifically, a failure to correct a *de minimis* amount of $50 from any previously reported amount should be defined as an "inconsequential error" in Reg. §301.6721-1(c)(2) and Reg. §301.6722-1(b)(2) that is not subject to the penalty provisions of IRC §§ 6721 and 6722. The regulations currently require a payer to issue a correction if the reported amount is incorrect in "any monetary amount" or "any dollar amount," depending on the regulatory language used. Minor changes to the language in these regulations to incorporate this recommendation would be extremely beneficial for all parties involved.

Discussion

Payers and filers of information returns are often notified by mutual funds, companies and others of changes in reportable information well after the due dates of January 31 or February 15 to provide Forms 1099 to recipients – generally because those entities did not have the information they needed by those dates, or their fiscal year that ended later revealed they did not have sufficient accumulated earnings and profits for the entire distribution to be treated as a dividend.

In addition, as information reporting has become more complex and comprehensive, the volume of corrected returns has increased significantly due to wash sales, changes to issuer returns (Form 8937, Report of Organizational Actions Affecting Basis of Securities) and so on. The amount of the changes is often immaterial and has no impact to the recipient's tax liability, and for the later announcements of reclassifying dividend distributions to return of capital reduces the recipient's taxable income.

Currently, in instances where information returns and payee statements are found to contain an error, substantial resources are being expended by withholding agents, including financial institutions (for printing, mailing, reputation, etc.), taxpayers (for filing amended returns), and the IRS (for processing and data matching, etc.) to correct and process corrected statements that, in many cases, have no impact on tax liability. This burden on resources is unnecessary when the correction is for an inconsequential sum that changes neither the taxpayer's liability nor the Government's revenues.

One member of IRPAC provided data for Tax Year 2012 corrections to date for its retail brokerage customers impacted by dividend reclassification announcements received by the payer after February 8, 2013 (when the original returns were created). Of the 456,559 corrected forms issued where the previously reported ordinary dividend amount was changed (usually, as a reduction) in Box 1a of the Form 1099-DIV, over 59% (270,275) were for changes less than $50. The volumes of amended returns for amounts less than $30 (49%) and $10 (27%) were very similar to the statistics provided in Appendix G of the 2012 IRPAC report that included a similar recommendation regarding *de minimis* corrections.

Each correction cost the payer $1.53 to print and mail, and each recipient – in addition to becoming annoyed – very likely incurred significant costs in terms of time and money filing a corrected return, or in consulting with their tax advisors to determine if a return needed to be filed. Finally, the IRS had its limited resources expended on processing amended returns that generally had no impact or reduced the taxpayer's taxable income.

While other proposals have been made to avoid amended returns, such as the payer entering into a closing agreement in lieu of issuing corrections, the payer is not guaranteed the IRS will accept the settlement offer and the process takes many months to complete. That proposed process provides no certainty to the payer or the recipient that an amended return is not required. In addition, as discussed above, most of the corrections reduce the amount of reported income instead of the failure to report an additional amount of income that is the primary basis of determining a settlement amount with the IRS. Finally, it is important to realize that the vast majority of information return corrections are related to announcements made by third parties after the current mailing and filing dates, and are not the result of payer errors. Therefore, it would be unfair for the payer to be forced to enter into a closing agreement for events outside its control.

The increasing costs and inefficiencies for everyone related to issuing amended information returns are why IRPAC requested the Chief Counsel to include it in the Priority Guidance Plan in each of the past two years. As more reporting requirements become effective, such as cost basis reporting, the volume of amendments for *de minimis* amounts will increase further.

E. Expand Eligibility to Use the Taxpayer Identification Number (TIN) Matching Program to Improve the Accuracy of Information Reporting

Recommendation

Eligibility to use the on-line TIN Matching Program should be expanded to include the many information return types currently barred from performing TIN validation prior to information return filing. This will improve the accuracy of non-wage information reporting, and increase the amount of usable valid data for IRS computer matching compliance activity. It will also reduce burdens of cost, staff time, and systems for payers and the IRS in administering the “incorrect TIN” penalty process for payee name-TIN mismatches. Expanded utilization of the TIN Matching Program will result in more accurate Form 1099 reporting and will reduce IRS administrative costs.

The current scope of the TIN Matching Program relates only to backup withholding under IRC § 3406. Therefore, taxpayers who file multiple information return types that are not subject to backup withholding bear a substantial burden due to being excluded from this means of early identification of payee name TIN mismatches, which otherwise are not known to these payers until they receive IRS Notice 972CG showing penalties under IRC §§ 6721 and 6722 for having filed incorrect TINs.

Legislation may be needed to support expanding eligibility for the on-line TIN Matching Program. IRPAC recommended expanding eligibility in 2002, but the recommendation was not acted upon. Legislation to expand eligibility was introduced in Congress, but was not enacted. The IRS should re-examine whether a statutory amendment is needed, or sufficient authority to the Secretary of the Treasury already exists, to enable the TIN Matching Program to be opened to payers that file additional types of information returns. If legislation is needed, the IRS and Treasury should actively pursue it.

Discussion

The current TIN Matching Program falls within the context of information returns that report income to which backup withholding could apply. IRC § 3406 which covers backup withholding establishes at § 3406(i), “The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.” Regulations § 31.3406(j) – 1(a) provides, “The matching program. Under

§3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (see § 601.601(d)(2) of this chapter) or other appropriate guidance the scope and the terms and conditions of participating in any TIN matching program."

In accordance with this authority, the current Interactive and Bulk TIN Matching Program operates under Revenue Procedure 2003-9. Rev. Proc. 2003-9 and IRC §6050W expanded the original TIN Matching Program created under Revenue Procedure 97-31, so that payers of income reportable on Forms 1099-B, 1099-DIV, 1099-INT, 1099-K, 1099-MISC, 1099-OID and 1099–PATR can verify the payee TINs required to be reported on these information returns and related payee statements. Through on-line TIN matching in IRS e-services, these payers may check the TIN furnished by the payee against the name-TIN combination contained in the IRS database for TIN matching. The TIN matching result returned to the payer by the IRS informs the payer whether the name-TIN combination payee furnished to the payer matches a name-TIN combination in the database. If it does not match, the result returned by the IRS can show additional information such as whether the TIN has been issued. Payers re-contact these name-TIN mismatch payees who have been identified through the use of TIN matching and solicit a new Form W-9 with correct TIN information prior to filing with the IRS. Payers, the IRS, and income recipients all benefit when accurate TINs are reported on the initial information return filing.

For 2013, IRS projections of information return filing for forms included in the TIN Matching Program are:

- over 91 million Forms 1099-MISC;
- over 180 million Forms 1099-INT;
- over 89 million Forms 1099-DIV;
- over 3 million Forms 1099-OID;
- over 1 billion Forms 1099-B;
- over 9 million Forms 1099-K;
- over 1 million Forms 1099-PATR.

Payers filing these forms can use TIN matching because these forms report income that could be subject to backup withholding.

However, payers that file other information return types which are subject to the same TIN penalties, but excluded from the TIN Matching Program, are at a significant disadvantage. They bear a serious burden because they do not have the opportunity to use the TIN Matching Program to identify incorrect payee TINs (name-TIN mismatches) prior to filing information returns which are subject to incorrect TIN penalties. They learn of incorrect TINs only when the IRS notifies these payers that incorrect TIN penalties are proposed to be assessed. For 2013, IRS projections of information return filing for some of the return types for which payers are currently prohibited from using TIN matching include:

- over 80 million Forms 1098;
- over 30 million Forms 1098-T;
- over 86 million Forms 1099-R;
- over 3 million Forms 1042-S;
- over 2 million Forms 1099-S;
- over 84 million Forms 1099-G;
- over 117 million Forms 5498.

Additional payers excluded from TIN matching include those that file Forms 3921 and 3922 relating to incentive stock options and employee stock purchase plan options; and will include those required to file the new information returns under IRC §§ 6055 and 6056 relating to health insurance coverage as required under the Affordable Care Act.

If such payers currently excluded from the TIN Matching Program were included in the program, payers and the IRS would benefit:

- The number of incorrect-TIN penalty 972CG listings would be reduced, saving the IRS time and expense in processing and in the labor-intensive review and appeals processes;
- A greater amount of valid data from original information return filings would be available to the IRS for compliance activity and addressing the identity theft problem;
- Payers would save time and expense for processing 972CG incorrect-TIN listings, preparing 972CG response letters and corresponding with the IRS including follow-ups and appeals on reasonable cause grounds.

IRS denial of penalty waiver upon initial receipt of the waiver request letter is common, requiring the payer – even though actually having reasonable cause under current regulations for waiver of TIN penalties – to invest additional time and expense to restate its case to the IRS, particularly if the payer determines it is necessary to engage outside professional assistance to handle the abatement request through a resubmission and the appeal process.

Incorrect TIN penalties are the more complex penalty types which a payer must address upon receipt of a Notice 972CG. A detailed written response to the IRS is required within 45 days. Documenting a cause for waiver of these assessments is labor-intensive, generally requiring multiple rounds of communication with the IRS, but payers that have been in compliance with the applicable tax regulations undertake the waiver request and appeal because they should not pay penalties for their payees' errors.

Penalties were increased two years ago to the following amounts:

- $30 per form, or per statement, if corrected within 30 days (maximum $250,000 per year);
- $60 per form, or per statement, if corrected more than 30 days after the filing due date by August 1 of the same year (maximum $500,000 per year);
- $100 per form, or per statement, if corrected later than August 1 of the same

year or if not corrected (maximum $1,500,000 per year);

- $250 per return, or per statement, or 10% of the total amount that should have been reported (5% if amounts should have been reported on Form 1099-B), whichever is greater with no maximum cap, where intentional disregard of the requirements is found.
- Payers with annual gross receipts of $5 million or less may qualify as “small business” payers for which the penalties may be reduced by 30% to 44% for various types of failures.

The reasonable cause defense under IRC § 6724 and regulations there under (also explained in Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (including instructions for reading CD/DVDs and Magnetic Media)) is the guideline for payers to obtain a penalty waiver. To show that the failure was due to reasonable cause and not willful neglect, payers must establish that they acted in a responsible manner both before and after the failure occurred, and that there were significant mitigating factors (for example, an established history of filing information returns with correct TINs), or the failure was due to events beyond the payer’s control (for example, a payee did not provide the correct name-TIN). If reasonable cause is established, the IRS will issue a Letter 1948C stating that the explanation given was accepted. If the response letter does not establish, or only partially establishes, reasonable cause, or if the response is not submitted by the deadline, the incorrect TIN penalty will be assessed and a balance due notice is issued. If more time is needed, IRS instructions are to submit a written request to the IRS Service Center on the notice before the end of the 45-day period, but the IRS cannot always hold back an assessment. Many waiver requests are denied at the first IRS review despite showing of reasonable cause in the response letter. Therefore, the payer must follow up with a second review request, a letter to preserve the right to appeal the denial, and very often a full appeal.

To mitigate this burden on payers, and reduce costs and administrative burden on the IRS, IRPAC recommends that the TIN Matching Program be expanded to cover information returns that are subject to incorrect TIN penalties under IRC §§ 6721 and 6722.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

EMPLOYEE BENEFITS & PAYROLL SUBGROUP REPORT

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A. Employer and Insurer Reporting Under the Patient Protection and Affordable Care Act

Recommendation

IRPAC provided numerous recommendations in the 2011 and 2012 IRPAC Public Reports on these reporting requirements -- recommendations that are still relevant. We encourage IRS to review these recommendations.

Discussion

IRC §6055 and IRC §6056 were added by the Patient Protection and Affordable Care Act (ACA), Public Law 111-148, which was amended by the Health Care Education Reconciliation Act of 2010, Public Law 111-152, and then transition relief was provided in IRS Notice 2013-45. These reporting requirements will now apply to coverage provided on or after January 1, 2015; the first information returns are required to be filed in 2016.

IRS Notice 2013-45 states that the transition relief will provide additional time for dialogue with stakeholders in an effort to simplify the reporting requirements consistent with an effective implementation of the law. Transition relief will also provide employers, insurers, and other reporting entities additional time to develop their systems for assembling and reporting the needed data, according to the Notice.

IRPAC appreciates the transition relief. In IRPAC public reports and discussions with the IRS, we have repeatedly requested an 18-month lead-time for new reporting forms or extensive changes to existing forms. This transition relief demonstrates that the Service is hearing and acting upon our concerns.

Proposed rules on information reporting of minimum essential coverage (REG-132455-11) and proposed rules on information reporting by applicable large employers (REG-136630-12) were released in early September 2013. Given the timing of this report, IRPAC will provide IRS with comments later.

IRS has consistently reached out to IRPAC for ideas on how to simplify these reporting requirements and has encouraged IRPAC to brainstorm on ways to utilize information already provided to the agencies on other annual filing forms, such as the Form 5500, Annual Return/Report of Employee Benefit Plan.

The reporting requirements under IRC §6055 include significant individual data elements that are not captured currently by plan-level reports, such as the Form 5500. IRC §6055 requires sponsors of self-insured plans and insurers in the case of fully-insured plans to provide the name and TINs of the primary insured and all dependents covered under the plan, each individual's dates of coverage, as well as other items.

The requirements under IRC §6056 require large employers (50 or more full-time employees) to report plan information that is not provided in current plan reporting. IRC §6056 requires large employers to certify the length of a waiting period, the months during which coverage was available, the monthly premium for the lowest cost option in each enrollment category, the employer's share of the total allowed costs of benefits provided, the number of full-time employees for each month during the calendar year, the name, address, and TIN of each full-time employee, and the months during which the employee and any dependents were covered under the health plan.

In response to IRS Notice 2012-32 and Notice 2012-33, IRPAC submitted two comment letters on June 11, 2012 that were included in the IRPAC 2012 Public Report. Comments were also submitted on March 18, 2013 (see Appendix D).

Since the publication of the transition relief, the IRS has asked IRPAC for feedback on alternative reporting options that would meet the requirements under the law. IRPAC appreciated the opportunity to comment on alternative reporting options. While alternatives may have limited use by the reporting community, we generally approve of alternative means to satisfy reporting obligations.

B. Missing TINs for Employer and Insurer Reporting

Recommendation

IRPAC recommends that the IRS issue TIN solicitation requirements and procedures for purposes of satisfying reporting under IRC §§6055 and 6056 and that the IRS explain these rules in plain language on the IRS website pages designed for individuals.

IRPAC also recommends that reporting entities should be deemed to have acted reasonably if their conduct conforms to the standard for acting in a reasonable manner under Treas. Reg. §301.6724-1(d) and the solicitation rules for missing TINs under Treas. Reg. §301.6724-1(e).

Discussion

A number of insurance companies have estimated that they are missing TINs for approximately 30 percent to 50 percent of their insured individuals. Some insurers have expressed serious concern about the credibility of the TINs they do have in their databases because they have not used the TINs so far. Insurers anticipate resistance from insured individuals in obtaining TINs and are seeking assistance from the IRS in educating the public about the need to provide an accurate TIN in a timely manner.

Fears of overwhelming numbers of mismatched TINs abound for insurers. The TIN matching program currently is contemplated only for purposes of backup withholding. The availability of a TIN matching system for purposes of Affordable Care Act (ACA) reporting would be helpful in order to identify potential TIN errors.

IRPAC acknowledges and appreciates the position taken in the preamble to the proposed rule on information reporting of minimum essential coverage. According to the preamble, reporting entities that make reasonable efforts to collect TINs but do not receive them will not be subject to penalties under §§6721 and 6722 for failure to timely report. The proposed regulations allow reporting entities to report a date of birth if a TIN is not available.

C. Patient-Centered Outcomes Research Trust Fund Chart

Discussion

IRS released final regulations that provide guidance on the fees imposed by the ACA on issuers of certain health insurance policies and plan sponsors of certain self-insured plans to fund the Patient-Centered Outcomes Research Trust Fund.

IRPAC created a chart to assist the employer/plan community in understanding the plans that were subject to the fee and provided this chart to IRS. IRPAC applauds the IRS for enhancing and publishing the chart on IRS.gov. The chart facilitated compliance during the first filing cycle for this new fee. We believe that the chart significantly reduced inquiries to the IRS on this topic (See Appendix E).

D. Minimum Essential Coverage

Recommendation

IRPAC recommends the IRS develop examples of limited benefit plans that would constitute minimum essential coverage to assist individuals in understanding the types of coverage that will preclude the availability of premium tax credits.

Discussion

An applicable large employer member may be subject to an assessable payment under IRC §4980H(a) if the employer fails to offer its full-time employees and their non-spousal dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan.

MEC is defined in IRC §5000A(f), which specifies the types of health plans that qualify as MEC for purposes of the individual shared responsibility provision. MEC includes coverage under an eligible employer-sponsored plan, which is defined as a group health plan or group health insurance coverage offered by an employer to an employee that is a governmental plan, any other plan or coverage offered in the small or large group market, or a grandfathered plan offered in the group market. IRC §5000A(f)(3) provides that MEC does not include health insurance coverage which consists of coverage of excepted benefits described in section 2791(c)(1) of the Public Health Service Act, or sections 2971(c)(2)(3) or (4) of the Public Health Service Act if the benefits are provided under a separate policy, certificate, or contract of insurance.

The IRS plain language definition of MEC appears on an IRS webpage that provides questions and answers on the individual shared responsibility provision. According to Q&A 5, MEC includes the following:

- Employer-sponsored coverage (including COBRA coverage and retiree coverage)
- Coverage purchased in the individual market
- Medicare Part A coverage and Medicare Advantage
- Most Medicaid coverage
- Children's Health Insurance Program (CHIP) coverage
- Certain types of veterans health coverage administered by the Veterans Administration
- TRICARE
- Coverage provided to Peace Corps volunteers
- Coverage under the Non-appropriated Fund Health Benefit Program
- Refugee Medical Assistance supported by the Administration for Children and Families
- Self-funded health coverage offered to students by universities for plan or policy years that begin on or before Dec. 31, 2014 (for later plan or policy years, sponsors of these programs may apply to the U.S. Department of Health and Human Services (HHS) to be recognized as minimum essential coverage)
- State high risk pools for plan or policy years that begin on or before Dec. 31, 2014 (for later plan or policy years, sponsors of these programs may apply to HHS to be recognized as minimum essential coverage)

Q&A 5 also includes a paragraph explaining what MEC does not include. According to this paragraph, minimum essential coverage does not include coverage providing only limited benefits, such as coverage only for vision care or dental care, Medicaid covering only certain benefits such as family planning, workers' compensation, or disability policies.

The paragraph explaining what MEC does not include leads the reader to believe that there may be other, unenumerated limited benefit plan arrangements that would and would not constitute MEC. Clarifications using more examples of limited benefit plans that would and would not constitute MEC would serve the interests of individuals in attempting to understand their options for premium tax credits and obligations under the individual shared responsibility provision.

E. Premium Tax Credit Educational Materials

Recommendation

IRPAC recommends that the IRS further develop the questions and answers on the premium tax credit webpage to address spouse and non-spouse dependent eligibility for premium tax credits.

Discussion

The ACA creates premium tax credits for eligible individuals who purchase health insurance coverage through exchanges, beginning in 2014 (IRC §36B(b)(1)). The premium tax credits generally are available to individuals with household incomes up to 400 percent of the federal poverty level. The credits are available on a sliding scale.

IRPAC recognizes that the IRS published a webpage on September 30, 2013 providing questions and answers on the premium tax credit. This is a good first step.

Employers are posing questions to IRPAC members about spouse eligibility for premium tax credits. A question and answer discussing the availability of premium tax credits for spouses when affordable self-only coverage is offered to an employee, but spousal coverage (while offered) is not affordable, would assist individuals in understanding their options.

Similarly, a question and answer discussing how employee coverage under an employer-sponsored plan impacts non-spouse dependent eligibility for premium tax credits would be helpful.

IRPAC looks forward to working with the IRS on developing educational materials that serve to educate the public.

F. Third-party Sick Pay Reporting

Recommendation

Based on ongoing discussions with the IRS, IRPAC recommends that the IRS continues its pursuit of assuming the responsibility of receiving and processing the third-party sick pay filings.

Discussion

Third-party sick pay is now reported to the Social Security Administration (SSA) who does not need or use the information. The SSA is revamping its Annual Wage Reporting System and will be eliminating third-party sick pay reporting effective for tax year 2014, processing year 2015.

Many employers use third party sick pay providers to handle Forms W-2, Wage and Tax Statement, for short-term and/or long-term disability payments. These providers operate on separate systems and significant coordination and communication is required between the third-party sick pay provider and the employer. Reporting directly to the IRS will be more effective and efficient compared to the current process of reporting to the SSA that, in turn passes the information over to the IRS.

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.
.

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

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[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.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

INTERNATIONAL REPORTING AND WITHHOLDING SUBGROUP REPORT

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Foreign Account Tax Compliance Act (FATCA)

IRPAC has worked closely with the IRS and Treasury regarding the implementation of the Foreign Account Tax Compliance provisions of Subtitle A of Title V of the HIRE Act (commonly referred to as FATCA). IRPAC has engaged in an ongoing dialogue with the IRS and Treasury regarding the regulations implementing FATCA that were issued on January 17, 2013 and the draft Forms W-8, Withholding Certificate), 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 intends to continue this dialogue and provide input with regard to the regulations, associated forms, and the foreign financial institution (FFI) registration process.

Following is a summary of the principal issues that have been discussed.

A. Notice 2013-43

Recommendation

IRPAC recommends that the IRS continue to take into account the time needed by withholding agents and their customers to implement FATCA in an orderly manner. Notice 2013-43 provides for a postponement in the imposition of FATCA withholding until July 1, 2014. Due to the delay in the issuance of final guidance, IRPAC recommends that the IRS provide for an additional postponement until January 1, 2015 in order for withholding agents to complete the steps necessary to fulfill their obligations under FATCA.

Discussion

The implementation of FATCA is an enormous task. Notice 2013-43 acknowledges the practical problems faced by both U.S. withholding agents and foreign financial institutions (FFIs) in complying with FATCA. IRPAC applauds the IRS for its decision to release Notice 2013-43 to announce the delay of the effective date for the implementation of FATCA until July 1, 2014.

Withholding agents have devoted substantial resources to the design of systems based on the final regulations and the associated draft forms. It is important to note that substantial work remains to be done and can only be undertaken after final and comprehensive guidance is issued. The systems development process involves a series of steps. The remaining steps include refining the scope of the project, development and documentation of technical requirements, design and coding of program changes, testing to ensure compliance with technical requirements, finalization of programming changes, and scheduling the release of systems changes. Each of these steps requires a substantial commitment of time and resources and must be undertaken sequentially. Although preliminary scoping and initial deign work has been largely completed based on guidance issued to date, the completion of design, programming and testing can only be accomplished after the IRS has released comprehensive final guidance.

IRPAC understand that the IRS intends to issue additional regulations that will provide guidance under Chapter 4, and make changes to the regulations under Chapter 3 and Chapter 61. The IRS has also issued substantially revised draft versions of Forms W-8, 1042 and 1042-S. Withholding agents cannot make the necessary changes to on-boarding procedures or their reporting and withholding systems until the final versions of these forms and their instructions are released.

The implementation of FATCA is further complicated by the negotiation of Intergovernmental Agreements (IGAs) between Treasury and foreign governments. The IGAs are meant to address local privacy concerns by providing a separate set of rules for financial institutions located in an IGA country. Financial institutions with branches and subsidiaries located in multiple countries will have to implement varying IGA requirements in the many jurisdictions expected to enter into IGAs. Thus, financial institutions are faced with the prospect of programming systems to comply with the FATCA regulations and then reprogramming systems and revising procedures for individual countries when an IGA becomes effective.

Due to the delay in the issuance of final guidance, IRPAC recommends that the IRS provide a postponement of the requirement to impose Chapter 4 withholding until January 1, 2015 (with corresponding changes to other effective dates under the Chapter 4 regulations).

B. Treatment of Expiring Chapter 3 Documentation

Recommendation

IRPAC recommends that withholding certificates (Forms W-8) and documentary evidence that would otherwise expire on December 31, 2013 should be considered valid until December 31, 2014.

Discussion

Notice 2013-43 provides that withholding certificate and documentary evidence that would otherwise expire on December 31, 2013 will expire instead on June 30, 2014, unless a change in circumstances occurs that would otherwise render the withholding certificate or documentary evidence incorrect or unreliable. This extension of the validity period of such documentation is consistent with the delay in the imposition of FATCA withholding until July 1, 2014.

The extension of the validity period from December 31, 2013 until June 30, 2014 is only relevant for obligations or accounts that are considered preexisting obligations under the Chapter 4 regulations. The extension of the validity period is of limited benefit because withholding agents would need to solicit a new Form W-8 before July 1, 2014. A new Form W-8 received before July 1, 2014 would generally not include Chapter 4 status information. Withholding agents would need to resolicit Forms W-8 for many preexisting accounts after July 1, 2014 and before December 31, 2014 in order to obtain necessary Chapter 4 status information.

IRPAC recommends that tax documentation that would otherwise expire on December 31, 2013 be treated as valid until December 31, 2014.

C. Electronic Transmission of Tax Documentation

Recommendation

IRPAC recommends that the electronic transmission provisions of Chapters 3 and 4 be modified to provide that a withholding agent may accept tax documentation (withholding certificates, written statements, withholding statements, documentary evidence) that has been transmitted via e-mail or facsimile, except in the case the withholding agent knows such documentation has been transmitted by a person who does not have the authority to transmit such documentation and, in the case of documentary evidence, the documentary evidence appears to have been altered from its original form. We recommend that all the other authentication requirements with respect to faxed and e-mailed documentation be eliminated.

Discussion

Treasury Reg. § 1.1471-3(c)(6)(iii)(iv) provides that a withholding certificate may be accepted by facsimile for Chapter 4 purposes if the withholding agent confirms that the individual or entity furnishing the form is the individual or entity named on the form. In the case of a withholding certificate that is transmitted via e-mail, the even more stringent authentication requirements of Treasury Reg. § 1.1441-1(e)(4)(iv) apply for Chapter 4 purposes. We believe that these authentication requirements with respect to faxed or e-mailed documentation do little, if anything, to identify documentation which has been signed by an unauthorized person. Such requirements, on the other hand, are costly for withholding agents to administer.

There should be no requirement that the person who furnishes a faxed or e-mailed form be the person named on the form. There is no such requirement in the case of a form placed in an envelope and sent via physical mail. No distinction should be made for this purpose between physical mail and e-mail or facsimile. Consider, for example, a person, such as an administrative assistant, who is not authorized to sign a Form W-8, but who, as part of his normal duties at work, transmits the form on behalf the person authorized to sign the form. Under current rules, such person is permitted to put the form in an envelope and then send the envelope via physical mail. In contrast, such person cannot transmit the form via e-mail or facsimile. The disparate treatment of forms sent via physical mail and e-mail or facsimile is irreconcilable.

Withholding agents generally request and collect documentation within a short timeframe. We posit that the probability of a withholding agent receiving documentation during this timeframe from a person other than the intended person is remote. An imposter would need to know when a particular withholding agent is expecting documentation from a particular account holder. Further, the withholding agent would have had to receive no documentation from the actual account holder. Had the withholding agent received documentation from the account holder, the withholding agent would almost certainly have notified the account holder of the two sets of documentation and eventually identified the authorized documentation. This combination of imposter knowledge and no documentation from the account holder is improbable.

The current electronic transmission requirements are also inconsistent with the fact that documents transmitted via e-mail and facsimile are generally presumed to be transmitted from an authorized person for purposes other than US withholding tax. E-mailed and faxed documents are commonly accepted in business, and the practice is generally devoid of authentication requirements.

In summary, the benefits, if any, of the current electronic transmission requirements applicable to documentation transmitted via e-mail or fax clearly outweigh the costs of compliance. Therefore, IRPAC recommends that the Chapter 3 and Chapter 4 regulations be revised to permit a withholding agent to rely on otherwise valid documentation which has been transmitted via e-mail or facsimile, except in the narrow case the withholding agent knows the documentation has been transmitted by a person who does not have the authority to transmit the information.

D. Presumption Rules for Certain Exempt Recipients

Recommendation

IRPAC recommends that an entity that may be treated as an exempt recipient without the need for furnishing a Form W-9, Request for Taxpayer Identification Number and Certification (an "eyeball exempt recipient") should not be presumed foreign unless there are indicia of foreign status associated with the entity's account.

Discussion

Treasury Reg. § 1.1471-3(f)(3)(ii) provides that certain entities that have been historically treated as U.S. exempt recipients (*e.g.* corporations, financial institutions, and brokers) under the eyeball test will be presumed foreign entities if the withholding agent has not received a Form W-9 or other documentary evidence from the recipient. This represents a change from long standing rules under Chapter 3 and Chapter 61. The rationale for this change is unclear. IRPAC believes that in the absence of foreign indicia associated with an account of an eyeball exempt recipient, there should not be a presumption of foreign status.

For purposes of Chapter 3, Treasury Reg. § 1.1441-1(b)(3)(iii)(A) provides that an eyeball exempt recipient is presumed to be a foreign person only if:

(1) the withholding agent has actual knowledge of the payee's employer identification number and the number begins with the two digits "98"; or

(2) the withholding agent's communications with the payee are mailed to an address in a foreign country; or

(3) the name of the payee indicates that it is a type of entity on the per se list of foreign corporations; or

(4) payment is made outside the U.S.

IRPAC believes that the above indicia of foreign status should also apply for purposes of presuming the foreign status of an eyeball exempt recipient for Chapter 4 purposes.

If the IRS concludes that the change made to the presumption rules under the Chapter 4 regulations should be retained and incorporated into the Chapter 3 regulations, IRPAC recommends that this change should not apply to preexisting obligations or accounts. It would require a tremendous amount of time and expense for withholding agents to solicit Forms W-9 for millions of preexisting accounts or obtain or locate documentary evidence for such accounts. IRPAC believes that such an effort would be wasteful and take strained resources away from the implementation of FATCA.

E. Treatment of Foreign Branches Located in IGA Countries

Recommendation

IRPAC recommends that foreign branches of U.S. financial institutions (USFIs) and controlled foreign corporations of USFIs located in an IGA country should be subject only to the IGA with respect to documentation standards and Chapter 4 withholding and reporting requirements.

Discussion

Foreign branches of USFIs are subject to the provisions of an Intergovernmental Agreement (IGA) if the USFI's branch is located in an IGA partner country. Such branches are treated as Reporting Financial Institutions under the provisions of Model I and Model II IGAs, and are subject to the requirements imposed by the IGA. USFI's controlled foreign corporations (CFCs) are also subject to the provisions of an IGA if the CFC is resident in that jurisdiction.

A separate set of rules and procedures for documenting, withholding and reporting with respect to accounts maintained by a Reporting Financial Institution are provided for in the IGAs. One of the primary goals of these rules is to address privacy concerns in a number of jurisdictions that would make it difficult or impossible to comply with FATCA. The Chapter 4 regulations do not appear to apply to a CFC of a USFI resident in an IGA jurisdiction; rather, only the account documentation and Chapter 4 withholding rules provided in the IGA apply.

The requirements are less clear with regard to branches of USFIs. The regulations do not specifically address whether the IGA documentation standards or the standards set forth in the Chapter 4 regulations apply to such foreign branches. It would appear that a customer may be required to provide a Form W-8 or other documentation when transacting with a Reporting Financial Institution that is a branch of a USFI, but would not be required to produce such documentation when transacting with other Reporting Financial Institutions. This distinction seems arbitrary. Foreign branches of USFIs would be at a competitive disadvantage if they are required to comply with the documentation rules contained in the regulations (e.g., a Form W-8) rather than the rules in the IGAs (e.g., reliance on client relationship, regulatory, or publically available information). IGA partner jurisdictions expect that customers of Reporting Financial Institutions only be required to provide the types of documentation described in the IGAs. If USFI foreign branch customers are required to provide a Form W-8, it is likely those customers will choose to do business with other Reporting Financial Institutions that are not subject to that documentation standard.

IRPAC recommends that the regulations be clarified to provide that accounts maintained at a USFI foreign branch located in an IGA jurisdiction (Model I or II) are subject to the documentation standards provided in the IGAs, and not those in the regulations, for purposes of compliance with Chapter 4.

In addition, IRPAC recommends that USFI foreign branches and CFCs located in IGA jurisdictions be subject only to the Chapter 4 withholding requirements applicable to Reporting Financial Institutions resident in the IGA jurisdiction. Treasury Reg. § 1.1471-2(a)(2)(v) requires that a USFI foreign branch located in a Model I IGA withhold in accordance with the rules in the regulations under Section 1471 and, presumably, also in accordance with the rules in a Model I IGA. For the same competitive reasons described above concerning documentation standards, IRPAC recommends that the regulations be amended so that the same Chapter 4 withholding obligations apply to all Reporting Financial Institutions subject to an IGA.

F. Reason to Know Standards Under Chapters 3 and 4

Recommendation

IRPAC recommends that the “reason to know” standard provided in Chapter 4 (and Chapter 3), be modified to permit additional time to review both documentation obtained at the time the account is opened and the results of a know-your-customer review conducted at or following the opening of the account. Additionally, corresponding regulations should be issued to provide that if the result of such review indicates that the tax documentation is unreliable or incorrect, the withholding agent is not obligated to impose withholding tax with respect to payments that occurred during the review period.

Discussion

Under existing regulations, a withholding agent that opens an account for a non-U.S. person is obligated to collect and review a withholding certificate, written statement or documentary evidence to support such person's claim of Chapter 4 status. However, such documentation is considered unreliable or incorrect to the extent that there is information in the withholding agent's files that conflicts with the person's claim. It is expected that withholding agents will now be required to compare a variety of information to the documentation provided to establish such person's Chapter 4 status. In many instances such review will not occur contemporaneously with account opening. Although not all on-boarding functions are organized in the same way, such a review would generally require the coordination of personnel that conduct a review of the withholding certificate or other documentary evidence with personnel that perform the local KYC/AML (Know Your Customer/Anti-money Laundering) review. IRPAC believes that thirty days is a reasonable period of time to permit withholding agents to accomplish this type of review.

During this thirty-day period, the account may be permitted to engage in certain transactions without the risk that the withholding agent would be obligated to impose withholding tax with respect to a withholdable payment. To the extent that the review does result in a determination that the tax documentation is unreliable or incorrect, withholding tax should be imposed only prospectively to withholdable payments and a withholding agent should not be obligated to impose withholding tax on withholdable payments that were paid during the thirty-day review period.

G. Coordinated Account System Rules

Recommendation

IRPAC recommends that the final regulations under Chapter 4 be modified to more clearly define, and expand, the circumstances under which a withholding agent, or members of its expanded affiliated group, may rely on shared tax-related documentation furnished by an accountholder or customer for multiple obligations or accounts. IRPAC also recommends that the corresponding regulations under Chapter 3 be similarly modified so that documentation requirements for both purposes are coordinated as closely as possible.

Discussion

Current tax documentation requirements under Chapter 3 and Chapter 4 each provide that, with specified limited exceptions discussed below, a withholding agent generally must obtain withholding certificates, written statements, or documentary evidence from a payee on an obligation-by-obligation (or on an account-by-account) basis. This essentially requires withholding agents with clients that establish multiple accounts, particularly when such accounts cross several distinct lines of business, to solicit and obtain separate tax documentation for each account. This documentation effort is voluminous and duplicative, often resulting in significant (and largely avoidable) costs and customer service issues.

The final regulations under Chapters 3 and 4 also provide specified instances in which a withholding agent may rely on a single withholding certificate, written statement, or documentary evidence furnished by a payee for one obligation or account to establish the payee's tax status with respect to other accounts or obligations. Unfortunately, the procedural provisions contained in these regulations are not clear in all cases and, for a number of reasons, including the uncertainties and complexities of the various technical requirements that must be met, offer limited relief to most withholding agents.

For example, Treasury Reg. § 1.1471-3(c)(8) makes numerous references to a "branch location" of the withholding agent, or a branch location of a member of the expanded affiliated group, which may be interpreted to include only distinct business operations that are separated geographically. There is no mention of separate lines of business that may exist within the same withholding agent, or separate lines of business that may exist among member organizations of an expanded affiliated group. Specific references to branch locations do not contemplate the scope or variety of distinct businesses and organizational structures of today's financial institutions. In addition, Treasury Reg. § 1.1471-3(c)(8) refers solely to "accounts" of a withholding agent, and makes no reference to "obligations" as that term is used elsewhere in the Chapter 4 regulations.

IRPAC recommended changes to Treasury Reg. § 1.1471-3(c)(8) that should simplify and clarify the existing account-by-account documentation exception rules, expand the application of these exceptions to better accommodate today's financial services environment, and include illustrative examples that explain the application of the modified rules. Finally, IRPAC also recommends that the corresponding regulations under Chapter 3, namely Treasury Reg. § 1.1441-1(e)(4)(ix), be modified so that documentation requirements for both purposes are coordinated as closely as possible.

These changes should enable withholding agents to share tax documentation in many more cases. This will be especially important as FATCA rules are gradually implemented over the coming years, and large populations of clients with preexisting accounts either establish new accounts, or need to be re-documented for Chapter 4 purposes.

H. New Forms W-8, W-9, 1042 and 1042-S

Recommendations

IRPAC reviewed and discussed with the IRS the May 2013 draft version of the new Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting. IRPAC recommends that the IRS make modifications to terminology and formatting on the face of the form in order to prevent a high level of errors by those completing the form and, therefore, decrease the number of invalid

Forms W-8BEN-E submitted to withholding agents. IRPAC also recommends that the IRS publish instructions to Form W-8BEN-E—as well as the forms and instructions for other forms in the W-8 series—as soon as possible in order to provide withholding agents with the necessary time to update their documentation, withholding and reporting systems, and that the instructions provide withholding agents with explicit guidance on how to validate the new Forms W-8 for purposes of both Chapter 3 and Chapter 4 requirements.

Discussion

IRPAC is pleased that in the May 2013 release of draft Form W-8BEN-E, the IRS adopted recommendations in the 2012 IRPAC Annual Report to clarify who should use the form and to streamline the overall amount of information collected and submitted. However, given the complexity of the FATCA regulations, the Form W-8BEN-E remains long and complicated. IRPAC is concerned that many people will be confused by the terminology used on the form which, combined with the length and complexity of the form, will lead to a high rate of errors on forms being submitted to withholding agents.

IRPAC discussed with the IRS a number of specific changes to the May 2013 draft Form W-8BEN-E, including:

- Remove “Chapter 3” on Line 3 and “Chapter 4” on Line 4, because references will be meaningless to persons completing the form who are unfamiliar with U.S. tax law nomenclature;
- Remove or clarify the last check box on Line 5 (“Not receiving withholdable/pass-thru payment”) because it is unclear what this status refers to and will likely be the subject of substantial misuse; and,
- Remove the “do not abbreviate” language from Lines 2, 6 and 7.

IRPAC also made a number of suggestions regarding the validation rules for financial institutions when reviewing and validating new Forms W-8, including:

- Allow a tolerance—based on a “reasonable person” standard—for the use of country abbreviations on Lines 2, 5 and 6;
- Allow entities to use a P.O. Box or In-Care-Of address on lines 6 and 12 if the entity does not have a physical address; and,
- Allow the withholding agent to accept and retain on its systems only the specific pages of the Form W-8 that pertain to the particular payee.

In addition, IRPAC made a number of suggestions regarding how to provide clarity in the Form W-8 series instructions in order to prevent high error rates, including:

- Provide explicit instructions on how to determine a Chapter 4 status if not readily known (including how to contact IRS for assistance);

- Clearly indicate who should complete the form—for example, should a foreign branch of a USFI located in a Model I IGA jurisdiction complete a Form W-9 or the IGA Partner FI documentation standard?;

- Clarify which lines on the Form W-8BEN-E need to be completed if the form is being used solely for Chapter 3 purposes, or solely for proving foreign status; and,

- Provide clarification in the withholding agent Requester Instructions—or in some other formal guidance—on validation rules for determining if a form is valid for both Chapter 3 and Chapter 4 purposes. For example, which specific status code combinations are required for the form to be valid?

IRPAC reviewed and discussed with the IRS the May 2013 draft version of the Form W-9. IRPAC recommended that the IRS provide additional clarity, by way of revised instructions or some other formal guidance, concerning the inclusion of the new exemption codes. Specifically, the IRS should notify withholding agents that all existing Forms W-9 on file (that do not include such exemption codes) remain valid going forward, and that withholding agents are not required to validate the new exemption codes.

IRPAC raised concerns that the inclusion of new exemption codes for (1) “Exempt payee code (if any)”, and (2) “Exemption from FATCA reporting code (if any)”, on the May 2013 draft Form W-9 appear to provide withholding agents with additional form validation obligations, as well as to indicate the need for withholding agents to re-paper all existing account holders with Forms W-9 on file in order to similarly validate and report on such codes. IRPAC stressed to the IRS the need for clarification due to the significant amount of effort that may be required to meet such requirements for withholding agents with large populations of U.S. account holders. IRPAC advised the IRS that withholding agents should not be required to re-paper their existing population of account holders with Forms W-9 on file, and that for new accounts, withholding agents should not be required to validate the specific exemption claimed by the account holder (assuming the name and TIN requirements were met).

IRPAC also emphasized to the IRS the need for clear instructions on who should complete the FATCA exemption code, and state explicitly that the FATCA exemption code is not relevant for accounts maintained in the U.S. In addition, IRPAC recommended that the Instructions for the Requestor of Form W-9 make it clear that the “exempt payee code” and “exemption from FATCA reporting code” only affect reporting and do not affect whether a payee is subject to backup withholding or FATCA withholding, regardless of how such codes are completed.

The IRS released the final version of Form W-9 and the Instructions to Requester in August, 2013. IRPAC notes that none of the recommendations we discussed with the IRS are reflected in the final Form W-9. We continue to believe those recommendations are important and urge the IRS to consider them. IRPAC also recommends that the IRS issue guidance that the new Form W-9 is not required to be used before July 1, 2014. In addition, IRPAC recommends that a substitute Form W-9 should not be required to include the certification that the payee is exempt from FATCA reporting, if the account is maintained in the U.S.

IRPAC reviewed and discussed with the IRS the April 2013 draft versions of Forms 1042 and 1042-S. With respect to the Form 1042, IRPAC recommends that the IRS remove Section 2, "Reconciliation of Payments of U.S. Source FDAP Income" because the information captured within this schedule is not pertinent to the withholding agent's U.S. account or NRA reporting obligations under Chapter 3 or Chapter 4, and capturing such information will create a significant burden on withholding agents.

IRPAC recommends that the IRS provide withholding agents with explicit instructions regarding which data fields on the Form 1042-S are required for purposes of reporting under Chapter 3, or Chapter 4, or for combined reporting under Chapter 3 and 4. IRPAC also recommends that the IRS modify the numbering sequence for the Chapter 3 status codes—which essentially replace the recipient code on the current Form 1042-S—so that they mirror the existing recipient codes for retained statuses such as individuals, corporations etc. Modifications to the existing numbering sequence will force all U.S. withholding agents to change their systems, even those only required to report under Chapter 3, thereby creating an unnecessary additional programming and systems development burden. Codes for all new Chapter 3 statuses should be appended to the existing numbering scheme.

IRPAC emphasized to the IRS the importance of providing withholding agents with clear guidance in the instructions regarding how to complete the forms, whether solely for purposes of Chapter 3 reporting, or Chapter 4 reporting, or for a withholding agent completing the form for combined Chapter 3 and 4 reporting. For example, for combined reporting, guidance is required for identifying acceptable Chapter 3 and Chapter 4 status and exemption codes. Without clear guidance, both withholding agents and the IRS will find it difficult to determine from the Form 1042-S if the withholding and reporting was done correctly. This may prove particularly troublesome under future IRS examinations of the withholding agent's Form 1042.

IRPAC also noted that the draft Form 1042-S omits a box for the recipient's GIIN, and advised that the recipient GIIN should be added to the final version of the form.

I. Reporting Obligations With Respect to Foreign Investment Funds

Recommendation

IRPAC recommends that the Chapter 61 obligations of a "U.S. payer" of distributions and redemptions made by a foreign investment fund which is either classified as a partnership for U.S. federal income tax purposes or treated as a passive foreign investment company under IRC § 1297 be eliminated in the case the FATCA reporting requirements of such investment fund are satisfied.

Discussion

A U.S. payer of distributions and redemptions made by a foreign investment fund – typically, a transfer agent with a U.S. parentage as the foreign fund itself would generally not be a U.S. payer – must currently generally issue Forms 1099 on such distributions and redemptions. (In the case of a fund that is treated as a partnership, such Forms 1099 are only required in the case the Form 1065, U.S. Return of Partnership Income, and Schedules K-1, filing requirements of the fund are not satisfied (see Treasury Reg. §§ 1.6041-3(f) and 1.6045-1(c)(3)(5)).) Such Forms 1099 are misleading to both taxpayers and the IRS. In the case of a fund that is a partnership, such forms are misleading because partnership distributions are not items of income, i.e., income is recognizable each year, regardless of any distribution, while the Forms 1099 are based on cash movements. In the case of a fund that is a Passive Foreign Investment Company (PFIC), such forms are misleading because, similar to a partnership, the PFIC rules generally result in the recognition of income each year, regardless of whether distributions are made. Further, the characterization of the distributions as reported on Forms 1099 (for example, as dividends in the case of a PFIC) is generally not the proper characterization for U.S. income tax purposes. In short, the information reported on the Forms 1099 is incompatible with the manner in which the distributions must be treated for U.S. income tax purposes.

In the case of a fund that is a partnership and that is <u>not</u> required to issue a Form 1065 or Schedules K-1 pursuant to Treasury Reg. §§ 1.6031(a)-1(b) and 1.6031(b)-1T, the fund may provide “pro-forma” K-1s to its US investors, if any, in order to assist such investors in completing their U.S. tax returns. In the case of a fund that is a PFIC, the fund may provide a PFIC statement (showing ordinary earnings and net long term capital gains) to its US investors, if any, in order to assist them in completing their U.S. tax returns. This reporting, which is not a regulatory requirement, unlike the Form 1099 reporting, is usable by taxpayers. FATCA will require the funds (partnerships and PFICs) to file a FATCA report with respect to reportable US investors showing the account balance and “the gross amounts paid or credited to the account holder during the calendar year including payments in redemptions (in whole or part) of the account” (see Treasury Reg. § 1.1471-4(d)(4)(iv), and the corresponding language at Article 2.2.a.7 of the Model 1 IGA). This requirement to report “gross amounts paid” is more appropriate with respect to such investment funds as, unlike Forms 1099, this reporting does not specify or imply the [generally incorrect] income tax characterization of a payment.

In summary, the pro-forma K-1s and PFIC statements, if any, and the FATCA reports provided by a PFIC or foreign partnership are sufficient and effective reporting. In contrast, the Forms 1099 issued with respect to distributions and redemptions by a PFIC or foreign partnership are unnecessary and misleading. Accordingly, we recommend that the requirement to issue such Forms 1099 be eliminated.

Appendix A:

IRS Notice 2013-22; 2013-2014 Guidance Priority List

Appendix B:

REG-154563-12 Premium subject to reporting for a debt instrument acquired on or after January 1, 2014

Appendix C:

REG-148873-09, TIN Truncation Regulations

Appendix D:

REG-138006-12-Proposed Regulations on Shared Responsibility for Employers Regarding Health Coverage
AND
Endnotes for the ACA Shared Responsibility Flowchart

Appendix E:

Application of the Patient-Centered Outcomes Research Trust Fund Fee to common Types of Health Coverage or Arrangements

Appendix A

IRS Notice 2013-22; 2013-2014 Guidance Priority List

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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Room 5203
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Ben Franklin Station
Washington, D.C. 20044

May 1, 2013

Re: IRS Notice 2013-22: 2013-2014 Guidance Priority List

Dear Acting Commissioner Miller:

The Information Reporting Program Advisory Committee[1] (IRPAC) appreciates the opportunity to recommend items that should be included on the 2013-2014 Guidance Priority List in response to Notice 2013-22.

IRPAC recognizes the challenges the IRS faces in developing and implementing new reporting and withholding policies and procedures as a result of the increased focus on using information reporting to help reduce the tax gap. Legislative changes continue to expand information reporting requirements, and payers are being requested to enhance their due diligence efforts when obtaining tax certification documentation from their customers.

Examples of that legislation include the addition of the Foreign Account Tax Compliance Act (FATCA) under sections 1471 through 1474 of the Internal Revenue Code, as amended, as well as the payment card transaction reporting under section 6050W, the Patient Protection and Affordable Care Act reporting under sections 6051, 6055 and 6056, and the cost basis reporting under section 6045. With these additional reporting programs comes an increased responsibility of IRPAC to fulfill its mission to reduce taxpayer burden and improve the overall administration of information reporting.

Considering these recent changes and consistent with our comment last year, we strongly recommend that the Guidance Plan include a new subcategory under "Tax Administration" entitled "Information Reporting" that focuses on the efficient implementation and administration of information reporting, with fair consideration of taxpayers' burdens. This would include an understanding of the lead times needed by the reporting community to implement both new programs and changes to existing programs, and consideration of the data requested in light of the availability and cost associated with producing such data, and the usefulness of the data collection.

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[1] IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities and state taxing agencies.

IRPAC recommends that the priority items set forth below be added to this proposed new subcategory of the Guidance Priority List:

1. FATCA guidance.
The effective implementation of FATCA is dependent on additional guidance items and forms being issued as soon as possible. IRPAC recommends that the following items related to the implementation of FATCA be included in the Guidance Priority List: (a) issuance of conforming regulations between Chapter 4 and Chapters 3 and 61; (b) issuance of technical corrections to the Chapter 4 final regulations, as well as responding to requests for clarification on matters that remain unclear; (c) issuance of the revised versions of Forms W-8, 8966, 1042 and 1040-S, including their instructions; (d) issuance of the FFI Agreement, including any coordination with existing Qualified Intermediary (QI) agreements; and (e) release of the FATCA Portal registration requirements and final Form 8957 and its instructions.

Both US withholding agents and foreign financial institutions have only a few months remaining to begin applying the initial requirements of the FATCA regulations, and we remind the IRS that the standard timeframe is 18 – 24 months to implement major programming. USWAs and FFIs must also revise account opening documentation, policies and procedures, and communicate those changes both internally and externally. In addition, large financial institutions must budget for changes a year in advance and generally cannot make systems changes in the fourth quarter of the calendar year.

2. Identity theft information reporting.
IRPAC thanks the IRS for issuing proposed regulations that will allow payers to truncate individual taxpayer identification numbers (SSN, ITIN and ATIN) on a permanent basis, and expanded the use to forms provided electronically. However, consistent with our comment letter dated February 14, 2013, payers should be allowed to truncate employer identification numbers (EINs) because of the fact many (if not most) tax reporting systems do not distinguish between the types of taxpayer identification numbers. The truncation of EINs would also have a direct benefit in reducing the volume of fraudulent returns – such as the Form 1099-OID showing a withholding amount just slightly less or equal to the income amount – being created that show withholding amounts being applied by a payer. Legitimate payers who filed a Form 941, 945 or 1042 are becoming concerned the IRS will start issuing withholding underpayment notices because of fraudulent information returns being created using the payer's name and EIN and showing withholding amounts for which the payer has no liability or deposit requirement.

The TIN truncation program should be extended to all existing or newly introduced information returns unless doing so is explicitly excluded as stated in the preamble to the proposed regulations or in the new form's instructions. Since fraudulent returns are most likely the result of theft from the postal mail of Form W-2 information, IRPAC recommends that Counsel support the adoption of H.R.1560 ("SAFE ID Act of 2013") which will amend IRC §6051 and permit the truncation of social security numbers on wage reporting statements.

Finally, the ability to provide all information returns electronically rather than through the U.S. mail where an envelope is marked "Important Tax Document Enclosed" and the due date to mail tax forms is well known would also reduce the possibility of thieves taking those statements and using them to create fraudulent information returns,and tax returns. Please see Priority Item #5 below for additional reasons as to why this program should be expanded.

3. *De minimis* threshold for Form 1099 corrections.
There are substantial costs to processing corrections to information returns, regardless of whether any amount corrected is material. The volume of corrections has increased significantly in recent years because of the expanded information reporting requirements, resulting in significantly increased costs to the IRS, financial institutions and taxpayers. Reclassification of mutual fund distributions and updated cost basis information are common causes of corrected information returns.

Filers would like to be allowed to apply a de minimis threshold so that corrections are not required for net changes of, for example, $50 or less (up or down). If you consider the cost to the financial institution (printing, mailing, reputation, etc.), the taxpayer (filing a corrected tax return) and the IRS (processing and data matching), a de minimis threshold would promote sound tax administration in that it would eliminate costly corrections that result in no material change in tax revenue. This recommendation could be achieved through minor changes to the definitions of an "inconsequential error or omission" in the regulations issued pursuant to IRC §6721 and §6722.

By way of background, last year IRPAC provided a histogram with its 2012-2013 Guidance Priority List letter dated May 1, 2012. The histogram illustrated the impact that such a correction threshold would have. For a given brokerage firm, 5150 accounts held a particular Unit Investment Trust (UIT) in 2009. The Forms 1099-DIV issued to those accounts included income attributable to that UIT. In the first quarter of 2011 (nearly a year after the associated tax returns would have been filed), the trustee's accounting firm discovered an error in the factors that the trustee had supplied to the industry allocating its distributions between dividend and non-dividend distributions. The trustee published amended factors that required corrected Forms 1099-DIV. The chart showed the distribution of those accounts across various dollar correction levels. If corrections were not required for changes of $50.00 or less, nearly 45% of the corrections would have been avoided.

In addition, brokers who are required to issue a Form 1099-B for the sale of securities continue to face significant challenges and customer complaints related to the reporting of wash sales, particularly for de minimis amounts and when all the information must be corrected because a company announces all or part of a dividend distribution is being reclassified to return of capital. While IRPAC recognizes the reporting of wash sales is mandated in IRC §6045(g)(2(B)(ii), the regulations should permit some exceptions to the requirement to file correct Forms 1099-B that are based on a de minimis amount. The confusion and volume of corrections is also being affected by the fact both brokers and taxpayers need more guidance regarding wash sales than currently exists. For example, wash sales resulting from purchases and dispositions within employee stock purchase plans (ESPP) appear to have a dual tracking requirement for both the cost basis and holding period because of the compensation and gain/loss reporting pursuant to IRC §423 versus the holding period adjustment rules under IRC §1223(3).

4. Guidance concerning the merchant reporting rules under IRC §6050W.
Consistent with a request made by IRPAC last year, IRPAC recommends that the IRS provide additional official guidance to further address open questions related to IRC §6050W. Official guidance is necessary to address open questions regarding the meaning and scope of certain terms in the statute and Treasury Regulations, particularly regarding third party networks. Key terms integral to the meaning of "third party payment network" must be 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 of its 2011 Annual Report.

In addition, guidance is needed to clarify uncertainty between the scope and application of the rules related to "aggregated payees" and "third party payment networks." This is needed, in part, due to apparent overlap of the rules in these areas and because a "third party settlement organization" is not required to report transactions for a payee whose aggregate transactions do not exceed $20,000 or 200 transactions, whereas the aggregated payee rules do not include a *de minimis* rule. Now that the IRS has received the first iteration of Forms 1099-K from payment settlement entities ("PSEs"), it should now be in a better position to understand the challenges facing PSEs and putative PSEs and should issue additional guidance accordingly in advance of the 2013 filing season.

5. Electronic furnishing of tax information forms to payees.
Consistent with a request made by IRPAC last year, IRPAC recommends that the IRS provide guidance that expands the authority of parties responsible for issuing information returns *(e.g.,* payers, withholding agents, business entities, etc.) to electronically furnish payee statements and like documents not permitted under current guidance to be issued electronically to recipients. This would include Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding; Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests; Schedule K-1 prepared and issued in connection with Form 1120S for S corporation shareholders; and Schedule K-1 prepared and issued in connection with Form 1041 for beneficiaries of certain trusts.

The ability to electronically furnish these additional forms to recipients would create greater procedural uniformity and consistency because the documents listed could be issued in a similar manner to Forms 1099 and W-2, and Schedules K-1 prepared and issued in connection with Form 1065 for partners in partnerships. In addition, foreign customers with bank accounts or who receive bank deposit interest through other types of accounts have expressed concern that not being able to receive a Form 1042-S electronically will expose them to kidnapping for ransom or other bodily injury.

Section 401 of the Job Creation and Worker Assistance Act of 2002 provides that "[a]ny person required to furnish a statement under any section of subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 for any taxable year ending after the date of the enactment of this Act, may electronically furnish such statement (without regard to any first class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under section 6051 of such Code or in such other manner as provided by the Secretary."

The IRS has exercised such authority to provide for electronic transmission of payee statements in Notice 2004-10 (regarding, in general, Forms 1099-R and 5498) and in Section 4.6 of IRS Publication 1179 (Rev. Proc. 2011-60) (regarding, in general, most Form 1098 and 1099 series). Similar to the regulations issued under IRC §6051 (Reg. § 31.6051-1(j)(2)), affirmative consent of the payee is currently required before Form W-2 payee statements can be delivered electronically.

IRPAC also recommends a change away from an affirmative consent and towards a negative consent in order expand the usage of electronic payee statements, including those that may currently be provided electronically. The response rate to any mail or electronic solicitation is, regrettably, generally ranging only from a few percentage points to the teens. Given the expense incurred to launch such solicitation efforts and the anticipated low response rates, many firms providing payee statements are hesitant to change from mailing paper statements to electronic delivery. As a result, year after year, there are complaints from customers about missing statements and identify thefts resulting from the mailing of paper statements. Firms providing the payee statements spend significant resources to sort and mail the paper statements, and then have to allocate resources to help customers on missing statements and identity thefts. This poses significant burdens both to the businesses providing such statements and the taxpayers receiving such statements.

The above cited legislation clearly grants the IRS broad flexibility in permitting electronic delivery of payee statements. We recommend that the IRS consider new regulations or administrative guidance to allow electronic delivery of payee statements to any person who has established online account access to receive account statements and other communications unless such person affirmatively elects to opt-out of electronic delivery of any or all payee statements (or opt-in to continue to receive paper statements). The IRS may provide for a transition period, such as a period of two years, during which the paper statements must still be provided with a notice informing the recipients of the transition to electronic delivery. This will give the recipients sufficient time and opportunity to opt-out from receiving statements electronically (or opt-in to continue receiving paper statements) should they choose to do so. Further IRPAC believes that permitting issuers to provide information returns electronically creates greater efficiency and security for all parties concerned.

6. IRS forms and publications.
IRPAC reiterates its prior recommendation that the IRS be required to post final information returns, instructions and publications on the IRS web site one year prior to the end of the applicable reporting period. The increasing number and complexity of information returns (for example, Form 1099-B) necessitates payers and software

vendors be able to have final revisions of any forms, instructions and publications available to them at least one year prior to the end of the applicable reporting period. If a final information return cannot be posted by that date, any revisions made thereafter should be optional until the following tax year. Generally, that deadline will be January 1, however, it should be noted that the IRS is creating information returns (such as IRS Form 1097-BTC) that must be mailed to recipients on a quarterly basis, instead of the standard annual basis following the end of a calendar year.

Most financial institutions and other payers do not report to their customers on the official IRS forms because the use of substitute forms and composite statements reduces printing and mailing costs. In addition, payers often include additional information that assists customers in completing their tax returns. IRS Publication 1179 provides guidelines for substitute forms, and in recent years that publication has not been released until December, which is only several weeks before payers start mailing forms for that tax year. Any changes from the prior year cannot be incorporated by that date.

Payers and software vendors must begin their analysis of any changes to forms, instructions and other IRS guidance included in various publications in the first quarter of the applicable tax year to provide sufficient time to make programming changes, test output and communicate changes to taxpayers. Generally, all programming and print formatting changes must be tested and finalized before the final months of the year when information systems are "locked down" and no more changes can be made because of the fact any change to one system can impact many other linked systems.

Revisions to forms, instructions and publications made after January 1 result in significant additional costs and staffing burdens to payers and software vendors. Such delayed revisions also prevent being able to communicate changes to taxpayers who will receive the information for inclusion on their tax returns. Creating a deadline for revisions to or the creation of information returns ensures greater accuracy and efficiency with the tax reporting process.

7. Revision of Form 8949 and Schedule D to include unique reporting requirements for contingent payment debt and other instruments. Taxpayers are generally unaware of the fact that a contingent payment debt instrument is not eligible for capital gain/loss treatment, as explained in Reg. §1.1275-4(b)(8). The primary reason for that is the Form 8949 and Schedule D do not have any provisions for reporting these securities separately and in a different manner from the disposition of other types of securities that are eligible for capital gain/loss treatment. Instruments known as currency shares are similarly treated and are also not addressed in the current versions of the applicable returns and schedules. Therefore, the IRS should revise these documents and their instructions accordingly to ensure accurate reporting by taxpayers of contingent payment debt instruments, currency shares or other instruments that are reported on Form 1099-B, but whose gains and losses are not considered capital.

8. Production of Form 2439 not currently filed electronically.
Each year, firms that produce Forms 1099-DIV are frequently required to also produce Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains. Unlike all the forms in the 1099 series, there is no provision to file the Form 2439 with the IRS electronically. This prompts financial services firms to literally pack boxes of paper Forms 2439 for delivery to the IRS. Mandatory paper Forms 2439 do not comport with the IRS' goal of moving to an electronic filing process for all taxpayer forms and returns where it is possible to do so. IRPAC recommends that the Service make a priority of creating electronic filing provisions for the Form 2439 and any other forms that are still filed on paper.

9. Reporting of OID accruals for stripped tax credit bonds. Brokers and other payers have found IRS Notice 2010-28 to be unworkable for reporting the correct amount for stripped tax credit bonds. At the time of the Notice, there were no stripped tax credits trading in the marketplace. That situation has now changed and IRPAC is pleased to see the IRS is seeking comments from the public regarding the effectiveness of the Notice. As part of that process, the IRS may wish to review IRPAC's analysis and recommendations found in its letter of July 26, 2012 (attached) covering these issues. In particular, a model is required for handling situations in which the acquisition cost is not known by the broker and the documented approach of aggregating multiple credits stripped from a single instrument must be eliminated in favor of an approach that considers each stripped credit as a stand alone instrument.

IRPAC thanks the IRS for requesting our recommendations for inclusion of items to include in the 2013-2014 Guidance Priority List. We look forward to working with you in creating a more efficient and sound tax administration system.

Respectfully Submitted,

Jeffrey M. Mason

2013 IRPAC Chair

Attachment: Stripped tax credit bonds analysis

Appendix B

REG-154563-12 Premium subject to reporting for a debt instrument acquired on or after January 1, 2014

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

Jeffrey Mason, Chairperson

Burden Reduction Sub-Group:
Julia Chang, Chair
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International Reporting & Withholding Sub-Group:
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Frederic Bousquet
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Terence Coppinger
Mark Druckman
Marjorie Penrod
Jonathan Sambur

July 17, 2013

Mr. Daniel Werfel
Principal Deputy Commissioner
Internal Revenue Service
CC:PA:LPD:PR (REG-154563-12), Room 5203
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Re: REG-154563-12 Premium subject to reporting for a debt instrument acquired on or after January 1, 2014

Dear Mr. Werfel:

The Information Reporting Program Advisory Committee (IRPAC)[1] is pleased to comment on the temporary/proposed regulations of §1.6049-9T regarding premium subject to reporting for a debt instrument acquired on or after January 1, 2014 These regulations help bring information returns for income and capital into alignment, providing taxpayers with a more complete view of their investments.

With this objective in mind we are addressing reporting for market discount as well as premiums and again bringing your attention to the handling of tax exempt original issue discount. We are also taking this opportunity to provide commentary on the final regulations regarding Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options that were publish concurrent with the proposed regulation. We do so because the final cost basis regulations contained substantial requirements regarding support of taxpayer elections that were not part of the proposed regulations and, therefore, not the subject of any industry commentary. IRPAC has several recommendations regarding implementation of these provisions.

Support of the various elections is intended to provide taxpayers with the information required to complete their tax returns. Deploying this functionality to brokerage, cost basis and tax reporting systems is complex and we offer several proposals to address this burden with no material loss of information to taxpayers.

Finally, in recognition of the fact that even the most comprehensive information reporting regime will not anticipate every possible scenario or circumstance, we are providing recommendations for taxpayer resources to complement information returns that we believe will be useful in achieving the most accurate tax returns and smoothest implementation of the new requirements.

We are grateful for the opportunity to assist the IRS in formulating the best possible approaches to serve taxpayers and the financial industry.

Sincerely,

Jeffrey N. Mason

Jeffrey N. Mason
IRPAC Chairman

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1 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 Budge Reconciliation Act of 1989. The recommendation suggested that the Internal Revenue Service (IRS) consider "The creation of an advisory group of representative from the payer community and practitioners interested in the Information Reporting Program (IRP) to discuss improvements to the system."

Table of Contents

Temporary and proposed regulations

For covered tax lots, the proposed regulations provide guidance for reporting bond and acquisition premium. This information will be new to taxpayers, but will not be available for all tax lots. Additionally, a comprehensive approach to interest income, including market discount, should be considered.

Variability of payee statements

Recipients of Forms 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 for 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.

RECOMMENDATIONS

Instructions to recipients of payee statements

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.

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.

Current inclusion of market discount

Section 1.6045-1(n)(6)(ii) directs brokers to report amounts of market discount accrued during the calendar year to taxpayers who have made a current inclusion election under 1278(b). There is no indication of where to report and how the income is to be characterized. This is in contrast to the detailed specifications of the proposed regulation for the impact of premiums on income recognition.

RECOMMENDATIONS

To help standardize income reporting on fixed income instruments, IRPAC offers the following recommendations.

Characterize as interest

For several reasons it would be practical and efficient to treat market discount as interest.

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

Use the final §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.

Modify Form 1099-OID similarly to Form 1099-INT

Currently, Form 1099-OID may be used to report interest income on a bond in addition to the original issue discount income. Considering that it is possible for an OID bond to be purchased with bond premium, IRPAC offers the following recommendations:

Additional boxes

Be certain that the following boxes are added to 1099-OID as well as 1099-INT

- Acquisition premium; and
- Bond premium; and
- Market discount.

Final cost basis regulations

Section §1.6045-1(d)(6)(iv) makes clear that a broker is not required to make certain adjustments to basis and §1.6045-1(n)(10) states that, "A customer is not bound by the assumptions that the broker uses to satisfy the broker's reporting obligations under section 6045. In addition, a notification to the broker under paragraph (n)(5) of this section does not constitute an effective election or revocation under the applicable rules for the election." Simply stated, no matter what instructions a taxpayer provides to his or her various brokers, there is no guarantee that the payee statements will adequately reflect what is needed for correct completion of the tax return. This potential gap will not be filled by additional information reporting requirements. Therefore, it is important for the IRS to use other means to establish reasonable expectations on the part of taxpayers and provide ample resources devoted to taxpayer education to supplement the information reporting program.

Taxpayer expectations and broker responsibilities

With publication of final regulations [TD 9616] for cost basis of fixed income obligations and options the IRS has developed a comprehensive vision of the computation and transfer of information that will allow taxpayers to accurately recognize capital gains and losses by using the information that is provided to them on the payee statements produced by their financial institutions.

While these reporting requirements will go a long way toward easing the taxpayers' recordkeeping burdens and reducing the opportunity for fraud or miscalculation, it must be noted that there are numerous scenarios in which the information reporting program will not provide the desired continuity. Further, the role of the broker is to follow the instructions of the taxpayer and should not be considered one of enforcement that puts the broker in the position of providing tax advice.

MULTIPLE TAXPAYER ACCOUNTS

It is common for taxpayers to maintain multiple accounts either at the same broker or with several different brokers. As the information reporting requirements are applied account by account, circumstances that are material to the taxpayer's liability will not be captured by the information returns.

Contradictory elections

Brokers are required to follow the written instructions of the taxpayer with regard to elections. Under this requirement, it is easy to see how inconsistent elections might be applied, particularly when accounts are held at different firms.

Wash sales

A taxpayer's investment activity across all accounts must be considered to arrive at an accurate assessment of tax liability. An individual broker will have no knowledge of activity at another firm and most likely not across accounts within the firm either. If the taxpayer has transactions in the same security within different accounts that result in wash sales, the information returns are likely not to be true indications of what the tax return should reflect.

LACK OF WRITTEN INSTRUCTIONS POST TRANSFER

Consider a taxpayer who purchases a bond with market discount and notifies the broker that his or her preference is to recognized the market discount currently. If after several years the taxpayer transfers the position to another broker, the transfer statement will reflect the election that is in force. But suppose that taxpayer notifies the new broker by the end of that calendar year that he or she has revoked the election for current inclusion of market discount, but does not similarly inform the prior broker. In these circumstances, the first broker will issue information returns reflecting market discount income accrued through the date of transfer and will provide a corresponding transfer statement to the receiving broker reflecting an adjusted cost basis that includes accrual of market discount for the current tax year.

OWNERSHIP OF COVERED AND NONCOVERED LOTS

To facilitate implementation, reporting requirements are phased in over time. There are many instances, therefore, in which taxpayers will receive payee statements (and supplemental statements provided as a customer service) that have varying levels of detail for fixed income. This will depend on which firm provides the information, what data was available on transferred positions and which lots are covered or noncovered. The opportunity for confusion or error is exacerbated by these variables.

RECOMMENDATIONS

The additional reporting requirements introduced by the cost basis regulations provide a foundation from which increasingly accurate tax returns will emerge as noncovered lots are retired and transferred positions retain the important history of cost basis. At the same time there are scenarios that can not be entirely anticipated by the information reporting program. Because of taxpayers' expectations that the enhanced information returns are all inclusive of the information they need, it is important that the IRS provide resources that advise taxpayers of their ultimate responsibilities. Additionally, this resource provides an authoritative voice to which brokers may refer taxpayers when questions arise. Toward this end, IRPAC has several recommendations:

Web page

Establish a cost basis web page for taxpayers that explains the elections available and what can be expected of the financial institution. It should also illustrate circumstances in which the information return might be insufficient for accurate completion of a tax return, and guide the taxpayer toward any required adjustments to income beyond what is reported on the information return.

Recipient instructions on information returns

Ensure that the instructions to recipients of information returns stress the taxpayer responsibility to ensure the accuracy of the information, determine what information is not included and adjust accordingly on his or her tax return when certain scenarios are encountered. Stress that a corrected payee statement not always the appropriate remedy for a situation.

Content

In all media, the following points should be emphasized:

- 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 a 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, which would not be reflected on the information return.
- The extent of information contained in an information return may vary based on whether a tax lot is covered or noncovered, and that 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, for example, when an election must apply to all tax lots or may not be revoked.

The following table is offered as starting point for establishing a taxpayer resource page.

Support of Taxpayer Elections by Brokers					
Election	**Broker Default**	**Taxpayer Election**	**Revocation**	**Applicable level**	**Code and/or regulation**
Market discount computation method	Straight line	Constant yield	Not permitted	Instrument by instrument and from the earliest taxable year owned	1276(b)(2)
Recognition of market discount income	At sale, redemption or maturity	Current inclusion	Permitted, with the consent of the Commissioner	All debt acquired during the taxable year of election and thereafter	1278(b)
Amortize bond premium on taxable debt[2]	Amortize	Do not amortize	Permitted, with the consent of the Commissioner	All taxable debt held during the year elected and thereafter	171 §1.171-4
Treat all interest as OID[3][4][5]	No	Yes	Permitted, with the consent of the Commissioner	Instrument by instrument (taxable) and from the earliest taxable year owned	§1.1272-3
Income conversions to US dollars	Period average	Spot rate on date of payment, credit or receipt	Permitted, with the consent of the Commissioner	All taxable debt held by the taxpayer in the year of election and thereafter	§1.988-2(b)(2)(iii)(B)

The "all OID" election under §1.1272-3

Under the new final Regulation §1.6045-1(n)(4)(iv) pursuant to existing Regulation §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 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.

[2] There is no comparable election for tax-exempt obligations. Brokers must amortize bond premium in this case.

[3] Brokers are required to amortize acquisition premium on OID bonds. If the "all OID" election is made by the taxpayer, it effectively changes the method of computing the premium from the "premium fraction" method to a constant yield method.

[4] Making this election for a bond purchased at market discount assumes the elections to compute discount on a constant yield basis and to recognize the income currently.

[5] This election is not available for tax exempt obligations.

SIMILARITY TO OTHER SUPPORTED TAXPAYER ELECTIONS

The language of §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 become 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 1.1272-3 election
Premium	171(c)(2)- recognition of bond premium (broker default)
Discount	1278(b)- current recognition of market discount 1276(b)(2)- computation of market discount on a constant yield

EXISTING FUNCTIONALITY AND INFRASTRUCTURE DO NOT SUPPORT LOT LEVEL COMPUATION

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 original issue discount (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 can not 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, 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 per security. 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 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.

RECOMMENDATION

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 §1.6045-1(n)(4)(iv). This will remove the significant development burden for a feature that provides no material benefit to taxpayers and would rarely, if ever, be used.

Reporting partial retirement

Section 1.6045-1(a)(9) includes in its definition of a sale (beginning on or after January 1, 2014) "partial retirement attributable to a principal payment." Conceivably this refers to payments other than qualified stated interest. This requirement raises several issues, as follows:

ADJUSTED COST BASIS FOR A COVERED TAX LOT

If such payments are made on a covered tax lot, the Form 1099-B would have to include an adjusted cost basis. Since this payment is itself (fully or partially) an adjustment to basis, it is unclear what the adjusted basis of the payment would be.

POTENTIAL ALLOCATION OF THE PROCEEDS AMONG OID, MARKET DISCOUNT AND PRINCIPAL

If the principal distribution is made on a bond purchased with market discount, a portion of the proceeds will be market discount income. Similarly, if the bond was issued with OID, a portion of the proceeds will be previously accrued OID. Only after accounting for the accrued OID and market discount would the remainder be considered the principal amount that is an adjustment to basis.

RECOMMENDATIONS

It would be most beneficial to filers of information returns and taxpayers alike if the IRS were to publish illustrations of the expected computation of basis for the payment under a variety of scenarios including a bond with original issue discount and purchases at both a premium and with market discount.

Tax exempt OID

With the proposed regulations regarding amortization of premium, the IRS has taken significant steps to make the information reporting requirements for income and capital more synchronous. With regard to tax exempt obligations issued at a discount there is still a remaining open issue.

INCOME REPORTING NOT REQUIRED

IRS Notice 2006-93 addresses tax-exempt OID by stating, "...no information reporting under section 6049 or backup withholding under section 3406 will be required for calendar year 2006 or thereafter until such time as the Service and the Treasury Department provide future guidance." This notice seems to be recognition of the fact that commercial sources of information for accrual of OID are not available nor are they covered by IRS Publication 1212.

NO DEMINIMIS THRESHOLD

Twenty-eight percent of municipal obligations are issued with some amount of original issue discount. If a traditional deminimis discount threshold is applied, this population shrinks to 2.8%. Also, this much smaller portion is traditionally covered by commercial sources that exist as adjuncts to IRS Publication 1212. Without a source of information for the accrual of OID it will not be possible to compute the adjusted basis for these issues.

Municipal Bond Population as of January 1, 2012	
Description	**Count**
Total MUNI outstanding as of 1/1/2012	1,529,937
Total MUNI with issue price < 100	430,653
Total MUNI with more than deminimis OID	43,787
Total MUNI with deminimis OID	386,866

RECOMMENDATIONS

Deminimis rule

Temporary regulations for reporting premium under Section 6049 were issued to make information reporting for income conform to basis reporting. To achieve similar conformity for tax exempt issues, IRPAC recommends extension of the deminimis rule of 1273(a)(3) to tax exempt obligations for purposes of OID reporting and corresponding cost basis adjustments. This will make OID reporting and basis reporting possible for the portion of the bond population for which OID accrual data is readily available.

Form 1099-INT

Remember 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.

Appendix C

REG-148873-09, TIN Truncation Regulations

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

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Chairperson

Burden Reduction Sub-Group:
Julia Chang, Chair
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Mark Druckman
Marjorie Penrod
Jonathan Sambur

February 14, 2013

Internal Revenue Service
CC: PA:LPD:PR (REG-148873-09)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: REG-148873-09

To Whom It May Concern:

On behalf of the Information Reporting Program Advisory Committee (IRPAC)[1], we submit the following comments in response to proposed TIN truncation regulations announced in REG-148873-09 (IRB 2013-7; February 11, 2013). For calendar years 2009-2012, many filers have taken advantage of the pilot program announced by the IRS in Notice 2009-93, as extended and modified in Notice 2011-38, to truncate the individual identifying numbers on specified paper payee statements. This program has assisted in efforts to protect payees' identity theft and misappropriation of sensitive personal information. We are encouraged by the proposed regulations to make the program permanent, as well as the application to electronically delivered statements.

IRPAC, however, has the following comments to the proposed regulations for your consideration.

Make the Employer Identification Numbers (EINs) eligible for truncation.
We ask that the IRS permit payors to truncate EINs on payee statements. IRPAC does not believe a distinction between EINs and SSNs, ITINs and ATINs for truncation is necessary as EINs can still be the target of identity theft and other abuses. Even if the

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[1] IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities, and state taxing agencies.

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. In addition, our research to date indicates that most payors do not have fields or indicators that easily distinguish individual TIN types from EINs. Therefore, some payors have not been able to utilize the pilot program and assist their customers and the IRS with preventing identity theft. Including EINs would make this program more effective and eliminate additional programming costs.

Increase the population of eligible forms.
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, it was ineligible for the pilot program and is not being considered in the proposed regulations. This creates an unfortunate divergence from the current effort to protect taxpayers. Further, the value of tax credits reported on Form 1097-BTC is also reported on Form 1099-INT, which is eligible for TIN truncation. It seems that the only reason for this disparity is the decision to introduce the 1097 series as part of the information returns program.

IRPAC strongly recommends that the regulations be drafted to include all information returns unless they are explicitly excluded either 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 to each new form series that is introduced.

Addressing this issue in a more global, sustainable way is highly beneficial to taxpayers and this would be an appropriate time to establish that foundation. Additionally, other existing information returns outside the 1099, 1098, 5498 series, such as Form 2439, should be included in the regulations through this more global approach.

Thank you for the opportunity to comment on these important regulations. We look forward to further discussions with you.

Sincerely,

Jeffrey M. Mason

Jeffrey Mason
IRPAC Chairperson

Appendix D

REG-138006-12-Proposed Regulations on Shared Responsibility for Employers Regarding Health Coverage

AND

Endnotes for the ACA Shared Responsibility Flowchart

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

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Duncan Brenan
Terence Coppinger
Mark Druckman
Marjorie Penrod
Jonathan Sambur

March 18, 2013

Honorable Steven Miller
Acting Commissioner, Internal Revenue Service
CC:PA:LPD:PR (REG-138006-12)
Room 5203
POB 7604
Ben Franklin Station
Washington, DC 20044

RE: REG-138006-12- Proposed Regulations on Shared Responsibility for Employers Regarding Health Coverage

Dear Acting Commissioner Miller:

The Information Reporting Program Advisory Committee (IRPAC)[1] is pleased to submit comments on the Proposed Regulations on shared responsibilities for employers regarding health coverage, published in the Federal Register on January 2, 2013.

The Proposed Regulations are complex and affect all employers, both small and large. Although only "applicable large employers" are potentially subject to assessments, each employer must engage in the determination of whether or not its business is an "applicable large employer." While IRPAC recognizes the work involved in promulgating the Proposed Regulations and applauds the Service's efforts in releasing these rules at the beginning of the year, IRPAC is keenly aware of the needs of all employers in trying to understand this complicated rule.

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[1] 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."

Small Employers

The challenges for small employers are especially acute. Many small employers with fewer than 50 employees who participate in a controlled group will mistakenly believe that they do not need to become educated in the employer shared responsibility rules and will not seek assistance from advisors. These small employers currently have no warning -- save the Proposed Regulations themselves and the accompanying Question and Answer document -- that controlled group rules apply under the Proposed Regulations.

Small employers are often alerted to new tax requirements from their CPAs. A number of CPAs who are currently serving on IRPAC have noted that their respective professional organizations have not yet provided explanations of the Proposed Regulations to assist members in their education. The employer shared responsibility rules take effect on January 1, 2014. Planning and preparation for these new rules must start immediately.

Large Employers

Members of IRPAC representing large corporations have noted that their companies would also appreciate having educational materials that would highlight the key components of the Proposal Regulations.

IRPAC Recommendation

IRPAC believes that the employer community as well as their tax and benefit advisors would be well served by educational materials created and published by the Service on the Proposed Regulations. Visuals, such as flowcharts, are warranted. We also request a step-by-step process to assist employers in determining the number of full-time employees against which potential assessments may be issued. The Service has significant experience in creating step-by-step procedures for other tax rules, such as the procedure in the Form 1040 for the child tax credit. IRPAC believes that the Service has the expertise to develop similar tools for the Proposed Regulations.

IRPAC has drafted a sample flowchart with accompanying endnotes (attached) that we believe would provide a wake up call to tax and benefit advisors, as well as employers, small and large. We encourage the Service to consider this for publication.

IRPAC continues to stand ready to assist the Service in developing educational tools on the employer shared responsibility rule. We look forward to working with you.

Sincerely,

Jeffrey Mason
IRPAC Chairman

Attachments: Flowchart - ACA Shared Responsibility Beginning in 2014
Endnotes for ACA Shared Responsibility Flowchart

Endnotes for the ACA Shared Responsibility Flowchart

March 15, 2013 Version

Caution: *These rules are complex. For a more detailed explanation, see IRS proposed regulations on shared responsibility for employers regarding health coverage (Federal Register, January 2, 2013).*

Endnote A – Generally, employers count full-time employees and full-time equivalents for part-time employees on business days during the preceding calendar year. Special rules apply if the employer was not in existence in the preceding calendar year. All employers that are members of a controlled group as defined in Code Section 414(b), (c), (m) or (o) are considered a single employer. Consult with your tax advisor to determine if your company is a member of a controlled group.

The term full-time employee means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer. For this purpose, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, provided the employer applies this equivalency rule on a reasonable and consistent basis.

The number of full-time equivalents is determined by adding the hours of service for each calendar month for employees who were not full-time (but not more than 120 hours of service for any employee)) and dividing that number by 120.

Generally, an employee's hours of service would include each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

Under the transition rule for 2014, employers have the option to use a period of at least six consecutive months in 2013, rather than a 12-month period.

Endnote B – The proposed regulations on shared responsibility for employers define an offer of coverage to full-time employees as an offer to at least 95% of its full-time employees and their dependent children who are under age 26, as defined in Code Section 152(f)(1). The term dependent does not include spouses. An employer is not required to make a contribution to the coverage to satisfy the offer requirement. There is transition relief in 2014 for plans that do not currently offer coverage to children. There is transition relief through 2014 for employers contributing to multiemployer plans.

Endnote C - Two types of subsidies are required to become available in 2014: health premium tax credits and cost-sharing reductions. These subsidies are available to individuals with household income starting at 100% of the federal poverty level up to 400% of the federal poverty level. 400% of the federal poverty level in 2014 for a family of four is estimated to be approximately $91,000. Household income includes the income of the taxpayer and all individuals for whom the taxpayer can claim a personal exemption.

Health premium tax credits operate on a sliding scale. The tax credit begins at 2% of household income for taxpayers at 100% of the federal poverty level and phases out at 9.5% of household income for those above 400% of the federal poverty level. For example, an individual at 100% of the federal poverty level would be expected to pay 2% of their household income for coverage; the premium tax credit would equal the balance of the cost of coverage for a "benchmark plan" (defined as the second-lowest-cost plan in the Exchange). No one would receive a credit that is larger than the amount they actually pay for their plan. □□

Cost-sharing reductions lower the annual out-of-pocket expenditures for deductibles, coinsurance, copayments and similar charges. Cost-sharing reductions do not include premiums, balance billing amounts for non-network providers or spending for non-covered services. They phase out after household income exceeds 400% of the federal poverty level. □□

Endnote D – This is the §4980H(a) assessment; it is calculated on a monthly basis. No level of employer contribution is required to avoid this assessment. Employers are not subject to this penalty for failing to offer coverage to an employee for the initial three calendar months of employment. Fiscal year plans have a transition relief rule. If an applicable large employer maintains a fiscal year plan as of December 27, 2012, the relief applies with respect to employees (whenever hired) who would be eligible for coverage, as of the first day of the first fiscal year of that plan that begins in 2014 (the 2014 plan year) under the eligibility terms of the plan as in effect on December 27, 2012.

Endnote E - IRS created an optional safe harbor that is based on an employee's W-2 wages instead of household income. Other safe harbors are also available.

Endnote F: IRS final regulations on the premium tax credit rules clarified that eligibility for the premium tax credit will be based on the affordability of single-only coverage.

Endnote G: This is the §4980H(b) assessment; it is calculated on a monthly basis.

Endnote H: Under the minimum value rule, an employer must pay at least 60% of the cost of a basket of health care expenses. Most employer-sponsored plans, excluding mini-meds, are expected to meet the minimum value requirements, according to a report released by HHS. HHS issued a final rule providing a Minimum Value Calculator for self-funded plans and large fully-insured group plans. The Minimum Value Calculator is posted on the Center for Consumer Information and Insurance Oversight's website, under Plan Management regulations, February 20, 2013. http://cciio.cms.gov/resources/regulations/index.html

Appendix E

Application of the Patient-Centered Outcomes Research Trust Fund Fee to common Types of Health Coverage or Arrangements

Patient-Centered Outcomes Research Trust Fund Fees on Health Insurance Policies and Self-Insured Plans

Coverage Type	Subject to Fee	Not Subject to Fee
Major medical	X	
Retiree-only major medical	X	
Dental or vision plan not integrated into another medical or health plan		X
Dental or vision which gives the choice of declining or electing and paying an additional premium		X
Health Flexible Spending Arrangements (FSAs) that are "excepted benefits"		X
Health FSAs that are not "excepted benefits"	X	
Health Reimbursement Arrangement (HRA) integrated with a self-insured major medical plan		X
HRA integrated with a fully-insured major medical plan	X	
Health Savings Arrangement		X
Archer Medical Savings Account		X
Hospital indemnity or specified illness (insured or self-funded)		X
Employee Assistance Plan, disease management, wellness program	Subject to fee if plan charges a COBRA premium	
On-site medical clinics providing employer-sponsored coverage	Subject to fee if plan charges a COBRA premium	

Governmental plans	Subject to fee unless specifically exempt	
Federally recognized Indian tribal government plans		
Accident or disability income		X
Long-term care		X
Liability insurance		X
Supplemental liability insurance		X
Workers' compensation		X
Automobile medical payment insurance		X

Information Reporting Program Advisory Committee
2013 Member Biographies

Paul Banker

Mr. Banker is Vice President of Client Management at Convey Compliance Systems in Minneapolis, Minnesota. He has over 20 years of experience within the tax information reporting sector. Mr. Banker lead tax information reporting activities at US Bank and United Health Group, before joining Convey, a tax information reporting and withholding provider who services over 2,000 financial and corporate clients. In his work with clients, Mr. Banker has extensive experience with all forms as well as full direct tax filing for all the applicable state, US territories, and IRS. He has also had significant experience working with 1099-K and 1099-B (Cost Basis) filers. He has been a speaker at several Tax Information Reporting conferences. Mr. Banker received his BA in Accounting from the University of St. Thomas. **(Burden Reduction Subgroup)**

Susan R. Boltacz

Ms. Boltacz, a CPA and attorney, is Senior Vice President, Tax Counsel and Director of Tax Information Reporting at Sun Trust Bank in Atlanta, Georgia. She has been advising on tax information reporting issues and implementing tax information reporting requirements for financial services and telecommunications industries for over 21 years. Ms. Boltacz is a member of the Tax Section of the American Bar Association and an IRS VITA Program Volunteer. She became the first woman member of the Advisory Board, Georgia State College of Law Tax Clinic in 2008. She received an Honors BS in Accounting/Operations Management from Marquette University and an MBA and JD from the University of Georgia. **(Chair, Emerging Compliance Issues Subgroup)**

Frederic M. Bousquet

Mr. Bousquet, a CPA, is a Vice President in the Product Tax Department of State Street Bank and Trust Company in Boston, Massachusetts. He has been with State Street for 19 years and advises business areas globally, including custody, transfer agency, capital markets, wealth management services, retiree services, payroll and accounts payable on US tax matters with an emphasis on US tax withholding and information reporting rules including those of the Foreign Account Tax Compliance Act (FATCA). He is a member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance Committee. Mr. Bousquet has a MS in Taxation and an MBA from Suffolk University and a BS in Business Administration from Stonehill College. **(International Reporting and Withholding Subgroup)**

Duncan W. Brenan

Mr. Brenan is Manager of Legal Support Group at Burt, Staples & Maner, LLP in Washington, D.C. He is experienced working with domestic and nonresident withholding and information reporting. He has managed teams that bring large financial institutions and AP departments in compliance with withholding and information reporting regulations. He received a BS in Economics and Politics from the University of Warwick, Coventry, England, and a Masters Degree from Duke

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Boyd J. Brown

Mr. Brown, JD, is a Benefits Tax Counsel in the Global Tax & Trade group at Intel Corporation in Santa Clara, California. He has worked for over 20 years in the compensation and benefits area. Mr. Brown serves as tax counsel supporting Human Resources, Compensation & Benefits, Payroll, Legal, HR Legal, and Compensation & Benefits Accounting. He also works with various business units regarding tax aspects of fringe benefits, equity compensation, nonqualified deferred compensation, board of director compensation, and health and welfare plans including compliance with tax withholding and information reporting requirements. Mr. Brown is an adjunct faculty member with Georgetown University Law Center, teaching courses in taxation of fringe benefits and nonqualified deferred compensation. He was a member of the Board of Directors (2009 – 2010) of the Virginia Conference Wellness Ministries, Ltd., and (2000 – 2008) the Virginia United Methodist Pensions Inc. Mr. Brown has a BA in Economics from Swarthmore College, a Master of Theological Studies from the Duke University Divinity School, a J.D. from University of Virginia School of Law and a LL.M. in Taxation from Georgetown University Law Center. **(IRPAC Vice-Chair, Employee Benefits and Payroll Subgroup)**

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Ms. Chang is a CPA/PFS at Julia Chang, CPA in Pacific Palisades, California. She has worked in the accounting field for over 30 years, specializing in taxation. She has worked for both a small CPA firm servicing small entrepreneurs and an international CPA firm servicing large companies. Ms. Chang is a member of AICPA and the California Society of CPAs. She received a BS in Business Administration from California State University and an MS in Business Taxation from Golden Gate University. (**Chair, Burden Reduction Subgroup)**

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Mr. Coppinger is a CPA and Director with Deloitte Tax LLP in their New York City office. He has been advising clients in the areas of tax information reporting and IRS practice and procedure for more than 15 years. He provides consulting services and audit representation related to domestic reporting and withholding obligations, qualified intermediaries, withholding foreign partnerships and nonresident alien withholding and reporting. Mr. Coppinger is a member of the Tax Section and the Personal Financial Specialist Section of the AICPA, and the IRS Relations Committee of the New York State Society of CPAs. He has co-authored articles in publications such as The Journal of Bank Taxation, Practical Tax Strategies and The AICPA Tax Adviser. He is an adjunct associate professor at St. John's University's Tobin College of Business where he teaches graduate courses in IRS Practice and Procedure, Federal Tax Research and Tax Research and Writing. Mr.

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Mark Druckman

Mr. Druckman is an Executive Director at JPMorgan Chase in New York, New York. He has over 20 years experience in the JPMorgan Chase Corporate Tax Department, and provides oversight and monitoring of tax information reporting and withholding matters, including Form 1099 and Form 1042-S filing requirements and FATCA implementation efforts. He previously served on IRPAC in 1996-1997, and has been a guest speaker at industry association seminars and conferences on tax information withholding and reporting. He is a founding member of the TINs Subcommittee of the New York Clearing House Association and a member of the Securities Industry and Financial Markets Association (SIFMA). **(International Reporting and Withholding Subgroup)**

Lynne Gutierrez

Ms. Gutierrez, a CIP, is a Manager of Operations at Southwest Securities, Inc. in Dallas, Texas. She has been in the securities business for over twenty-four years. She leads teams focusing on retirement plans and government reporting. She has been involved in the implementation of Form 1099 DIV changes, the reporting of the Widely Held Fixed Investment Trust (WHFIT) products and the new Cost Basis regulations. She is a member of the Securities Industry and Financial Markets Association (SIFMA), holds a FINRA Series 99 License and is designated as a Certified IRA Professional (CIP) with Ascensus. Ms. Gutierrez has a Bachelor of Business Administration with a field of concentration in finance and accounting from the University of North Texas. **(Emerging Compliance Issues Subgroup)**

Rebecca Harshberger

Ms. Harshberger is VP, Finance and Tax, GEP Administrative Services, Inc. in Burbank, California. She is responsible for employment and tax information reporting and processing. She works directly with state, federal and foreign revenue agencies, state unemployment insurance agencies and motion picture studio tax departments to ensure payroll and information reporting compliance for film credits and incentives. Ms. Harshberger is on the Board of directors of the Los Angeles Chapter of the American Payroll Association. She is a member of APA, a Certified Payroll Professional and teaches the LA CPP prep course. She has a BS in Business Administration from San Diego State University. **(Chair, Employee Benefits & Payroll Subgroup)**

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Ms. Jetmundsen, CPA is a Tax Advisor to the University of South Florida in Tampa, Florida. She advises the University on payroll, purchasing and accounts payable and information reporting obligations. She has taken a leadership role in the state university system and served as Chair of the Taxation Subcommittee of the Inter-institutional Committee on Finance and Accounting (ICOFA). She is a member of the Tax Council of the National Association of College and University Business Officers (NACUBO). Ms. Jetmundsen has a BS in Accounting and a Master of Tax Accounting from the University of Alabama. **(Emerging Compliance Issues Subgroup)**

Kristin Johnson

Ms. Johnson, CPA and Chartered Retirement Plan Specialist, is a Principal with Edward Jones in St. Louis, Mo. Edward Jones is one of the largest retail brokerage and investment advisory firms in the United States with more than 7 million individual investors as clients. She has had the responsibility for all information reporting to clients and the IRS. Ms. Johnson has been responsible for Form 1042 reporting, Qualified Intermediary status compliance, Form 1099-Q reporting for firm-name 529 accounts, as well as tax reporting for their Canadian division and clients. In addition she has been involved with groups such as DALBAR (financial services market research firm) and SIFMA (Securities Industry and Financial Markets Association) in formulating information reporting best practices for broker-dealers. Ms. Johnson received a BS in Accountancy from the University of Illinois, an MA in Computer Resources and Information Management from Webster University and an MBA from Washington University. **(Emerging Compliance Issues Subgroup)**

Mary C. Kallewaard

Ms. Kallewaard is a Principal at COKALA Tax Information Reporting Solutions, LLC in Ann Arbor, Michigan. She has focused on tax information reporting for nearly 17 years. She co-founded a tax technical advisory services firm in partnership with two respected advisors specializing on information reporting compliance. Working with clients she has developed an understanding of how current business practices and technology integrate. She is a member of the American Accounts Payable Association (an organization affiliated with the American Payroll Association) and is co-author of the AAPA Guide to Accounts Payable. Ms. Kallewaard has a BA in American Studies from the University of Michigan. (Burden Reduction Subgroup)

Victoria Kaner

Ms. Kaner, a CPA, is the Manager of Merchant Compliance and Tax Services at Amazon.com in Seattle, Washington. She is responsible for compliance with identity collection and reporting laws for third party merchants selling on Amazon globally. She spends a significant amount of time working with new and existing product line owners to identify information reporting requirements. In addition, her team assists merchants with questions regarding tax identity collection and information reporting. She is a member of the AICPA. Ms. Kaner has a BS in Accountancy from the University of Illinois and a JD and LLM in

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Mr. Lam, a CPA and attorney, is Vice President and Associate Tax Counsel at T. Rowe Price Associates, Inc. in Owings Mills, Maryland. His current position covers tax matters for the company's investment products. He addresses the legal requirements of tax information reporting and withholding for millions of investor accounts and retirement plan participant accounts both domestic and foreign. He is a member of the firm's steering committee, advising on cost basis reporting. Mr. Lam is a member of the Investment Company Institute's Tax Committee. He received a BA from the University of Hong Kong, an LLB from the University of London, a JD from Seton Hall University and an LLM in taxation from New York University. **(Burden Reduction Subgroup)**

Anne C. Lennan

Ms. Lennan is President of the Society of Professional Benefit Administrators in Chevy Chase, MD, which represents 300 Third Party Administration employee benefit firms across the US. She has over 20 years experience as an advisor to employee benefit plans and a liaison between TPA firms and federal government agencies. She has worked on benefit issues impacting large corporations, small businesses, union plans, state and local government plans, and association-sponsored plans. Ms. Lennan is a member of Women in Government Relations and the International Society of Certified Employee Benefit Specialists. She co-founded an educational software company. She has a BA from Vanderbilt University, and is a Certified Employee Benefit Specialist. **(Employee Benefits & Payroll Subgroup)**

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Mr. Lloyd is Member in the law firm of Miller & Chevalier Chartered in Washington, DC. He advises large businesses and tax-exempt organizations on a range of tax issues, including cross-border withholding and reporting, domestic information reporting and backup withholding, employment taxation, the treatment of fringe benefits, executive compensation, and penalty abatement. Mr. Lloyd is a member of the American Bar Association, Section of Taxation, and was honored as a John S. Nolan Fellow in 2005. He regularly speaks before organizations such as the Tax Executives Institute and the American Payroll Association. He received a B.S. in accounting from Mount St. Mary's College, and a J.D. (Order of the Coif, Order of Barristers) from the University of Maryland School of Law. **(Emerging Compliance Issues Subgroup)**

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Mr. Mason is Tax Counsel in the Wells Fargo & Company, Corporate Tax Department in Winston-Salem, North Carolina. He has over 10 years experience ensuring compliance with information reporting requirements in the banking and brokerage industries. Prior to his current job he worked as the Tax Operations Manager at Wachovia Securities, LLC and First Clearing, LLC. Mr. Mason is a member of the SIFMA Tax Compliance Committee. He received his B.A. and J.D. degrees at the University of North Carolina at Chapel Hill. **(IRPAC Chair)**

Donald C. Morris

Mr. Morris is Counsel at Mayer Brown LLP in Chicago, Illinois. He has been engaged in the analysis and application of information reporting and withholding rules for over 25 years. His practice includes providing advice to financial institutions and to domestic and foreign investors. He was a member of the original IRPAC from 1991-1993. Mr. Morris is a member of the American Bar Association, Section of Taxation and the Chicago Bar Association. He received his B.A. in Political Science from the University of Illinois and received his JD from DePaul University College of Law. **(Chair, International Reporting and Withholding Subgroup)**

Marjorie A. Penrod

Ms. Penrod is a Managing Director in the Corporate Tax Department at JP Morgan Chase in New York, New York. She manages the IRS Information Reporting and Withholding Tax Advisory Function for the firm and its worldwide affiliates. In this role, Ms. Penrod establishes and coordinates tax policy across all business lines to ensure consistent tax treatment of all products and transactions. She is also responsible for monitoring withholding tax legislative and regulatory developments. This is Ms. Penrod's second IRPAC appointment; she previously served from 1994-1996. Ms. Penrod is a member and past chair of the Clearing House Association Tax Withholding and Reporting Committee, and the Securities Industry & Financial Markets Association Tax Administration Committee. She has a BS from the Pennsylvania State University. **(International Reporting and Withholding Subgroup)**

Jonathan A. Sambur

Mr. Sambur, an attorney, is a Partner at Mayer Brown LLP in Washington, DC. His practice includes advising non-US financial institutions regarding compliance with US information reporting and withholding tax rules. Mr. Sambur regularly speaks before a number of non-US national banking associations and US and non-US trade groups, such as the American Bankers Association, the Association of Certified Anti-Money Laundering Specialists (ACAMS) and various Tax Executives Institute's chapters. Prior to joining Mayer Brown LLP, Mr. Sambur was an attorney-advisor at the IRS Office of Associate Chief Counsel (International). Mr. Sambur received his B.A. in Politics from Brandeis University, a J.D. (with distinction) from Hofstra University School of Law, and an LL.M. from New York University School of Law. **(International Reporting and Withholding Subgroup)**

Patricia L. Schmick

Ms. Schmick, EA, recently sold her practice to Accounting & Tax Service, Inc., a tax and accounting practice that has three offices in the South Puget Sound area of Washington State. She works for Accounting & Tax Services part time and also volunteers for AARP Tax Aide preparing and reviewing tax returns at the Puyallup, WA library. She has been an accountant and tax professional for over 40 years working with small businesses and individual taxpayers. She served on a Small Business Focus committee in Seattle that was formed to reduce the burden placed upon small business owners by governmental regulating agencies. Ms. Schmick is a founding member of the Washington Small Business Fair (Biz Fair) Planning Committee and has been actively involved since 1997. The Biz Fair is a free educational event for new and existing businesses drawing 500 – 900 participants each year. She is a member of the Washington State Society of Enrolled Agents and National Association of Enrolled Agents (NAEA). She was on NAEA's board of directors (1990-1999) and President (1997-1998). She was NAEA Education Foundation Trustee (2000 – 2002) and Chair (2001 – 2002). She is a Fellow of the National Tax Practice Institute, NAEA. **(Burden Reduction Subgroup)**

Paul P. Scholz

Mr. Scholz, CPA, is a Managing Partner of Onisko & Scholz, LLP CPAs in Long Beach, California. He has been a practitioner for almost 20 years working with small businesses and individual taxpayers, assisting them with tax compliance and reporting. He works with a staff specializing in income, estate and other taxes including payroll, property and sales and use taxes. He serves as partner in charge of tax planning and compliance for individuals, corporations, estates, trusts, partnerships and LLCs. Prior to returning to public accounting he was manager of tax compliance for CalFed Bank. Mr. Scholz is a member of the California Society of CPAs, AICPA and the Estate Planning and Trust Council, Long Beach. He has a BS in Accounting from the California State University and a MS in Business Taxation from the Golden Gate University. **(Burden Reduction Subgroup)**

Julia Shanahan

Ms. Shanahan, an attorney, is the Tax Director and Associate Director of Payroll at the University of Washington in Seattle, Washington. She advises campus departments including the medical school, the medical center and affiliated hospitals, on tax and payroll matters. Her work includes advising on international, Federal, and state and local tax issues and ensuring compliance with both US and international information reporting requirements. She is a member of the Tax Council of the National Association of College and University Business Officers, a member of the Washington State Bar Association, and a member and former Board Member of Washington Women Lawyers. She is a volunteer in the University of Washington Tax Clinic. Ms. Shanahan has a BA in International Studies from Manhattanville College, a Master in

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Holly L. Sutton

Mrs. Sutton, CPA, is the Sr. Director-Corporate Tax at Golden Living in Fort Smith, Arkansas. Golden Living is a large privately held healthcare provider doing business in 38 states and the District of Columbia. The business is diversified within the healthcare industry, operating 300 plus skilled nursing facilities, assisted living centers, an administrative services company, a real estate investment partnership, hospice and home health agencies, a large rehabilitation therapy company and other service businesses. She has worked in the healthcare industry for 18 years, 15 of those years in the field of corporate taxation. In addition to working Form 1099 issues, she provides high-level legislative support to the payroll tax group of the company. She supplies information on compliance concerns and solutions to the management team regarding all tax-related legislative changes, including those related to information reporting. Ms. Sutton received a BBA in Accounting from the University of Central Arkansas and is a member of the American Institute of Certified Public Accountants. **(Employee Benefits and Payroll Subgroup)**

Arthur B. Wolk

Mr. Wolk is a Senior Vice President at SunGard Wall Street Concepts in New York, New York. He has over twenty years of experience in tax information reporting, specializing in securities operations. He is a member of the Dividend Division of the Securities Industry and Financial Markets Association. Mr. Wolk received his BA in Economics from the State University of New York at Binghamton. **(Emerging Compliance Issues Subgroup)**

Lonnie Young

Mr. Young is a CPA and has been the owner of Young & Company, LLC since 1982 in Lake Mary, Florida. He received an award from IRS for his firm's exemplary performance as an Electronic Return Originator in 2004. His firm prepares corporate, partnership, trust and individual returns as well as payroll information returns. Mr. Young also holds the designation of CGMA (Chartered Global Management Accountant) from the AICPA (American Institute of Certified Public Accountants). He was an Adjunct Professor of Accounting at University of Central Florida for 5 years. He is a member of the AICPA and the National Society of Accountants. Mr. Young received a BSBA from the University of Arkansas and his MBA from the University of Utah. **(Burden Reduction Subgroup)**