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## 2014 IRPAC Public Report Letter from the Chair

Dear Commissioner Koskinen:

The Information Reporting Program Advisory Committee<sup>1</sup> (IRPAC) presents its annual report to you in an environment of ever-increasing complexity for both taxpayers and tax practitioners. Each one of us on the committee thanks you for the personal interest you have taken in our work and the work of other Internal Revenue Service (IRS) advisory committees. That personal interest, and the interest and cooperation of IRS representatives who have met with us this year, show in a tangible way that the IRS wants to work with the public to improve tax administration.

At the outset I want to offer thanks to my fellow committee members for their dedication, hard work, and perseverance this year. I also thank the Office of National Public Liaison for all its efforts and success in making this a productive year for IRPAC. A finer group of cat-herders I have not witnessed.

This year IRPAC worked as an entire committee on one issue of major concern to all of us – the TIN Matching Program. As a group we met with IRS representatives on several occasions and engaged in some lively discussions, and we set forth our recommendations and discussion on TIN Matching separately as a standalone issue.

IRPAC currently divides itself into four subgroups that meet throughout the year with IRS personnel to discuss information reporting topics in these broad categories:

1. Burden Reduction (BR) (Julia Chang, Chair): The BR subgroup began focusing on many issues faced by individuals and small business taxpayers in 2013. The subgroup continued to make suggestions to improve those forms many individuals and small businesses struggle with, and brought up a few new issues during 2014 to reduce confusion and incorrect filing of forms. Discussions with IRS during the year on one of the issues resulted in acceptance of recommended wording for a line description on 2014 Form 8889. This issue, as well as recommendations on instructions to Form 2848, are discussed further in the BR subgroup's report. The subgroup also continued working closely with IRS personnel on several issues reported by IRPAC in prior years. There has been some

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<sup>1</sup> The Information Reporting Program Advisory Committee operates under a charter in accordance with the Federal Advisory Committee Act, P.L. 92-463, as amended (at 5 U.S.C. App. 2), formed in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. IRPAC's current charter states as its duties "to identify, research, analyze and provide recommendations regarding specific information reporting issues, current or proposed IRS information reporting policies, programs and procedures, and, when necessary, suggest improvements to information reporting operations and/or administration."

progress, especially putting helpful information on the webpage at IRS.gov, for Form 1099-MISC. Concerns regarding Forms 1099-MISC and W-9, as well as corresponding instructions to those forms, and a *de minimis* threshold for Form 1099 corrections, are once again included in the BR subgroup's report.

2. Emerging Compliance Issues (ECI) (Julia Shanahan, Chair): The ECI subgroup continued in 2014 to work with the IRS seeking additional guidance on issues associated with Form 1099-K reporting on payment card and third party network transactions. The subgroup also made recommendations, detailed in its report, on cost basis reporting, as well as on reporting issues of particular concern to colleges and universities regarding Form 1098-T on tuition payments, and Form 8300 on reporting of cash payments over \$10,000.
3. Employee Benefits & Payroll (EB&P) (Rebecca Harshberger, Chair): The EB&P subgroup has worked throughout the year with the IRS on many aspects of the implementation of the Affordable Care Act (ACA), in particular regarding the reporting to be done by insurance companies and employers that will help the IRS to verify compliance by individual taxpayers with the coverage mandate. The subgroup also focused efforts on ACA education resources being made available by the IRS to both tax professionals and the taxpaying public. In addition to work on the ACA, the EB&P subgroup's report reviews its work with the IRS on third-party sick pay reporting issues and reporting and withholding of pension payments from U.S. plans to nonresident aliens.
4. International Reporting & Withholding (IR&W) (Frederic Bousquet, Chair): The IR&W subgroup 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) through an ongoing dialogue regarding the FATCA regulations, the coordinating regulations under Chapters 3 and 61, and other published guidance that were issued in 2013 and 2014, together with Forms W-8, Form 1042, Form 1042-S and Form 8966. The subgroup intends to continue this dialogue and provide input with regard to the regulations, associated forms, and the foreign financial institution (FFI) registration process. The IR&W subgroup report contains recommendations about three broad areas of concern regarding FATCA compliance: (1) the regulations; (2) IRS forms and instructions; and (3) intergovernmental agreements and FATCA registration.

Working for a large multinational manufacturer in the technology sector, I see every day how our environment is rapidly getting both smaller and larger. The world has shrunk: at relatively low cost billions of people can communicate by voice or even video with others around the globe on devices that fit in the palm of

a hand. The Dick Tracy watch exists, except it has more capacity than most of us could even have imagined a decade ago. The world has expanded: through big data and social networks we are able to access enormous quantities of information, stay in touch “in real time” with many people, and permit information about ourselves to be gathered and shared, again all in the palm of a hand. The medical tricorder of Star Trek fiction may well become a reality in our lifetimes.

How does this rapidly changing technological environment affect tax administration, and particularly information reporting? The minor commercial interactions of everyday life are now captured in detail electronically, organized and stored in large databases, and transferable in vast quantities with the push of a button or the click of a mouse. What once was a simple cash purchase -- for example, buying a cup of coffee -- is often now an economic transaction that involves borrowing, a commitment to pay interest, a fee for facilitating the purchase itself, and possibly many other separate transactions, all of which require tracking for tax purposes. And this is just one example.

Perhaps it is unavoidable that the IRS as revenueur and regulator will be reacting to developments around it, always playing catch up to technological changes. IRPAC appreciates that the IRS currently lacks but needs adequate resources to enhance its systems capabilities, and to fulfill its expanding enforcement and administrative obligations under recent legislation such as ACA and FATCA. It seems to me as well that the IRS may be reaching a tipping point where the default approach for all manner of tax reporting moves to an electronic medium rather than paper, for administrative efficiency, cost, and environmental reasons.

A more complex and seemingly shrinking world presents ongoing challenges to both tax practitioners and taxpayers, as well as the IRS. We hope this report, our recommendations, and a continuing dialogue with IRPAC will assist you as you lead the IRS and continue the work of maintaining and administering a voluntary tax compliance system that serves our country.

Respectfully submitted,

/signed/

Boyd J. Brown  
2014 IRPAC Chair



## Executive Summary of Issues

### Burden Reduction Subgroup

#### A. *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 taxpayers, IRS and information return filers. IRPAC recommends that the IRS provide a safe harbor that net changes of \$50 or less (up or down) are not subject to the penalty provisions of IRC §§ 6721 and 6722.

#### B. Business Master File (BMF) and Form 8822-B,

IRPAC recommends the IRS send notices to taxpayers before making an address change to help prevent identity theft, and increase efficiencies by having the IRS receive timely responses to its inquiries and notices without repeated mailings. We are happy to report that the IRS is in the process of implementing sending notices (Notice CP 148) to taxpayers when a deemed address change occurs with a different address on the tax return from prior period's return. The IRS is planning to publicize implementation of this notice on IRS.gov prior to the scheduled implementation in January 2015.

IRPAC recommended that the "old responsible party's" name and TIN lines be eliminated from the Form 8822-B, Change of Address or Responsible Party - Business. We are pleased to note that the IRS appreciated our concern and has removed lines pertaining to the old responsible party's information on the recent draft published on IRS.gov.

#### C. Form W-9 Instructions – Revision

Many small businesses and individuals do not understand the importance of filling out Form W-9, Request for Taxpayer Identification Number and Certification, correctly. This results in unnecessary correspondences between requestors of Form W-9 and payees; and in some cases the IRS has required unnecessary backup withholding.

Accordingly, IRPAC recommends that the IRS make the form easier to understand by referencing line numbers on Form W-9 and providing clearer form instructions. The Burden Reduction Subgroup has been working closely with the IRS and will continue to review and comment as the recommended changes are incorporated in instructions.

## **Executive Summary of Issues**

### **D. 1099-MISC - Miscellaneous Income**

IRPAC continues to recommend establishing an e-service for small businesses to file Forms 1099-MISC online to help ease the burden and costs associated with filing only a few forms. IRPAC also recommends improving instructions that will assist small businesses to better understand and meet the requirements of Form 1099-MISC reporting. These recommendations will also reduce the burden on the IRS of processing erroneous tax data reported on Forms 1099-MISC and reduce having to devote resources to what are presumed to be underreporting recipients of income.

### **E. Nonresident Alien Withholding and Reporting of Payments for Truck or Rail Transportation**

IRPAC recommends a short addition to the first paragraph under “Transportation income” in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, to clarify that the gross transportation income stated to be “generally not subject to NRA withholding” does not include income from truck or rail transportation.

IRPAC also recommends that withholding agents be permitted to use a 50% - 50% allocation to determine the U.S.-source portion of payments of truck or rail transportation income to ease the burden on withholding agents having to allocate the proper amount subject to Chapter 3 withholding as sufficient data is often not available to them.

### **F. Instructions for Form 2848, Power of Attorney and Declaration of representative**

IRPAC recommends revising the Purpose of Form section of the instructions. Specifically, we recommend that the other forms listed be grouped together under a section with a common heading that indicates that these are the forms that can be used if taxpayers only want to authorize an individual or organization to inspect the tax documents but do not want representation. This would also allow for some of the repetitive language under each of the other forms to be removed.

IRPAC also recommends clarifying and shortening several paragraphs in the Specific Instructions to make them easier to read and understand.

### **G. Form 8889 – Health Savings Account**

IRPAC thanks the IRS for responding to a recommendation made during 2014 IRPAC meetings to change the description for Line 15 of Form 8889 to avoid inadvertent incorrect reporting. We are happy to report that the 2014 draft form posted on the IRS website is changed to reflect our recommendation.

## **Executive Summary of Issues**

### **Emerging Compliance Issues Subgroup**

#### **A.-F. Cost Basis Reporting**

IRPAC requests several changes to Forms 1099-B and 1099-INT to provide better information for the taxpayer and to the IRS, and to ensure correct payment of tax. Specifically, IRPAC requests that the IRS allow for aggregate sales reporting for one trade order filled on the same day by multiple fills. In order to facilitate Section 1256 option reporting when options are transferred between brokerage firms, IRPAC also requests that the regulations be amended to remove transferors of Section 1256 options contracts as being exempt from transfer statements, and to require that the unrealized profit or loss be reported. In addition, IRPAC suggests that the IRS add Frequently Asked Questions and move the FAQ page to provide easily understandable and accessible information for taxpayers. Finally, IRPAC suggests that the IRS provide draft forms to the subgroups so that the subgroups can provide meaningful feedback to the IRS.

#### **G. IRC §6050W and Form 1099-K Reporting**

IRPAC again this year is asking for additional guidance on issues associated with Form 1099-K, Payment Card and Third Party Network Transactions, reporting. IRPAC recommends that the IRS focus on providing clear definitions of confusing terminology that is used in the statute and the Treasury Regulations.

#### **H. Form 1098-T Reporting**

IRPAC continues to request a clarification of terms in “Instructions for Forms 1098-E and 1098-T, Student Loan Interest Statement and Form Tuition Statement,” with respect to information that should be reported by colleges and universities in box 5 of Form 1098-T. IRPAC recommends that the service update, and continue to monitor notices sent to taxpayers to ensure that the content is not misleading, or easily misconstrued. Finally, IRPAC recommends Publication 970 be updated to include additional details in the example that will assist taxpayers in accurately claiming education credits.

#### **I. Form 8300**

IRPAC again 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 of, an instrumentality of, owned by or operated by a governmental entity) must file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

## **Executive Summary of Issues**

### **J. Revenue Procedure 95-48**

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

### **Employee Benefits & Payroll**

#### **A. Third-party Sick Pay Reporting**

The IRS has created Form 8922, Third-Party Sick Pay Recap and will accept paper recap forms for tax year 2014 filed in 2015. IRPAC recommends that the IRS continue to work with IRPAC on all third party sick pay reporting issues.

#### **B. Basis Allocation for Direct Rollovers to IRAs (IRC §402(f))**

IRPAC would like to thank the IRS for adopting our recommendation to provide consistent basis allocation rules for direct and indirect rollovers from qualified retirement plans. With the release of Notice 2014-54, the IRS has reunified the treatment of basis allocation for direct and indirect rollovers, which will simplify tax planning for retirees, tax administration for retirement plan administrators, and provide ease of administration for the IRS.

#### **C. Proper Reporting of FSA Overpayments**

IRPAC requested guidance/clarification on how the taxable income is reported when an erroneous reimbursement is made to a participant which cannot be offset by other proper payments. The Office of Chief Counsel released a Memorandum on March 28, 2014, describing the correction procedure for improper FSA payments.

#### **D. Patient Protection and Affordable Care Act and Health Reimbursement-like plans**

The IRS should clarify that non-HRA integrated plans are not required to satisfy the lifetime and annual rules on a stand-alone basis, provided that the combined benefit satisfies the requirements. These non-HRA plans do not permit unused portions of the maximum dollar amount to be carried forward to increase the maximum reimbursement amount in subsequent coverage periods. These plans should be given the same treatment as integrated HRAs for purposes of the lifetime and annual limit rules.

## Executive Summary of Issues

### E. Withholding and reporting for pension payments to NRAs

IRPAC recommends that the IRS clarify the withholding requirements in cases where retirement plan participants, who are nonresident aliens (NRAs), complete in-plan Roth rollovers. Recent modifications to the in-plan Roth rollover rules (found in Notice 2013-74) create uncertainty, as the IRS indicated that funds not eligible for distribution from the retirement plan can now be included in an in-plan Roth rollover.

IRPAC also recommends that the IRS expand the list of “Income Codes” reported in Box 1 of *Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding* to allow for more accurate reporting of pension income and potentially prevent lost tax revenue.

### F. ACA Education

The ACA Information Center for Tax Professionals page on the IRS website should be improved to provide clearer guidance about what constitutes minimum essential coverage (MEC). The confusion will be most pronounced for 2014 since the individual shared responsibility provision of IRC §5000A is new for 2014. Special emphasis should be placed on explanations in forms and instructions since no information reporting will exist.

### G. Reporting by insurance companies and third parties under IRC §§6055 and 6056

1. IRPAC recommends that instructions for line 61 of Form 1040 discuss the importance of providing social security numbers for responsible and covered individuals to insurance companies and employers as well as the consequence of not providing social security numbers.
2. IRPAC recommends that the 2014-2015 Priority Guidance be expanded to include new or revised regulations under §§6055 and 6056 which address unique new solicitation issues.
3. Early release drafts of Form 1095-B and 1095-C were issued as “DRAFT AS OF JULY 24, 2014”. Early release draft instructions were issued as “DRAFT AS OF AUGUST 28, 2014.” Software vendors, insurance companies and employers are reluctant to make major programming efforts until final forms are issued with final instructions, the lead time to ensure all needed information is captured as of January 1, 2015 is narrow. IRPAC recommends that the IRS expand the time period for voluntary compliance with IRC §§6055 and 6056 from 2014 to 2015 and provide general transition relief for 2015.

## Executive Summary of Issues

### International Reporting and Withholding

#### A. Carve-Out To Definition of Financial Account

IRPAC recommends that an addition be made to the list of exceptions (provided in Treas. Reg. § 1.1471-5(b)(2)) to the definition of “financial account” under FATCA (Foreign Account Tax Compliance provisions of Subtitle A of Title V of the HIRE Act) for debt interests in investment entities described in Treas. Reg. § 1.1471-5(e)(4)(i)(B) or (C) that result from ordinary course of business transactions rather than from true financial investments in such entities.

#### B. Retroactive Use of Faxed/Emailed Forms W-8

IRPAC recommends that the effective date for the rule permitting withholding agents to rely upon an otherwise valid withholding certificate or other documentation received by facsimile or scanned and received electronically (such as by pdf attached to an e-mail) be modified to be effective for all certificates/documentation *furnished* after March 6, 2014, rather than only to *payments made* on or after that date. Withholding agents seeking to cure past documentation failures, most of which arise inadvertently, should not be subjected to a higher form-delivery mechanism standard.

#### C. Material Modification to a Grandfathered Obligation

IRPAC recommends that the events constituting a withholding agent’s actual knowledge of a material modification to a grandfathered obligation be limited to specific, identifiable actions, such as (1) the receipt of a disclosure from either the issuer or the issuer’s agent, or (2) the assignment of a new security identifier (such as a CUSIP number), as these are the only two reliable, and practical, indicators that may be used by withholding agents in a consistent manner.

#### D. “It maintains for retail customers” in Treas. Reg. §1.1473-1T(a)(4)(vi)

IRPAC recommends the elimination of the words “it maintains for retail customers” in Treas. Reg. § 1.1473-1T(a)(4)(vi), as we believe this phrase represents an unintended limitation to the transitional relief from withholding provided for certain offshore payments of U.S. source fixed or determinable annual or periodic (FDAP) income paid prior to 2017. Treasury and the IRS have adopted this recommendation.

#### E. Application of Coordinating Regulations on Offshore Obligations to Non-financial Entities

IRPAC recommends that the coordinating regulations clarify the extent to which certain provisions in the coordinating regulations that apply to payments made "with

## Executive Summary of Issues

respect to an offshore obligation" are limited in their application only to payors that are financial entities.

### **F. Definition of “banking or similar business” as Applicable to Non-banking Entities**

IRPAC recommends that the definition of "banking or similar business" under Treas. Reg. § 1.1471-5(e)(2) be modified to avoid the inadvertent treatment of ordinary non-banking business taxpayers as financial institutions by providing limited exceptions for entities that sell goods and services.

### **G. Hold Mail Address at Treas. Reg. §1.1441-1T(c)(38)**

IRPAC recommends that the definitions of “permanent residence address” contained in Treas. Reg. §§ 1.1441-1T(c)(38) and 1.1471-1(b)(99) be modified to make it clear that a hold mail instruction should not invalidate documentation used to establish a payee's status provided that the hold mail address is not the sole address on file for the payee.

### **H. Special Rules for PFICs**

IRPAC recommends that the IRS modify the rule that eliminates a transfer agent’s Form 1099 reporting obligations when the principal (the fund) provides a statement annually that it is FATCA compliant and a PFIC (Passive Foreign Investment Company) by permitting the transfer agent to rely on such a statement until such time there is a change in circumstances or unless the transfer agent knows or has reason to know the statement is incorrect. The requirement to obtain such a statement annually is unnecessary given how infrequently an entity’s PFIC and FATCA statuses change. IRPAC also recommends that the required statement may be provided by any party authorized to sign documents on behalf of the fund rather than by an “officer” of the fund.

### **I. Per Se Foreign Corporation**

IRPAC recommends that Treas. Reg. § 1.1441-1T(b)(3)(iii)(A)(1)(iii) be amended to enable a withholding agent to presume a payee to be a foreign person if the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations, even if the name contains the designation “corporation” or “company.” The FATCA regulations block a withholding agent from presuming an entity with such a designation that is on the per se list of foreign corporations to be a foreign person, presumably to preclude a domestic (U.S.) corporation from being treated as a foreign person. We find the rule unnecessary because a withholding agent would need an indicator that an entity is formed in a jurisdiction other than the U.S. in order to presume the entity is foreign based on the per se list.

## **Executive Summary of Issues**

### **J. Source of Brokerage Fees**

IRPAC recommends that the IRS and Treasury add a sourcing rule that presumes commissions for trades of securities issued by non-U.S. issuers to be foreign source income if paid to a broker that is a non-U.S. person or can be presumed to be a non-U.S. person, unless the withholding agent knows or has reason to know that the broker executed the trade inside the U.S., such as when the trade is of American depository receipts traded on a U.S. securities market. Such a presumption rule would eliminate any need to collect location of services statements from putative non-U.S. brokers, which is a wasteful undertaking with respect to non-U.S. securities, as the probability of non-U.S. brokers performing services inside the U.S. on non-U.S. securities is remote.

### **K. Time Period for Acceptance of Pre-FATCA Forms W-8**

IRPAC recommends that the IRS issue guidance providing that withholding agents may continue to accept pre-FATCA Forms W-8, Certificate of Foreign Status, through December 31, 2014. This recommendation has been adopted, except with respect to Form W-8BEN, Beneficial Owner's Certificate of Foreign Status for U.S. Tax Withholding, for individuals.

### **L. "Other income" Example in Line 15 Instructions for Form W-8BEN-E**

IRPAC recommends that the last example of when a special treaty claim is needed in the Instructions for Form W-8BEN-E, Certificate of Entities Status of Beneficial Owner for United States Tax Withholding (Entities) for line 15 be eliminated, as the "other income" article of U.S. income tax treaties prescribes only one rate of withholding, and requires no special conditions (e.g., special tax status, classification or ownership percentages) that must be satisfied in order to apply this article. The IRS adopted this recommendation in the Cover Sheet to Update 2014 Instructions for Form W-8BEN-E published October 7, 2014.

### **M. Instructions for the Requestor of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY Regarding Print Name**

IRPAC recommends that the Instructions for the Requestor of Forms W-8 be modified to provide that a validation of the new field appearing on Form W-8BEN-E, Form W-8ECI and Form W-8EXP, in which the person signing the form is also required to print their name on the signature line, be optional.

## **Executive Summary of Issues**

### **N. Translation of Forms W-8 and Instructions**

IRPAC recommends that the IRS issue official foreign language translations of the W-8 series of Forms and Instructions, as this would reduce most errors associated with a non-fluent English speaker preparing the forms.

### **O. Form W-9: FATCA Jurat, Exempt Payee Code, Exemption from FATCA Reporting Code**

IRPAC recommends that the fourth certification of Form W-9, Part II (regarding the FATCA code) be removed. If this recommendation is not adopted, IRPAC recommends that the IRS issue guidance specifying that, for accounts maintained in the United States, a substitute version of Form W-9 is not required to include the fourth certification in Part II of Form W-9. In addition, IRPAC recommends that the Instructions for the Requester of Form W-9 be modified to clarify that the exempt payee code and the exemption from FATCA reporting code are not required fields, and do not affect the validity of the form for purposes of withholding.

### **P. Self-Certifications For New Accounts Under Intergovernmental Agreements**

IRPAC recommends that the IRS and Treasury clarify with FATCA partner countries the consequences of a reporting Model 1 or 2 financial institutions not obtaining a self-certification or, when permitted under Annex I of the applicable IGA, alternative documentation, to establish the FATCA status of a new account. These consequences should be consistent across all IGA jurisdictions, or else opportunities could exist to shift accounts to FIs in partner countries which devise the least harmful consequences.

### **Q. Effect of Signing FATCA Registration Form**

IRPAC recommended that the IRS adopt certain proposed Q&As IRPAC submitted to the IRS for inclusion in its list of Q&As posted on the IRS website, which are intended to clarify the certifications and liability of the person who acts as responsible officer for purposes of registering an FFI. The IRS has adopted the portion of the proposed Q&A which explained the certifications. IRPAC recommends that the IRS fully adopt its proposed Q&A.

## **Executive Summary of Issues**

# **INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE**

## **GENERAL REPORT**

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## IRPAC General Report

### Expand Use of TIN Matching Program to Improve Information Reporting Accuracy

#### Recommendations

1. IRPAC again recommends expansion of the TIN Matching Program to include filers of all nonwage information returns to which incorrect-TIN penalties under IRC §§ 6721 and 6722 apply. This will (1) reduce IRS administrative costs; (2) increase the amount of valid data available for IRS tax return fraud prevention, identification of underreporters, and discovery of identity theft; and (3) eliminate a significant burden on information return filers who have been barred from performing TIN validation prior to IRS filing.
2. IRPAC recommends that the IRS amend Revenue Procedure 2003-9 to provide that after filing an information return other than those types potentially subject to backup withholding, the filer may check the TIN furnished by the payee (or other recipient) against the name/TIN combination contained in the IRS TIN Matching database and receive TIN validation information. This will permit information return filers to request correct TINs to replace non-validated TINs and report the newly obtained TINs on corrected information returns in time to reduce filers' penalty exposure, and in time to reduce administrative costs for the IRS.
3. IRPAC recommends that the IRS issue a Notice announcing relief from IRC § 6721 and § 6722 incorrect TIN penalties for all nonwage information return types that the TIN Matching Program may not be used to validate payee/recipient TINs.
4. IRPAC recommends that the IRS add a checkbox to Form W-9 and Form W-4P which can be checked by the payee to indicate that the payee gives the payer permission to submit the payee's name and TIN to the IRS TIN Matching Program for validation.
5. IRPAC recommends that the IRS develop and offer a new premium-level TIN Matching service (in addition to maintaining the current basic TIN Matching Program). The new premium-level service would require an enrollment fee paid to the IRS, and would process bulk files submitted through the information return filer's account on the IRS secure site for information return filing.

#### Discussion

The TIN Matching Program provided by the IRS is currently limited to use by filers of information return types to which backup withholding may apply. The filers of many more information return types that are not subject to backup withholding bear a substantial burden due to being barred from using TIN Matching for early identification

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of payee name-TIN mismatches. Deprived of TIN Matching, these filers have no means of identifying incorrect TINs in their records until they receive IRS Notice 972CG informing them that penalties under IRC §§ 6721 and 6722 will be assessed against them for having used those TINs on information returns filed to the IRS. These penalties are set by statute at \$100 per information return, and \$100 per recipient statement which is the copy of the information return furnished to the taxpayer named on the form, each with a cap of \$1.5 million for a calendar year. Although penalty abatement is provided for under the reasonable cause regulations (Reg. § 301.6724-1) where the filer acted in a responsible manner and the TIN errors were due to the payee's action in furnishing the incorrect TIN or name, the process for obtaining penalty abatement is lengthy, costly, complex and currently structured to require repeated rounds of written communication and submission of documentation to the IRS, frequently including appeals. The cost of just the first level of penalty notice response is illustrated by a Form 1098-T filer that received a notice listing 3,183 incorrect student TINs (12.7% of the total number filed, a typical rate for higher education where despite diligent efforts of the institution to initially solicit correct information, students have no incentive and little interest in furnishing the exact name/TIN combination used on their income tax returns). The penalty assessment was \$318,300, for all of which reasonable cause for abatement was documented to the IRS, but at an expenditure of over 350 hours of work for just the initial response to the IRS which was required prior to announcement of the one-time reprieve for tax year 2011 Form 1098-T incorrect-TIN penalties. And although a new solicitation of the reportable name and TIN is a required part of the workload of filers who receive incorrect-TIN penalty notices, at best this results in the filer obtaining the correct name/TIN combination a year and a half after the original information return was filed to the IRS.

By contrast, if the filers currently excluded from TIN Matching could use the program prior to filing information returns with the IRS, they would contact the mismatched payees/recipients, obtain new information and file original information returns with correct name/TIN combinations that the IRS would use to timely prevent tax return fraud, uncover identity theft, and find underreporting of tax liabilities. In addition, the IRS would reduce administrative costs by producing and mailing fewer penalty notices, and working fewer incorrect-TIN penalty cases.

IRPAC first recommended expansion of the TIN Matching Program in 2002. At various times expansion was proposed by the Department of Treasury and recommended by the National Taxpayer Advocate. Expansion was written into federal legislation which was passed by the Senate in 2004 but ultimately not enacted. In 2013, expansion of the TIN Matching Program was recommended by the IRPAC Burden Reduction Subgroup, Emerging Compliance Issues Subgroup, and Employee Benefits and Payroll Subgroup. In 2014, TIN Matching expansion was elevated to an IRPAC-wide issue on which the entire advisory committee has worked throughout the year. The need for expansion is widespread and will soon grow even larger when great numbers of new information returns required under the Affordable Care Act become subject to incorrect-TIN penalties without benefit of access to pre-filing use of the TIN Matching Program. Moreover, U.S. individuals whose identities cannot be matched properly

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against the ACA-related Forms 1095-C or 1095-B will be at risk for receiving notices from the IRS relating to liability for individual shared responsibility payments.

Filers of Forms 1099-B, 1099-DIV, 1099-INT, 1099-K, 1099-MISC, 1099-OID and 1099-PATR are permitted to use the TIN Matching Program. The IRS does not currently permit TIN Matching for a longer list of information returns including Forms 1098 (mortgage interest), 1098-T (tuition statement), 1099-R (distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc.), 5498 (IRA contributions), 1099-G (government payments), 1099-S (proceeds from real estate transactions), 1042-S (foreign person's U.S. source income subject to withholding) – which represent over 400 million forms projected to be filed for 2014 (per Publication 6961) and that is only some of the form types shut out of TIN Matching under current rules. Hundreds of millions more information returns subject to incorrect-TIN penalties but excluded from TIN Matching will be added with the filing of the new Forms 1095-B (health coverage) and 1095-C (employer provided health insurance offer and coverage).

**Discussion of Recommendation 1:** Expand the TIN Matching Program to include filers of all nonwage information returns to which incorrect-TIN penalties under IRC §§ 6721 and 6722 apply. This will reduce IRS administrative costs, increase the amount of valid data available for IRS tax return fraud prevention and identification of underreporters, and eliminate a significant burden on information return filers who have been prohibited from performing TIN validation prior to IRS filing. IRPAC has engaged in numerous discussions with the Office of Chief Counsel regarding what constitutes disclosure of return information for purposes of IRC § 6103, and while there is not complete agreement either within IRPAC or with the personnel with whom IRPAC has discussed these matters, IRPAC acknowledges and supports the need to protect taxpayer information. Authority for regulations expanding TIN Matching exists in IRC § 7805 which provides that, “the Secretary shall prescribe all needful rules and regulations for the enforcement of this title ...”

**Discussion of Recommendation 2:** Amending Revenue Procedure 2003-9 to provide that after filing an information return other than those types potentially subject to backup withholding, the filer may check the TIN furnished by the payee (or other recipient) against the name/TIN combination contained in the IRS TIN Matching database and receive TIN validation information. This will permit information return filers to request correct TINs to replace non-validated TINs and report the newly obtained TINs on corrected information returns in time to reduce filers' penalty exposure, and reduce administrative costs for the IRS. These filers would go through the same strict, multi-part registration process as all other users of the TIN Matching Program and certify the same pledge of confidentiality and proper use of TIN Matching. IRPAC appreciates the discussions with the Office of Chief Counsel which clarified that disclosure issues do not arise post-filing. And though it may seem onerous to file a year's information returns, then file corrected information returns as soon as the originally filed name/TIN combinations can be matched and the non-validated TINs identified and replaced with correct TINs, filers will use this alternate procedure because it will lessen their penalty exposure; while the IRS will reap the benefits of having

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additional valid information in time for identification of underreporters, as well as reducing the number of penalty notices required to be produced, mailed and worked in the following years.

**Discussion of Recommendation 3:** Provide penalty relief from IRC § 6721 and § 6722 incorrect TIN penalties for all nonwage information return types for which the TIN Matching Program may not be used to validate payee/recipient TINs. With higher volumes and higher costs to the IRS and to information return filers, TIN Matching is no longer an attractive “extra,” but rather is a necessity for information reporting compliance. Until such time as TIN Matching expansion is effected, penalties for incorrect name/TIN combinations should be waived for all forms for which the TIN Matching program is unavailable. A penalty waiver need not be viewed as a giveaway to filers, nor as an invitation to noncompliance, because applicable penalty relief could be conditioned on a filer’s re-solicitation of the correct TIN from the affected name-TIN mismatched taxpayers.

**Discussion of Recommendation 4:** Add a checkbox to Form W-9 and Form W-4P which the payee/recipient can check to specifically authorize the payer/filer to validate the payee name and TIN through the IRS TIN Matching Program. This direct authorization by the payee/recipient, on a form which would be kept on file by the payer, would meet the requirement of IRC § 6103(c) for disclosure of return information to a designee of the taxpayer, and permit use of the TIN Matching Program by filers of returns other than those to which backup withholding could apply.

**Discussion of Recommendation 5:** Develop and offer a new premium-level TIN Matching service (in addition to maintaining the current basic TIN Matching Program for which no fee is charged). The new premium-level service would require an enrollment fee paid to the IRS, and would process bulk files submitted through the information return filer’s account on the IRS secure site for information return filing. Just as the Social Security Administration receives a fee for its premium service (the CBSV), the IRS would gain fee income from premium TIN Matching which, it is anticipated, would primarily be used by large-volume information return filers. Further, and perhaps more importantly, large-volume information return filers tend to generate the largest number of name/TIN mismatches (and accompanying penalty assessments that are expensive to challenge for abatement due to reasonable cause), so a new premium-level service would enhance effective tax administration.

**INFORMATION REPORTING PROGRAM  
ADVISORY COMMITTEE**

**BURDEN REDUCTION  
SUBGROUP REPORT**

**PAUL B. BANKER  
MARY C. KALLEWAARD  
PATRICIA L. SCHMICK  
JULIA K. CHANG, SUBGROUP CHAIR**



## Burden Reduction Subgroup Report

### A. De Minimis Threshold for Form 1099 Corrections

#### Recommendation

1. IRPAC recommends establishing under regulations a de minimis dollar threshold for corrections to original information returns and original recipient statements, creating a safe harbor to provide that no penalty will apply for failure to correct net changes of \$50 or less in the reported amount. This will relieve significant burdens on taxpayers and the IRS for the cost and use of resources to report and process corrections that generally are not the result of payer error and do not increase taxable income of the recipients.

#### Discussion

IRPAC again recommends that a failure to correct a de minimis amount of \$50 or less previously reported to the IRS should be defined in Reg. § 301.6721-1(c) and Reg. § 301.6722-1(b) as an “inconsequential error” not subject to the penalty provisions of IRC §§ 6721 and 6722.

Regulations currently require a payer to issue a corrected information return if the reported amount is incorrect in “any monetary amount” or “any dollar amount,” depending on the regulatory language used. Up to 10 corrected forms (or one and one-half percent of the filer’s total information returns for the year) can be filed without penalty. Above that number, each corrected information return triggers a penalty under IRC § 6721(a)(2)(B) for having included incorrect information on the original return. The penalty under IRC § 6721(a)(1) is \$100 for each such return, up to \$1.5 million for any calendar year. When corrected information returns are filed with the IRS, corrected recipient statements must be furnished and under IRC § 6722 each triggers a separate \$100 penalty, up to \$1.5 million for any calendar year, for having included incorrect information on the original statement. However, Treas. Reg. §§ 301.6721-1(c) and 301.6722-1(b) provide for penalty exceptions for inconsequential errors and it is in these sections that IRPAC recommends the creation of a safe harbor for de minimis dollar amount corrections of \$50 or less (up or down).

Restatements of investment earnings are a high-volume example of corrections that are required under current rules and cause burden on Form 1099, Information Returns, filers and the IRS and the reported taxpayers, yet do not necessarily increase tax liabilities or government revenue. The filers of information returns often receive late notifications of reportable amounts from mutual funds and corporations, generally because those entities did not have the information they needed in time to pass along to 1099 filers or because a fiscal year-end after the 1099 filing deadline revealed that restatement was necessary due to insufficient accumulated earnings and profits to support dividend treatment. The volume of information returns requiring correction for small amounts has also increased significantly due to wash sales and changes on Form 8937, Report of Organizational Actions Affecting Basis of Securities. The amount of the change is often immaterial and has no impact on the recipient’s tax liability, or often

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results in a reduction in the recipient's taxable income when changes are due to reclassification of dividend distributions to return of capital.

The \$50 de minimis threshold recommended by IRPAC for information return and recipient statement corrections will significantly reduce the burden on taxpayers (who receive corrected statements after having filed their income tax returns and then face new costs for the preparation and filing of amended returns), reduce the burden on the IRS (which must process all of the corrections, then handle a higher volume of resulting penalty notices and the prolonged process of reasonable cause review and appeal) and reduce the burden on information return filers (who must reprocess, create a new IRS filing and print and mail new statements).

The cost to the IRS to handle corrections and penalties is not disclosed to IRPAC. The cost to information return filers was illustrated in the 2013 IRPAC Public Report by an example of one common type of correction: a filer issued 456,559 corrected Forms 1099-DIV, Dividends and Distributions, for tax year 2012 to retail brokerage customers to report changes in the ordinary dividend amount (box 1a) due to dividend reclassification announcements received after the original information returns were created; 59% of these (270,275) were for changes less than \$50; each recipient statement correction cost the Form 1099 filer \$1.53 to print and mail so the cost of statements for changes less than \$50 was \$413,520.75; the filer also incurred the use of resources to produce the corrected IRS file and later will incur costs to deal with IRS proposed penalties (additional illustrations were furnished in the 2012 IRPAC Public Report). The cost to individual taxpayers relates to their concern about filing amended income tax returns which for many would mean additional fees to accountants or other tax preparers.

The closing agreement process offered under IRC § 7121 is not a sufficient answer to these problems because it does not reduce the burdens described above on the IRS, taxpayers or information return filers. Many months are consumed in the process at the end of which there may be no agreement, leaving the payer to issue even later corrected information returns and taxpayers facing the same burden of amended tax returns. Moreover, the closing agreement for Forms 1099 addresses underreporting of income, while most of these high-volume, small-amount restatements reduce reportable income and are not the result of 1099 filer error.

### **B. Business Master File and Form 8822-B**

#### **Recommendations**

1. IRPAC recommends reinstating the process of issuing a change of address notification letter mailed to the last address when a mailing address on the Business Master File (BMF) is updated based on the requirements in Revenue Procedure 2010-16.
2. IRPAC recommends, as an alternative, IRS revise Revenue Procedure 2010-16 to state that an address change related to an Employer Identification Number

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(EIN) will only occur after receipt of IRS Form 8822-B, Change of Address – Business,

3. IRPAC recommended old representative's name and Taxpayer Identification Number (TIN) lines be eliminated from the Form 8822-B and IRS was very receptive to the recommendation.

### **Discussion**

#### **Business Master File**

IRPAC recommended creating additional mailing address fields on BMF in 2013. We understand the challenges associated with this recommendation as it will be a monumental undertaking that may not be achievable in a short period. Please refer to 2013 Public Report for a detailed discussion. We do feel strongly about providing additional address fields in BMF and we will continue to work with IRS until such time as resources become available to implement it.

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 recommendations for BMF outlined above are achievable without having to overhaul entire computerized BMF system. Yet one of the above recommendations will reduce notices (such as B-notices (CP2100 and CP2100A notices) that include TIN and customer name and account information) being delivered 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.

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.

We are happy to report that IRS is in the process of implementing sending notices to taxpayers when deemed address change occurs with a different address on the tax return from prior period's return. The Notice CP 148, Name and/or Address Change, initially mailed to all taxpayers filing employment tax returns with address change, will be sent to the taxpayers' old addresses starting in January, 2015. IRS is planning to publicize implementation of this notice on IRS.gov. prior to January.

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### **Form 8822 – B**

IRS issued final regulations in May 2013 that require every person obtaining an EIN to provide IRS with updated information. (T.D. 9617). Subsequently revised form 8822-B was issued to accommodate the requirement set out in Reg. § 301-6109-1(d)(2)(ii)(A). The form is to be used to provide old and new mailing addresses, old and new responsible parties and the old and new responsible party's Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN) or EIN.

IRPAC reviewed the form and had a meeting with the Wage & Investment (W&I) division of IRS and discussed box 1 of the form which currently lists many forms with a line description, employment, excise, income, and other business returns. We would like to see the box broken in to 4 boxes to capture each type of return the box lists. We understand the actual address change cannot be accomplished based on these box types until such time as more address fields are implemented in BMF. We will continue to discuss how we can improve the form with this in mind.

We raised concerns relating to the required information for the old representative. Many companies, especially the ones that have been in operation for a number of years, do not know which entity or individuals name was put on the Form SS-4, Application for Employer Identification Number, when the EIN was first applied for. Often, the lawyers or accountants engaged in helping owners set up companies put their names and their address on the form, not the owners'. Or, they may not be able to locate the form as it is not a form that any business refers to on a regular basis. There is no reason to have the old information if the purpose is to gather current information and having the form considered incomplete because the business cannot provide the old representative's name.

We are, once again, delighted to note that the IRS understood our concern and removed lines pertaining to the old responsible party's information on the recent draft published on IRS.gov.

### **C. Form W-9, Request for Taxpayer Identification Number and Certification, Revision**

#### **Recommendations**

IRPAC continues to recommend revisions to Form W-9, Request for Taxpayer Identification Number and Certification, to clarify for many individual taxpayers and small businesses what information is needed on the form. Increased clarity in the line captions and form instructions will result in greater numbers of Forms W-9 with valid name-TIN combinations, which will reduce the administrative burden on the IRS and businesses for incorrect TIN notices and incorrect TIN penalty notices and abatement requests. It will reduce the burden on businesses where, realizing the information on the form is incomplete or unclear and will lead to B Notices and penalties when used on information

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returns, the business spends time contacting payees for correct information. Listing additional information return types in the Purpose of Form section will establish a recognition factor for more taxpayers, leading them to furnish the form as requested rather than ignoring it and thus becoming subject to backup withholding.

1. Add line numbers to the form.
2. Add corresponding numbers to the form instructions so each numbered line of the form relates to a specific numbered paragraph in the instructions.
3. Add to the caption in line 1 (name) to explain that a name is required on this line; do not leave this line blank.
4. Add to the caption in line 3 (tax classification) to say “Check only one of the following seven boxes.”
5. Add to the first tax classification description to clarify that it is for Individual sole proprietor or individual single member of Limited Liability Company (LLC).
6. Add to the caption in line 4 (exemptions) to clarify that exempt payee codes apply only to certain entities, not individuals, and to see instructions on page 3; and clarify that Foreign Account Tax Compliance Act (FATCA) reporting exemption codes apply to accounts maintained outside the U.S.
7. Insert “or” between the SSN and EIN number boxes.
8. In the Purpose of Form section, list 11 of the most widely recognized Forms 1099 and 1098, Mortgage Interest Statement, by number and name. This will increase the likelihood that taxpayers will realize the Form W-9 relates directly to an information return the taxpayer expects and wants to receive every year. Also add:
  - a. The information must match your government-issued identification information.
  - b. If you do not return the Form W-9 to the requester with a TIN, SSN or EIN you might be subject to backup withholding; see What Is Backup Withholding on page 2.
  - c. See What Is FATCA Reporting on page 2 for further information.
9. Throughout the instructions, clarify TIN as SSN or EIN. Individual taxpayers know what their SSN is but often do not understand the term TIN.
10. In the Specific Instructions, add to line 1 (name) instructions to clarify:
  - a. You must enter one of the following on this line – do not leave this line blank. The name should match the name on your tax return.
  - b. If you have a business name, trade name, doing business as (DBA) name, or disregarded entity name, you may enter it on Line 2.
  - c. Sole proprietor or individual single member of LLC: Enter your individual name as shown on your income tax return
11. In line 3 instructions (tax classification), add clarifying language about LLCs and disregarded entities.
12. In line 4 instructions (exemptions), use bullets instead of running text to call attention to the exempt status statements and add one additional statement:

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- a. Corporations that provide medical or health care services, or provide legal services, are not exempt from backup withholding.
13. In line 5 instructions (address), add “This is where the requester of Form W-9 will mail your information returns, unless you later ask the requester to change your address in their records.”

### Discussion

The Form W-9 will be more easily understood by the person filling out the form, and the data taken from Forms W-9 and filed on information returns to the IRS will be more accurate, if the recommended enhancements are incorporated into the Form W-9. At present, taxpayers and businesses do not always furnish the requested information to payers or do not properly fill out the Form W-9. Taxpayers all too often look only at the first page and do not read through the following three pages to search out instructions for the various lines and boxes on the first page.

Taxpayers unable to locate clear instructions sometimes fail to furnish Form W-9 to the requester because they do not understand why it is needed and thus some of them become subject to backup withholding. Or, taxpayers furnish a nonmatching name-TIN combination or incorrect tax classification status because they do not find the instructions for those lines of the form and this leads to B Notices, Backup Withholding Notice (Incorrect/Missing TIN), all of which create extra burden for the taxpayer, the IRS and the information return filer.

The Burden Reduction subgroup undertook the issue of Form W-9 clarifying revisions partway through 2013 and resumed work on the issue in 2014. The participation and assistance of tax law specialists from the W&I Division in addressing the W-9 issues in 2014 has been much appreciated.

Adding numbers to the lines on the form, and corresponding numbers to the specific instructions for each line, will assist taxpayers in finding the instruction needed to provide correction information. Adding “do not leave this line blank” to the line 1 (name) caption 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 line 2 but line 1 (the name of the taxpaying individual or entity) is left blank.

Adding clarifying language for the various tax classifications will help payers determine the correct tax treatment and whether information reporting is required. Adding “check only one of the following seven boxes” to the line 3 (tax classification) caption will reduce the number of forms on which a single-member LLC checks both Limited liability company and Other, or an LLC checks both Limited liability company and C Corporation.

For Exempt payee code, adding “codes apply only to certain entities, not individuals; see instructions on page 3” makes it clear to individuals that they can ignore this line and their Form W-9 will remain valid.

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For Exemption from FATCA reporting code, adding “Applies to accounts maintained outside the U.S.” makes it clear that this information is not applicable to most taxpayers who provide Form W-9 to withholding agents located within the United States, and the form will remain valid without a FATCA exemption code for the vast majority of persons who will complete the Form W-9.

### D. 1099-MISC - Miscellaneous Income

We would like to acknowledge that tremendous progress has been made on some of our 2013 recommendations related to Form 1099-MISC, Miscellaneous Income. Forms 1099-MISC 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. IRPAC continues to encourage IRS to act on the following recommendations to address these problems.

In the 2013 Public Report we recommended adding a 1099-MISC page and have it linked to the home page of IRS.gov. IRS Representatives from SB/SE and Taxpayer Burden Reduction have been extremely responsive to our suggestions. The list below is the recommendations from 2013 that are now on the webpage dedicated to 1099-MISC. We applaud the swift action by W & I representatives.

- An expanded list of the types of payments reportable on the 1099-MISC
- A short list of payments that are not reportable and should not be reported on the 1099-MISC
- FAQs about 1099-MISC reporting

In addition, all of the recommendations under the item number 2 below have been accepted by IRS and incorporated in the draft 2015 instructions published on IRS.gov on September 15<sup>th</sup>. We really appreciate the IRS representatives from Forms and Publications who were involved in the discussions during the year and worked diligently to update 2015 instructions.

### 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 (Wage and Tax Statement) forms which has been successful. IRPAC also

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recommends that this feature be linked to 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, Publication 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G 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 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). But 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.

- 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

Add the following sentence to the back of copy A instructions of the 1099-MISC:  
“See instructions for 1099-MISC for explanation on how to correct previously filed forms or when to void a 1099-MISC.”

## Discussion

Every year many taxpayers receive erroneous 1099-MISCs from small businesses. Most errors happen with the use of box 7, non-employee compensation of Form 1099-MISC. Most boxes are clearly labeled but box 7 is often used by companies to report any and all payments to a person that is not an employee. The erroneously reported box 7 payments include not only the proper payments for services but also payments for products purchased, prizes and reimbursements of expenses. While the amounts in these examples may be reportable, they are not necessarily reportable in box 7 as reporting in box 7 indicates that these payments will be subject to self-employment tax. Therefore, improving instructions and providing examples explained on

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paper instructions as well as on the website will improve the proper reporting, especially for small businesses.

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 1099 forms or correcting 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, Annual Summary and Transmittal of U.S. Information Returns, with their IRS service center 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 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.

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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” and 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 better 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.

### **E. Nonresident Alien Withholding and Reporting of Payments for Truck or Rail Transportation**

#### **Recommendations**

1. IRPAC recommends a short addition to the first paragraph under “Transportation income” in Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, to clarify that income from rail or truck transportation does not qualify for the exemptions that may be available to ship or aircraft transportation income.
2. IRPAC again recommends that withholding agents be permitted to use a 50% - 50% allocation to determine the U.S.-source portion of payments of truck or rail transportation income.

#### **Discussion**

IRPAC made multiple recommendations in 2010, 2011, 2012 and 2013 to address withholding agents’ uncertainty about IRC Chapter 3 withholding requirements, withholding agents’ concerns about exposure to penalties for failures to withhold or report and perceptions of underreporting of income, all in regard to rules for tax withholding and Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, reporting of payments to non-U.S. persons for international transportation that either begins or ends in the United States. The 2010 IRPAC work on these issues

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was led by the Burden Reduction Subgroup; from 2011 - 2013 the Emerging Compliance Issues Subgroup took the lead; and in 2014 the Burden Reduction Subgroup again took the issues but with intent to present only two of the original six recommendations.

IRPAC appreciated the participation of the Office of the Associate Chief Counsel (International) in a meeting by conference call in which the issues raised by IRPAC were acknowledged and the areas needing study were identified. IRPAC understands that there was a reorganization within the Office of Chief Counsel (International) and in addition, many resources were reassigned to projects necessary for the implementation of the Foreign Account Tax Compliance Act and the directly related changes to other sections of the regulations. Largely as a result of that call, IRPAC makes only two recommendations on these issues this year. We trust the IRS will return in the next year or two years to the requests for broader guidance on these issues made in the 2010 – 2013 IRPAC Public Reports.

**Background: Gross transportation income and exceptions from chapter 3 withholding.** U.S.-source transportation income is generated by foreign transportation providers through the use of aircraft, ships, trains and trucks, but tax law and regulations and the compliance issues faced by withholding agents differ depending on whether the income is derived through the use of ships and aircraft or derived through the use of trains and trucks.

For purposes of certain exemptions from 30% Chapter 3, (Withholding of Tax on Nonresident Aliens and Foreign Corporations) withholding, “transportation income” means income derived from or in connection with the use or hiring or leasing for use of a vessel or aircraft or the performance of services directly related to the use of a vessel or aircraft under IRC § 863(c)(3). This income from ships and aircraft is exempt from the 30% 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 under IRC § 887(a). The income may be exempt from tax under a U.S. income tax treaty, a shipping treaty or an equivalent tax exemption as described under IRC § 883. Or, it may constitute income effectively connected with a U.S. trade or business that is subject to U.S. income tax under IRC § 1 or § 55.

Income from railroad or truck transportation is not included in the statutory definition of transportation income, so it does not qualify for the exemptions from 30% withholding that are available under IRC §§ 887 or 883. Withholding agents must look to the rules for services to determine withholding and information reporting obligations for truck and train transportation income.

Publication 515 is widely consulted by withholding agents particularly at the point of setting up vendors and approving invoices for payment, where withholding agents identify and classify payments for tax withholding and information reporting. Publication 515 provides guidance under the subheading “Transportation Income” which begins

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with this sentence: “U.S. source gross transportation income is generally not subject to NRA withholding.”

IRPAC advised the IRS that many withholding agents, as well as foreign cross-border transportation providers uneager to provide additional tax forms, are not reading beyond that first sentence. The term “transportation income” has a naturally broad meaning, and people pressed for time and seeking simplicity may take away only the idea of all transportation income being generally not subject to NRA withholding. There is an explanation in the second paragraph that transportation income is income from the use of a vessel or aircraft, but Publication 515 will be more helpful if there is an initial statement of how to treat income from truck or train transportation.

To clarify withholding obligations and increase compliance, IRPAC recommends the following wording for the first paragraph: “Transportation Income. U.S. source gross transportation income (in connection with a ship or aircraft) is generally not subject to NRA withholding. U.S. source income in connection with rail or truck transportation does not qualify for the exemptions that may be available to ship or aircraft transportation income.”

**Background: Gross transportation income and allocation of U.S.-source income.** Under IRC § 863, gains, profits and income from services rendered partly within and partly without the United States is treated as derived partly from sources within and partly from sources without the United States. This requires withholding agents to make an allocation of each such payment, in order to know what amount is subject to Chapter 3 withholding. IRC § 863(c)(2) provides a special income sourcing rule for transportation income that either begins or ends in the United States: the U.S. portion is a simple 50% of the total payment. However, this is limited to transportation income derived from or in connection with the use of a vessel or aircraft. Withholding agents for payments of income derived from rail or truck transportation have no current authority for a simple 50% allocation, so they bear the burden of trying to obtain and interpret rail container logs, truck drivers’ logs, and similar records in an attempt to identify what percentage of their total invoiced amount was driven within the U.S. Even if logs can be obtained, direct correlations with truck transportation invoices are extremely difficult to achieve due to onloading and offloading at depots and lack of detail on truck routing and miles traveled attributable to a particular withholding agent’s business.

IRPAC recommends that withholding agents be permitted to use a simple 50% - 50% allocation to determine the U.S.-source portion of payments of truck or rail transportation income. The lack of an allocation rule invites failures to withhold and report, and IRPAC believes the IRS has broad statutory discretion to develop sourcing rules for types of income where sourcing is not clearly established. Where a category of income is not listed in the sourcing regulations, case law tells us to proceed by analogy (*Howkins v. Commissioner*, 49 T.C. 689 (1968); *Container Corporation v. Commissioner*, 134 T.C. No. 5 (2010) affirmed by No.10-60515 (5th Cir., 502011)). Regulations should be able to address this matter without statutory constraint.

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### **F. Instructions for Form 2848, Power of Attorney and Declaration of Representative**

#### **Recommendations**

1. IRPAC recommends revising the Purpose of Form section of the instructions. Specifically, we recommend that the other forms listed be grouped together under a section with a common heading that indicates that these are the forms that can be used if you only want to authorize an individual or organization to inspect your tax documents but do not want representation. This would also allow for some of the repetitive language under each of the other forms to be removed.
2. IRPAC recommends clarifying and shortening several paragraphs in the Specific Instructions to make them easier to read and understand.
3. IRPAC recommends adding a link to the Centralized Authorization File (CAF) webpage entitled Common Reasons for Power of Attorney (POA) Rejection

#### **Discussion**

Many taxpayers, especially individuals or small business owners, are not equipped to respond to inquiries received from Internal Revenue Service due to the complexity of the tax laws. They often rely on tax preparers or others to represent them before IRS. With this in mind, IRPAC recommends the following changes to make it easier for taxpayers to understand when and how this form is to be used and when certain other forms are used in lieu of Form 2848. We will discuss the issues in the order they appear in the instructions for Form 2848 as revised in July, 2014.

#### **Purpose of Form**

After the initial paragraph describing the form, three forms are listed with some repetitive language. IRPAC recommends the three paragraphs listing the forms be replaced with the following sentence that applies to all three forms followed by a bulleted list of forms and specifics for the particular form as shown below.

If you want to authorize an individual or organization to request and inspect your confidential information, but do not want to authorize an individual to represent you, you can do one of the following:

- Use Form 8821, Tax information Authorization – This authorization is valid for 6 months,

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- Use Form 4506T, Request for Transcript of Tax Return – Request for a Transcript of Tax return,
- Use Form 56, Notice Concerning Fiduciary Relationship – To notify the IRS of the existence of a fiduciary relationship. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of the taxpayer and acts as the taxpayer, not as a representative. A fiduciary may authorize an individual to represent or perform certain acts on behalf of the person or entity by filing a power of attorney that names the eligible individual(s) as representative(s) for the person or entity. Because the fiduciary stands in the position of the person or entity, the fiduciary must sign the power of attorney on behalf of the person or entity.
- Add a new paragraph that explains that the taxpayer may also request his/her own copy of a transcript on [IRS.gov](https://www.irs.gov).

### Specific Instructions

- IRPAC recommends breaking up the long paragraph about Individuals into three shorter paragraphs as shown below so that individuals not familiar with the form can better understand what needs to be entered in the Taxpayer Information section of the form.

**Individuals.** Enter your legal name, social security number (SSN), individual taxpayer identification number (ITIN), and/or employer identification number (EIN), if applicable, and your street address or post office box, and city, state, and zip code.

If you file a tax return that includes a sole proprietorship business (Form 1040 (Schedule C, Profit or Loss From Business ) and you are authorizing the listed representative(s) to represent you for your individual and business matters, including employment tax liabilities, enter both your SSN (or ITIN) and your business EIN as your taxpayer identification numbers.

If you, your spouse, or former spouse is submitting powers of attorney to the Centralized Authorization File (CAF) in connection with a joint return that you filed, you must submit separate Forms 2848 even if you are authorizing the same representative(s) to represent you.

- IRPAC recommends changes to the first paragraph of Line 3, Acts Authorized, so that a list of items that must be entered is on a bulleted list so that each item is easily checked off as taxpayers fill out the form. Here are the suggested changes to the paragraph.

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Enter the description of the matter, and where applicable, the tax form number, and the year(s) in order for the power of attorney to be valid. For example:

- You may list “Income, 1040” for calendar year “2010”
- “Excise, 720” for “2010” (this entry covers all quarters in 2010)
- You may list all consecutive multiple years or a series of inclusive periods, including quarterly periods, by using “thru” or a hyphen. For example, “2008 thru 2010” or “2<sup>nd</sup> 2009-3<sup>rd</sup> 2010.”
- For fiscal years, enter the ending year and month, using the YYYYMM format.
- DO NOT use a general reference such as “All years,” “All periods,” or “All Taxes.” The IRS will return any power of attorney with a general reference.
- Representation only applies for the years or periods on line 3.
- List on line 3 only tax forms directly related to the taxpayer listed on line 1.
- You may list the current year/period and any tax years or periods that have already ended as of the date you sign the power of attorney.
- Future tax periods listed may not exceed 3 years from December 31 of the year that the IRS receives the power of attorney.
- If the matter relates to an **estate tax**, enter the dates of the decedent’s death instead of the year or period.
- If the matter relates to an **employee plan**, include the plan number in the description of the matter.

### **IRPAC recommends adding a link to the CAF webpage**

The instructions are comprehensive and the mistakes may be even further reduced when IRPAC suggestions are incorporated. However, it will be helpful, since the webpage already exists, to place a link on the instructions to alert taxpayers to a list of common reasons why POAs are often rejected.

### **G. Form 8889 – Health Savings Account**

#### **Recommendations**

The IRPAC thanks the IRS for responding to a recommendation made during 2014 meetings to change the description for Line 15 of Form 8889, Health Savings Accounts (HSAs), to avoid inadvertent incorrect reporting. We are happy to report that 2014 draft form posted on IRS website is changed to reflect our recommendation.

#### **Discussion**

The wording of Line 15 on the 2013 Form 8889 is ambiguous, which may result in an incorrect amount being reported on a federal tax return. Taxpayers often interpret

## Burden Reduction Subgroup Report

Line 15 to mean that they are to enter only the amounts for which they have not been reimbursed; then when they subtract this figure from the amount on Line 14 it often results in taxable income and penalties. Line 14 is the amount that is reported by the HSA administrator on Form 1099-SA, Distributions From an HSA, Archer MSA, or Medicare Advantage MSA, as distributed from the HSA plan in the tax year. The taxpayer should report only the qualified medical expenses their HSA has reimbursed them for.

To illustrate, a taxpayer incurred \$1,000 in qualified medical expenses and submitted \$1,000 to be reimbursed during 2013. As of 12/31/2013, only \$800 had been received from HSA and \$200 was not yet distributed to the taxpayer.

Taxpayer enters \$800 reported on the Form 1099-SA on line 14 and reading line 15 of Form 8889 that states "Unreimbursed qualified medical expenses", the taxpayer enters \$200 on line 15. This results in the taxpayer reporting \$600 in taxable income (line 14 minus line 15). The intended and correct entries for these lines are \$800 for line 14 and also \$800 for line 15 for a net result of no taxable income as the taxpayer did not receive any distributions from HSA in excess of medical expenses incurred and paid for by the HSA provider.

To avoid this type of error, IRPAC recommended changing the line description to one of the following three.

1. Qualified medical expenses paid using HSA distributions (see instructions),
2. Qualified medical expenses paid by your HSA directly to you or on your behalf, or
3. Distributions from all HSAs in 2014 that were used for qualified Medical Expenses.

2014 draft form 8889 dated June 20, 2014 shows the line description #1 suggested above. We thank IRS for a swift action.

**INFORMATION REPORTING PROGRAM  
ADVISORY COMMITTEE**

**EMERGING COMPLIANCE ISSUES  
SUBGROUP REPORT**

**BEATRIZ T. CASTANEDA  
DARRELL D. GRANAHAN  
G. LYNNE GUTIERREZ  
VICTORIA KANER  
JULIA SHANAHAN, SUBGROUP CHAIR**



## Emerging Compliance Issues Subgroup Report

### A. 1099-B Limitations of Boxes 1f and 1g

#### Recommendations

1. Provide separate boxes on Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, to report disallowed loss, market discount, and an indicator to report the sale of collectibles.
  - Repurpose box 1f to report market discount.
  - Repurpose box 1g to report wash sale disallowed amount.
  - Add a new box containing a checkbox to indicate whether or not the gross proceeds are from the sale of collectibles.
2. IRPAC understands that resource constraints may prevent the IRS from making the changes required to provide meaningful market discount and wash sale disallowed loss amounts to both the IRS and taxpayer for Tax Years 2014 and 2015. IRPAC therefore strongly recommends that brokers should not be required to treat the transaction as covered. Brokers should not report cost basis, market discount, or disallowed loss in circumstances where a client sells a debt instrument acquired at a market discount in a wash sale transaction.

#### Discussion

Instructions for Form 1099-B require brokers to enter either market discount or wash sale disallowed loss in box 1g. They also require that brokers enter a corresponding code in box 1f indicating whether the amount in 1g was provided for wash sales (W), market discount (D), or if the proceeds were from the sale of collectibles (C). It doesn't appear the IRS considered the possibility of a transaction having both market discount and disallowed loss amounts. While this type of transaction does not happen frequently, brokers require a mechanism to report both amounts.

Given the inability to report both numbers on the 1099-B brokers are left with the decision to report either the disallowed loss or market discount. If a taxpayer sees a disallowed loss on their 1099-B for a covered transaction, they may presume they had no market discount leading them to underreport their income with no means for the IRS to check the transaction. Alternatively, if brokers report market discount and not disallowed loss clients may unintentionally claim a loss they are not entitled to.

Over the past year IRPAC has met on several occasions with the IRS and it has indicated resource constraints prevent them from making the 1099-B box changes for Tax Year 2014 and likely Tax Year 2015. IRPAC recommends that in situations where taxpayers sell debt instruments acquired at a discount in a wash sale transaction that brokers be allowed to treat the position as non-covered until such time the IRS is able to implement the programming changes required for the additional boxes. This transition relief will prevent taxpayers from underreporting their income because they are relying on incomplete reporting on their Form 1099-B for covered transactions.

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### B. 1099-INT Limitation of Box 11 Bond Premium

#### Recommendation

1. Provide information that can be easily transferred to a taxpayer's return and will result in the correct payment of tax. Add four new bond premium boxes that correspond to the existing interest income reporting boxes on Form 1099-INT, Interest Income:
  - Premiums on bonds that accrue taxable interest (non-government).
  - Premiums on bonds that pay non-taxable interest not subject to AMT.
  - Premiums on bonds that pay federally taxable interest (government instruments).
  - Premiums on private activity bonds with accrued premium subject to AMT.

#### Discussion

The instructions to box 11 for the Form 1099-INT require brokers to aggregate bond premium for all individual bonds into a single gross number in Box 11 regardless of whether the debt instrument is taxable or tax-exempt. This method does not provide a useful number for the taxpayer to report their income and may result in underreporting of income because they reduced their taxable interest by tax-exempt bond premium. In meetings with the IRS they reiterated their previous comments that form changes would be delayed until the 2016 Tax Year due to resource constraints.

### C. 1099B Aggregate Reporting of Sales

#### Recommendation

1. Allow for aggregate sales reporting for one trade order filled on the same day by multiple fills.

#### Discussion

The IRS instructions for Form 1099-B require brokers to report each transaction (other than regulated futures, foreign currency, or section 1256 option contracts) on a separate Form 1099-B. Clients who place large orders to sell or sell securities that are thinly traded may have one trade order broken up into multiple transactions at different times and prices to fulfill their order. This usually happens on the same day but can take place on subsequent trading days. There are some clients who require hundreds to thousands of transactions to fulfill their order.

The instructions for Form 1099-B require brokers to issue multiple forms for a single sale order unless the "transactions are reported on a single confirmation that lists an aggregate price or an average price per share." Despite this provision, brokers are still issuing multiple 1099-Bs for same day orders because their system does not

## Emerging Compliance Issues Subgroup Report

provide for single confirmations for the same order with an aggregate or average price. This creates unnecessary records and leads to increased postage and print costs for broker dealers. IRPAC recommends the IRS permit brokers to aggregate sales for the same order that take place on the same trade date for the same CUSIP (Committee on Uniform Securities Identification) or security identifier. Allowing aggregation would materially reduce the number of Forms 1099-B issued to the taxpayer without changing income reported to the IRS.

### **D. Taxpayer Access to Information on Cost Basis Reporting for Debt Instruments Recommendations**

1. Add Frequently Asked Questions (FAQs) specific to reporting cost basis and bond premium for debt instruments to IRS.gov.

Cost Basis FAQ's for Debt Instruments for consideration:

What debt instruments are covered in 2014, 2015, 2016 and 2017?

What debt instruments are not covered at all?

What is market discount?

What is acquisition premium?

What is bond premium amortization and how do I adjust my cost basis for it?

What does it mean to accrue market discount and how do I adjust my cost basis for it?

What defaults are you requiring brokers to use when reporting premium and market discount?

- Brokers must assume clients have made IRC §171 election to amortize bond premium on taxable bonds
- Brokers must report market discount at disposition
- Brokers must accrue market discount using the straight-line method

What is an IRC §171 election?

Why are brokers required to assume clients have made an election under IRC §171 to amortize bond premium?

What if the broker reporting rules do not match my tax filing elections?  
Can I instruct them to make changes to their reporting?

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If I give brokers written instructions to change my elections will they notify you so it will also apply to my tax return? Does making an election with my broker mean that I have made the election with the IRS?

Why can't I elect with my broker to turn off amortization on my tax exempt bonds?

How do I make an election with the IRS?

Can I change my elections every year? Can I change my elections back to the defaults?

What is the deadline for me to provide my broker with my debt instrument elections?

If brokers are reporting my cost basis do I need to make additional adjustments to my cost basis on my schedule D for my debt instruments?

2. Move the location of the Cost Basis Reporting FAQ page on [IRS.gov](https://www.irs.gov) to the Help and Resource page for Individuals (Appendix A).

### Discussion

The cost basis and bond premium reporting regulations represent a significant change for taxpayers and brokers. Much of the information for the reporting of cost basis and premium on debt instruments is located within the Internal Revenue Code and is not easily accessible by or understood by individual taxpayers. As discussed in the 2013 Public report, providing easily understood and accessible taxpayer resources is necessary. Developing plain language answers to the suggested FAQs would go a long way towards alleviating confusion over the new reporting rules.

A Cost Basis Reporting FAQ page exists on IRS.gov under the Small Business & Self Employed pages. Individual Taxpayers can only locate it through a key term search. We recommend moving it to the Help and Resources for Individuals page and adding the link to the list of frequently asked questions. This will enable taxpayers to locate it more easily.

### E. Transfers of Section 1256 Options

#### Recommendations

1. Amend IRC §1.6045A–1(B)(vi) to remove transferors of § 1256 Option Contracts as being exempt from transfer statements.
2. Amend IRC 1§ 1.6045A–1 to include the following:
  - In addition to the information required in paragraph (b)(1) of this section, for a transfer of a § 1256 option that is a covered security, the unrealized profit or (loss) at the end of the prior tax year is required.

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### Discussion

The final cost basis regulations for Debt and Options specifically exempted transferors of § 1256 options from issuing a transfer statement<sup>1</sup>. Holders of § 1256 option contracts have the ability to transfer them between firms. Brokers are required to treat § 1256 options as if they were regulated futures contracts and perform realized profit or (loss) calculations on closed contracts, unrealized profit or (loss) on open contracts, and aggregate profit or (loss). Brokers are unable to perform these calculations without knowing the cost basis and the prior year's unrealized gain loss number at the transferring firm. If these numbers are not added to the transfer statement brokers will not be able to issue Form 1099-B reporting for any § 1256 option contracts that are transferred from another firm.

### F. Coordination of Taxpayer Forms with Broker Forms

#### Recommendations

1. The IRS should coordinate revisions to individual taxpayer forms with the release of 1099 substitute statement requirements.
2. The IRS should share copies of draft forms with IRPAC for feedback.

### Discussion

On January 14, 2014 the IRS released revised Form 8949, Sales and Other Dispositions of Capital Assets, for use in the 2013 filing season. This form revision was intended to help taxpayers report more accurately by providing new alpha check boxes for the reporting of assets with a long term holding period. Unfortunately, the IRS did not revise IRS Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns, which provides the rules for substitute forms. The instructions required brokers to reference these checkboxes on Composite Forms 1099-B. This mismatch between the broker reporting headings and the instructions on Form 8949 led to taxpayer confusion, eroded client confidence in the accuracy of their 1099 forms, and placed the burden and associated costs on firms to communicate with their clients on an emergency basis.

IRPAC advises the IRS to consider all potential forms impacted by revising the instructions of a single taxpayer form. In addition IRPAC recommends that the IRS share copies of draft forms with IRPAC so that members may provide necessary and meaningful feedback on the potential impacts to the information reporting community and taxpayers.

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<sup>1</sup> (vi) Section 1256 options. A transferor of an option described in § 1.6045-1(m)(3) is not required to furnish a transfer statement.

## Emerging Compliance Issues Subgroup Report

### G. IRC §6050W and Form 1099-K Reporting

#### Recommendations

IRPAC continues to recommend this year that more guidance is needed related to IRC § 6050W "Returns Relating to Payments Made in Settlement of Payment Card and Third Party Network Transactions." These recommendations are set forth below as numbered items.

1. IRPAC recommends that the IRS provide additional official guidance (e.g. revenue rulings, notices, proposed 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.
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.
3. During meetings with the IRS in 2014, IRPAC recommended that the IRS issue guidance to clarify that an aggregated payee (i.e., an intermediary who receives payments from a payment settlement entity (PSE) on behalf of one or more participating payees and distributes such payments to the participating payees) must either be: (i) in the case of a payment card transaction, a merchant acquiring entity (MAE); or (ii) in the case of a third party network transaction, a third party settlement organization (TPSO). IRC § 6050W(b)(1).<sup>2</sup> IRPAC suggested that the IRS include in guidance two examples that make it clear that the de minimis rules applicable to TPSOs would apply to an aggregated payee that also met the definition of a TPSO.
4. 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 (e.g. parties participating in accounts receivable factoring transactions). 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

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<sup>2</sup> IRPAC believes this result is required because a PSE is defined in the Code to either be an MAE or a TPSO. IRC §6050W(b)(1).

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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.

5. 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.
6. 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.
7. To minimize burdens and report insignificant amounts, IRPAC recommends implementing a minimum threshold below which reporting under section 6050W would not need to be performed. We believe this threshold should be at least as high as the combined cost to the payer to print and mail the IRS Forms 1099-K, Payment Card and Third Party Network Transactions, to the merchant. However, if the IRS does not believe it has the authority to implement a minimum threshold at this time, IRPAC alternatively recommends that the IRS issue guidance to exclude from the definition of a "reportable payment transaction" wire transfers of funds that are equal to \$.01 and that are made by the PSE solely to check that it has the correct banking information for the merchant at the time the relationship is established ("Wire-Check Payments"). Thousands of Form 1099-Ks are sent out each year with no more than \$.01 reported because the account activity for the year only involved setting up the account. Defining reportable payment transactions to exclude these Wire-Check Payments would save both the IRS and the private sector significant resources. IRPAC believes the IRS has the authority to make this change since it relates to the definition of what is or is not a payment transaction.

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### 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 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.

IRC § 6050W and the related Treasury Regulations require the reporting of 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. Third party network transactions are any transactions settled through a third party payment network.

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 once again urges the IRS to issue guidance to address these issues as expeditiously as possible.

Guidance is needed to clarify that aggregated payees can retain their TPSO status upon distributing payment (as a PSE) to one or more participating payees. An aggregated payee's retention of TPSO status should not vary based on the type of arrangement (i.e. payment card, debit card or bank account) or the source of the funds from which it receives payment. This is especially appropriate, for example, where the contractual terms between the intermediary and the credit card processing entity from which the intermediary receives payments are not identical to those between the intermediary and the merchant. (e.g., the credit card processing entity might not provide any fraud guarantees for transactions, but the intermediary might offer that service to its merchant customers.) Where the contractual terms differ and may give rise to different obligations for the intermediary, the classification of the arrangement between the intermediary and the merchant cannot be derived from the character of the arrangement between the intermediary and the credit card processing entity. Instead, given the potential for different obligations under the two arrangements, each arrangement should be evaluated independently. Accordingly, IRPAC recommends that the IRS issue guidance to clarify that an intermediary serving as an aggregated payee when it receives payment may be treated as a TPSO with respect to its payment of those funds to the merchant.

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Guidance is also needed either to implement a minimum threshold below which reporting under § 6050W would not need to be performed or – if the IRS does not believe it has the authority to implement a minimum threshold at this time – to exclude from the definition of reportable payment transactions Wire-Check Payments. In addition, guidance is needed to make clear under certain arrangements whether or not IRC § 6050W applies. Accordingly, IRPAC recommends that the IRS issue guidance to provide much needed clarity to reporting organizations as they attempt to navigate this complex area of the law.

### H. Form 1098-T

#### Recommendations

1. 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, Miscellaneous Income, and Form W-2, Wage and Tax Statement.
2. IRPAC encourages the IRS to update current notices and to closely monitor future notices sent to taxpayers in relation to the Form 1098-T. Previous forms have contained confusing language indicating that colleges and universities are completing the forms erroneously or that could be misinterpreted to indicate that colleges and universities should furnish additional information to help the taxpayer claim education credits.
3. IRPAC recommends that the IRS update the example in the Appendix of Publication 970, Tax Benefits for Education, to include treatment of qualified expenses that are not reported on Form 1098-T and treatment of a scholarship that is used for qualifying expenses but that cannot be claimed as paid by the taxpayer.

#### 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 stating 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.

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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:

### § 1087II. 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 § 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.

In recent years taxpayers have received IRS notices, regarding education credits, that have resulted in significant taxpayer confusion. Form 886-A, Explanation of

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Items, indicated that the taxpayer needed to obtain a Form 1098-T with box 1, payments received for qualified tuition and related expenses, completed even though the college or university accurately reported amounts billed for qualified tuition and related expenses, in box 2 as allowed by law. Since colleges and universities may report in either box 1 or box 2, this language should be amended to reflect that a correction of the form is not required. In other instances, taxpayers received a CP2000 notice with unclear language that was interpreted by taxpayers to mean that they needed a letter signed by the student's institution explaining the amounts claimed on the taxpayer's tax return. The IRS has been receptive to updating the wording in these notices so IRPAC will continue to work with the IRS to develop clear language that reflects the IRS' need for additional information from the taxpayer while observing that colleges and universities may, by law, report in either box 1 or box 2 of the Form 1098-T. Additionally, IRPAC recommends that the IRS continue to monitor future notices to ensure that confusing language is not used.

Finally, in Publication 970, Tax Benefits for Education, the IRS provided an Illustrated Example of Education Credits. IRPAC recommends that the IRS add language that addresses how a taxpayer may utilize qualifying payments not reported on a Form 1098-T, such as books not purchased through the school, and also how a taxpayer should deal with a scholarship that is used to pay for qualifying expenses.

In sum, there are thousands of colleges and universities in the U.S. that struggle with tax information reporting issues involving Form 1098-T. Further, taxpayers continue to struggle with the complexities of claiming education credits. 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, and also to improve taxpayers' experience in claiming valuable education credits.

### I. Form 8300

#### Recommendation

1. IRPAC again recommends that the IRS clarify whether 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 of, an instrumentality of, owned by 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 require that certain information be reported to the IRS and the Financial Crimes Enforcement Network (FinCEN). This information must be reported on IRS/FinCEN Form 8300.

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IRC § 6050I(a) provides that “Any 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 Bank Secrecy Act (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. A single IRS Form 8300 satisfies both the IRS and BSA filing requirements.

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:

2. 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 § 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 § 6050I to file a Form 8300 information report.

10. 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 § 162. To fall under this category, an organization must have obtained § 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.

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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 has caused confusion. Specifically, § 4.26.10.6 (07-13-2012) of the IRS Internal Revenue Manual (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 26 CFR 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 for purposes of Form 8300.

Although it is clear that the definition of who must file Form 8300 is identical for both purposes of the filing, the IRS has not explained how a public university meets this definition. Since the IRS definition is 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 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. The IRS has indicated to IRPAC that there are plans to issue guidance to clarify Form 8300 reporting requirements for colleges and universities. IRPAC eagerly awaits this guidance.

### **J. Revenue Procedure 95-48**

#### **Recommendation**

1. 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

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published with no information linking the two. The IRS has indicated that it agrees with IRPAC; however, no action has been taken to date.

### 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 governmental units and affiliates of governmental units, some of which are § 509(a)(3) supporting organizations, that 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 the PPA removed the Secretary's authority to relieve organizations described in § 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**

**EMPLOYEE BENEFITS & PAYROLL  
SUBGROUP REPORT**

**ROBERT J. BIRCH  
ERNESTO S. CASTRO  
MICHAEL W. GANGWER  
REBECCA M. HARSHBERGER, SUBGROUP CHAIR**



## **A. Third-party Sick Pay Reporting**

### **Recommendation**

1. In our 2013 Public Report, IRPAC recommended the IRS create a way to accept third-party sick pay recap reporting since the current process of reporting to the Social Security Administration (SSA) will end when SSA implements its new Wage Reporting System in 2014. The IRS has created the new Form 8922, Third-Party Sick Pay Recap, and will accept paper recap forms for tax year 2014 filed in 2015.
2. IRPAC recommends that IRS continue to work with IRPAC on all third party sick pay reporting issues.
3. IRPAC requests that the IRS create an electronic version of the new form for the 2015 filing season.

### **Discussion**

IRS worked with IRPAC on the paper receipt of new Form 8922 and IRPAC will continue to work with IRS on the electronic filing of the form as well as any processing issues that may arise with this new form and the new way to report recaps.

Many employers use third party sick pay providers to furnish and file Forms W-2, Wage and Tax Statement, for short-term and/or long-term disability payments. It is very common under these arrangements for the employer and third party to agree to split the responsibilities for tax depositing and reporting Forms 941, Employer's Quarterly Federal Tax Return and Form W-2, Wage and Tax Statement, in such a way that a Third-Party Sick Pay Recap W-2 and W-3, Transmittal of Wage and Tax Statements, must be filed by one party to reconcile its Forms 941, with its Forms W-2. Reporting directly to the IRS will be more effective and efficient compared to the historic process of reporting to the SSA that, in turn passes the information over to the IRS.

## **B. Basis Allocation for Direct Rollovers to IRAs under IRC § 402(f)**

### **Recommendation**

1. IRPAC would like to thank the IRS for adopting our recommendation to provide consistent basis allocation rules for direct and indirect rollovers from qualified retirement plans. IRPAC first provided a formal recommendation on this issue in our 2010 Public Report, followed by multiple discussions with IRS personnel in 2012 and 2013.

## Discussion

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) expanded the rollover provisions to permit the rollover of after-tax amounts (directly and indirectly), and expressly provided in the flush language of IRC § 402(c)(2) that the amount transferred shall be treated as consisting first of "the portion of such distribution that is includible in gross income." The legislative history similarly stated that "if a distribution includes both pretax and after-tax amounts, the portion of the distribution that is rolled over is treated as consisting first of pretax amounts." Accordingly, plan sponsors and third party administrators have historically permitted a participant to directly or indirectly roll over the entire pre-tax amount first. For example, if the participant took a full distribution of \$10,000 of his account, which had \$2,000 of after-tax contributions and the remainder as pre-tax amounts, the participant could elect to rollover the entire \$8,000 pre-tax amount to a traditional IRA and the remaining \$2,000 to be paid in cash (or rolled to a Roth IRA) to the participant tax-free.

An updated model 402(f) (rollover notice) was issued in late 2009 (Notice 2009-68, Safe Harbor Explanation — Eligible Rollover Distributions) that challenged this approach. The Notice states that if the distributee elects to rollover only a portion of the distribution in a direct rollover, an allocable portion of any after-tax contributions are considered rolled over.

With the release of Notice 2014-54, the IRS has reunified the treatment of basis allocation for direct and indirect rollovers, which will simplify tax planning for retirees, tax administration for retirement plan administrators, and provide ease of administration for the IRS.

## C. Proper Reporting of Flexible Spending Arrangement Overpayments

### Recommendation

1. IRPAC requested the IRS issue correction procedures for improper Health Flexible Spending Arrangements (FSA) payments by Third Party Administrator (TPA). When an employer hires a TPA to run an FSA program and pay the reimbursements and the TPA discovers an error has been made in making a reimbursement to a participant which cannot be offset by other proper payments (e.g., ineligible expenses, insufficient receipts), the participant should be treated as having taxable income.

IRPAC requested guidance/clarification on how and when the taxable income is reportable. The Office of Chief Counsel released a Memorandum on March 28, 2014 describing the correction procedure for improper FSA payments.

## Discussion

IRPAC thanks the Office of Chief Counsel for publishing guidance along with law and analysis. The Memorandum will facilitate compliance.

### **D. Patient Protection and Affordable Care Act and Health Reimbursement-like plans**

#### **Recommendation**

1. IRS should clarify that non-health reimbursement arrangement (HRA) integrated plans are not required to satisfy the lifetime and annual rules on a stand-alone basis, provided that the combined benefit satisfies the requirements.

#### **Discussion**

The Patient Protection and Affordable Care Act (ACA) prohibits group health plans from imposing lifetime and annual limits on the dollar value of essential health benefits, but allows “restricted annual limits” for plan years beginning before January 1, 2014. The preamble of the Interim Final Rule on lifetime and annual limits (26 CFR 54.9815-2711T) distinguishes between stand-alone HRAs and HRAs that are integrated with other group health coverage. The preamble states that when an HRA is integrated with other health coverage, if the other coverage alone would meet the lifetime and annual limits requirements, the HRA need not satisfy the requirement on its own because the combined benefit satisfies the requirements.

There are non-HRA plans that are integrated with other health coverage that satisfy the lifetime and annual limit rules. These non-HRA plans do not permit unused portions of the maximum dollar amount to be carried forward to increase the maximum reimbursement amount in subsequent coverage periods. These plans should be given the same treatment as integrated HRAs for purposes of the lifetime and annual limit rules. IRPAC wishes to commend the IRS for publishing Notice 2013-54 wherein they consolidate the Affordable Care Act, HRAs, Health FSAs and certain other Employer Healthcare Arrangements with Department of Labor. More information is available at [FAQs about Affordable Care Act Implementation Part XI](#).

## **E. Withholding and reporting for pension payments to Nonresident Aliens**

### **Recommendation**

1. IRPAC recommends that the IRS clarify the withholding requirements in cases where retirement plan participants, who are nonresident aliens (NRAs), complete in-plan Roth rollovers. While the IRS provided clear guidance that withholding is not required on the in-plan Roth rollover transaction for US persons, it is unclear to plan administrators and payors what withholding requirements, if any, apply to these transactions for NRAs. Recent modifications to the in-plan Roth rollover rules (found in Notice 2013-74) create further uncertainty, as the IRS indicated that funds not eligible for distribution from the retirement plan can now be included in an in-plan Roth rollover.
2. IRPAC also recommends that the IRS expand the list of “Income Codes” reported in box 1 of Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding, to allow for more accurate reporting of pension income and potentially prevent lost tax revenue.

### **Discussion**

#### **Withholding on in-plan Roth rollovers**

In-plan Roth rollovers became effective for distributions made after September 27, 2010, and permit a plan that includes a qualified Roth contribution program to allow employees to roll over pre-tax amounts from their accounts to their designated Roth accounts in the plan. To be eligible for an in-plan Roth rollover under Small Business Jobs Act of 2010 (SBJA) § 2112, the amount had to satisfy the rules for distribution under the Code (an “otherwise distributable amount”) and had to be an eligible rollover distribution as defined in § 402(c)(4). Section 902 of The American Taxpayer Relief Act of 2012 (ATRA) added § 402A(c)(4)(E) to the Code to expand the type of amounts eligible for an in-plan Roth rollover. IRC § 402A(c)(4)(E) provides that the in-plan Roth rollover of these additional amounts (“ otherwise nondistributable amounts” ) will not be treated as violating the statutory distribution restrictions applicable to elective deferrals.

In Notices 2010-84 and 2013-74, the IRS provided clear guidance that the mandatory 20% withholding found in IRC § 3405 does not apply to an in-plan Roth direct rollover, noting specifically that some or all of the rollover amount may not be eligible for distribution under the terms of the plan. However, the IRS did not address whether or not the mandatory 30% withholding found in IRC § 1441 applies to an in-plan Roth direct rollover. If the IRS believes that IRC § 1441 withholding does apply, then IRPAC believes that the IRS must issue additional guidance to inform payors of the requirement to withhold and to reconcile how payors can withhold tax on in-plan Roth direct rollovers when some or all of the rollover amount is not eligible for distribution from the plan.

Note that if withholding is required on this transaction, additional guidance will also be needed to clarify how payors should report the transactions on Form 1042-S.

### **Expanding “Income Codes” on Form 1042-S for pension distributions**

Payors report pension distributions to US persons on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., which has a “Distribution Code” scheme in box 7 that allows the payor to communicate information about the nature of pension distribution to IRS. Important examples include whether or not a distribution is “early” and subject to the early withdrawal penalty or when a distribution is a nontaxable direct rollover.

Form 1042-S, which among other things, is used to report pension income to foreign persons, has no corresponding coding system for pension distributions. Currently the only way for a payor to communicate that a distribution is from a pension is by using “Income Code -14” in box 1. That single income code is used for all pension distributions, meaning that pension payors have no mechanism to indicate to the IRS or the foreign plan participant that the pension distribution is “early” and subject to the 10% penalty. Without this information, the IRS and foreign plan participants may be unable to determine when an early distribution penalty applies, potentially leading to lost revenue for the IRS.

IRPAC believes that the IRS could close this gap by expanding the list of “Income Codes” to include several variations on Income Code “14 – Pensions, annuities, alimony, and/or insurance premiums”.

IRPAC provides the following list of suggested additional “Income Codes” for box 1 on Form 1042-S:

- 52 - Pension or annuity - early distribution
- 53 - Pension - taxable Roth conversion or rollover
- 54 - Pension or annuity - direct rollover
- 55 - Pension - nontaxable Roth distribution
- 56 - SIMPLE IRA - early distribution in first 2 years

## **F. ACA Education Using Plain Language and Education**

### **Recommendation**

1. The ACA Information Center for Tax Professionals page on the IRS website should be improved to provide clearer guidance about what constitutes minimum essential coverage (MEC).

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2. Special emphasis should be placed on explaining in the forms and instructions a unique 2014 issue where no information reporting will exist and confusion about MEC is very likely.

### **Discussion**

Tax professionals will be confused about what type of documentation to accept in preparation of individual income tax returns for 2014 regarding MEC. The chart on the IRS webpage about the individual shared responsibility provision lists 28 examples of differing types of health insurance coverage. IRPAC commends IRS for the detailed listing of coverages and the work that was involved in the listing. The difficulty will be for taxpayers to match the type of coverage from the list to the coverage they have. This is especially true for the examples of coverages with references to special federal laws. Combining the complexity of tax rules together with the complexity of understanding health insurance creates a near perfect storm for taxpayers and tax professionals.

The confusion will be most pronounced for 2014 since the individual shared responsibility provision of IRC §5000A is new for 2014. The information reporting rules of IRC §§6055 and 6056 have been delayed for one year with reporting first required for 2015. For years after 2014 this confusion will be mitigated with new information returns 1095-B, Health Coverage, and 1095-C, Employer Provided Health Insurance Offer and Coverage, reporting who has MEC and for what period of time during the year.

Early release drafts of Form 1095-B and 1095-C were issued as “DRAFT AS OF JULY 24, 2014”. Early release draft instructions were issued as “DRAFT AS OF AUGUST 28, 2014.” On August 29, 2014, IRS released Questions and Answers on Information Reporting by Health Coverage Providers on IRS.gov. Voluntary reporting on these forms has been encouraged for 2014 but is being hampered by the timing of final forms and instructions.

IRPAC considered various recommendations and found no perfect sources of information to be used in advance of the requirements to provide Forms 1095-B and 1095-C for 2015. We reviewed documents entitled “New Health Insurance Marketplace Coverage and Your Health Coverage,” the “Summary of Benefits and Coverage,” a typical insurance identification card and other non-governmental documents. The Summary of Benefits and Coverage does require a statement about MEC starting in 2014. However, none of the documents examined contained all of the information necessary to conclude that MEC exists for the responsible person and all covered individuals for all months during 2014.

In order to assist taxpayers and tax professionals for 2014 IRPAC recommends that special emphasis be placed in instructions on the most

common coverage types, and common types of documentation acceptable as proof of coverage for 2014.

### **G. Reporting by insurance companies and third parties under IRC §§6055 and 6056**

#### **Recommendation**

1. IRPAC recommends that instructions for line 61 of Form 1040, U.S. Individual Tax Return, discuss the importance of providing social security numbers for responsible and covered individuals to insurance companies and employers as well as the consequence of not providing social security numbers. During 2014 IRPAC shared with the IRS suggested “Questions and Answers” on this subject and recommended that similar information be shared in form instructions and on the IRS website.
2. The 2013 IRPAC Report stated that “IRPAC recommends that the IRS issue Taxpayer Identification Number (TIN) solicitation requirements and procedures for purposes of satisfying reporting under §§6055 and 6056 and that IRS explain these rules in plain language on the IRS webpages designed for individuals.” In 2014, IRPAC recommended (Appendix B) that the 2014-2015 Priority Guidance be expanded to include new or revised regulations under IRC §§6055 and 6056 which address unique new solicitation issues. These recommendations continue to be relevant today.
3. The 2013 IRPAC Report noted the need for adequate transition rules to implement these new reporting rules. IRPAC recommends that IRS expand the time period for voluntary compliance with IRC §§6055 and 6056 from 2014 to 2015 and provide general transition relief for 2015.

#### **Discussion**

1. IRC §§6055 and 6056 impose new information reporting rules on insurance companies and employers. These rules were initially to apply for 2014 but were delayed by Notice 2013-4, 2013-31 I.R.B.116 until 2015. Insurance companies have taken steps to secure social security numbers of customers. Employers are taking similar steps for dependents of their employees who are covered individuals. Insurance companies report mixed success in ongoing efforts to secure missing social security numbers.

New Forms 1095-B and 1095-C will be used by the IRS to verify compliance with the individual shared responsibility provision on income tax returns. Insurance companies and employers will electronically provide this information to IRS for matching against filed individual income tax returns. Electronic information provided to IRS without social security numbers will be

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difficult to match effectively and likely result in correspondence from IRS asking taxpayers to verify coverage. The correspondence from IRS asking taxpayers to verify coverage may be expected to do little to work toward one part of the Strategic Goals of the IRS for 2014-2017 to “deliver high quality and timely service to reduce taxpayer burden and encourage voluntary compliance.” Voluntary compliance could actually suffer from unnecessary and scant IRS resources being utilized to verify compliance which have to be diverted from other priorities with higher potential for noncompliance.

The 2013 IRPAC Report noted, “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.” This resistance can be mitigated in part where insurers and employers can point customers and employees toward explanations on the IRS website or in tax publications or instructions about the need to provide SSN for these new rules as well as the likely consequences of failure to provide the information.

During 2014, IRPAC shared with the IRS suggested “Questions and Answers” which would assist taxpayers in understanding their responsibility to provide TINs to insurance companies and employers as well as the consequences of not providing this information and recommended that similar information be shared in form instructions and on the IRS website.

2. Public Law 111-148 added IRC §§ 6055 and 6056 to the definition of information returns. IRC §§ 6721 and 6722 impose penalties for failure to include all information or incorrect information on information returns. IRC §6724 provides that no penalty may be imposed if any failure is due to reasonable cause and not willful neglect. TIN solicitation rules for acting in a responsible manner are described in Treas. Reg. 301.6724-1(d) and the rules for missing TINs are described in Treas. Reg. 301.6724-(1)(e). The required manner of making solicitations includes a requirement that payees must be informed that they may be subject to a \$50 penalty imposed by the Internal Revenue Service under §6723 if they fail to provide a TIN. Insurance companies report significant questions being raised when notification is made to customers about this penalty.

The 2013 IRPAC Report recommended that these rules be explained in plain language. IRPAC commends the IRS for the efforts to simplify these rules in the preamble to the final regulations and for consideration and reference to many of the comments received. However, as stated in the preamble “Treasury and the IRS recognize that the existing solicitation rules under IRC § 6724 may not address certain circumstances that may arise with respect to reporting under IRC § 6055. Although the final regulations do not revise the regulations under IRC § 6724 to specifically address these circumstances, Treasury and the IRS will continue to study the issue and may provide additional clarification if appropriate through guidance or forms or instructions.”

## Employee Benefits and Payroll Subgroup 2014 Public Report

On May 24, 2014, IRPAC provided recommendations that various items be included in the 2014-2015 Priority Guidance Plan. Recommendation number six from that letter stated that: “Additional clarifications should be issued in the form of new regulations under IRC §6055 which explain the timing and manner of TIN solicitation unique to IRC §6055. Specifically, it is critical to clarify that an enrollment form *required to be reported under IRC §6055* is an initial solicitation. This clarification would address the situation of a customer having completed an enrollment form without a TIN many years prior to enactment of IRC §6055.

In addition, new regulations under IRC §6055 should be constructed so that health insurance companies may rely upon solicitations performed by the sponsor of an employer-sponsored group health plan, in order that duplicate efforts to obtain TIN’s can be avoided.”

These recommendations regarding the solicitation process continue to be relevant today.

On August 29, 2014, IRS released Questions and Answers on Information Reporting by Health Coverage Providers on IRS.gov. This guidance should be reworded where it states, “the reporting entity must make the initial solicitation at the time the relationship with the payee is established.” If the relationship was established many years ago or in a state which prohibited the insurer from requesting or collecting the SSN’s it is very likely that a SSN would not have been obtained at the time the relationship was established. Use of the term payee should also be reconsidered because its use in reference to an insurance company or others required to report under these rules is confusing.

IRPAC also recommends that additional guidance be provided to simplify the burden placed on insurers and employers by providing that a solicitation for missing TIN’s may be made at the same time as any Form 1095-B or 1095-C is issued.

3. Early release drafts of Form 1095-B and 1095-C were issued as “DRAFT AS OF JULY 24, 2014”. Early release draft instructions were issued as “DRAFT AS OF AUGUST 28, 2014.” Software vendors and insurance companies and employers are likely reluctant to make major programming efforts until final forms are issued with final instructions. The 2013 IRPAC Report recommended “an 18-month lead-time for new reporting forms or extensive changes to existing forms”

The preamble to the final regulations encourages voluntary compliance with these rules for 2014 by stating “Real world testing of reporting systems and plan designs, built in accordance with the terms of these final regulations, through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.”

## Employee Benefits and Payroll Subgroup 2014 Public Report

IRPAC believes that substantial voluntary compliance for 2014 is unlikely given the late release of final forms and instructions. Therefore, real world testing of reporting systems and designs cannot be anticipated to achieve the desired results in 2014. Consistent with our prior 18-month lead time recommendation from 2013, IRPAC recommends that the voluntary compliance period be extended to 2015 reporting in 2016 and that general transition relief also be extended for 2015 reporting done in 2016.

**INFORMATION REPORTING PROGRAM  
ADVISORY COMMITTEE**

**INTERNATIONAL REPORTING AND  
WITHHOLDING  
SUBGROUP REPORT**

**ROSEANN M. CUTRONE  
CAROLYN W. DIEHL  
MARK DRUCKMAN  
JONATHAN A. SAMBUR  
FREDERIC M. BOUSQUET, SUBGROUP CHAIR**



## International Reporting and Withholding Subgroup Report

### 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) through an ongoing dialogue regarding the FATCA regulations, the coordinating regulations under Chapters 3, Taxes to Enforce Reporting on Certain Foreign Assets and 61, Information and Returns, and other published guidance that were issued in 2013 and 2014, together with Forms W-8, Withholding Certificate, Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding and Form 8966, Foreign Asset Tax Compliance Act (FATCA) Report. IRPAC intends to continue this dialogue and provide input with regard to the regulations, associated forms, and the foreign financial institution (FFI) registration process.

Below is a summary of the principle issues that have been discussed. Section I contains recommendations about the regulations. Section II contains recommendations about IRS forms and instructions. Sections III contains recommendations about the intergovernmental agreements and FATCA registration. The appendix C. to this report lists 57 other recommendations IRPAC has made in connection with FATCA.

### SECTION I – RECOMMENDATIONS ABOUT THE REGULATIONS

#### A. Carve-Out To Definition of Financial Account

##### Recommendation

1. IRPAC recommends that an addition be made to the list of exceptions (provided in Treas. Reg. § 1.1471-5(b)(2)) to the definition of “financial account” under FATCA for debt interests in investment entities described in Treas. Reg. § 1.1471-5(e)(4)(i)(B) or (C) that result from ordinary course of business transactions rather than from true financial investments in such entities.

##### Discussion:

Under the FATCA rules, participating foreign financial institutions (PFFIs) must perform FATCA processing on the “financial accounts” they maintain. In addition to depository and custodial accounts (and insurance/annuity contracts), the term financial account is defined to include certain equity or debt interests. Treas. Reg. § 1.1471-5(b)(1)(iii). For an equity or debt interest in an entity that is a depository institution, a custodial institution, an insurance company, or an investment entity described in Treas. Reg. § 1.1471-5(b)(e)(4)(i)(A), such equity or debt interest is a financial account generally only if the interest is determined primarily by reference to assets that give rise to withholdable payments. In contrast, for an equity or debt interest in an investment

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entity described in Treas. Reg. § 1.1471-5(b)(e)(4)(i)(B) or (C) (in general, an investment fund), such equity or debt interest is a financial account regardless of whether the interest is determined primarily by reference to assets that give rise to withholdable payments. This is a sensible rule with respect to equity interests and what are typically thought of as debt interests (i.e., traditional loans of cash and interests in a debt instrument such as a bond). The term “debt interest” could, however, be interpreted much more broadly to mean any enforceable obligation to pay a fixed sum of money (see, e.g., *Halle v. Comm’r*, 83 F.3d 649 (4th Cir. 1996); Treas. Reg. § 1.1666-1(c)). This would, in IRPAC’s view, unintentionally bring into the ambit of FATCA account due diligence requirements of an investment entity described in Treas. Reg. § 1.1471-5(e)(4)(i)(B) or (C) routine trade payables and certain other payments on transactions which are not themselves debt. Consider, for example, periodic payments, which would become “debt” once fixed and enforceable, on a bespoke interest rate swap, which would not itself be debt (embedded loans excepted).

To resolve this potential overreach of the meaning of debt interest, IRPAC recommends that an exception be added to the list of exceptions to the financial account definition under the FATCA rules for debt interest in investment entities described in Treas. Reg. § 1.1471-5(e)(4)(i)(B) or (C). Specifically, IRPAC recommends the definition of financial account in Treas. Reg. § 1.1471-5(b) be modified to add the following carve-out to Treas. Reg. § 1.1471-5(b)(2) (“Exceptions”). This recommendation carves out, in general, debt that has a short life and is not interest-bearing (other than late payment interest):

*(vii) Certain Trade Debt. Debt interest in an Investment Entity described in Treas. Reg. § 1.1471-5(e)(4)(i)(B) or (C) that satisfies each of the following conditions:*

*(A) The debt interest either arose in the ordinary course of the Investment Entity’s trade or business (such as a liability arising from an employment relationship or a liability arising from a business relationship with a service provider or supplier) or represents the obligation to make a payment on a transaction with a counterparty;*

*(B) The principal amount of the debt interest is required to be paid or expected to be paid within 90 days of the date it arose; and*

*(C) The debt interest does not accrue any amounts representing interest or amounts economically equivalent to interest, except to the extent such amounts clearly represent penalties for default or late payment of the debt interest.*

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### B. Retroactive Use of Faxed/Emailed Forms W-8

#### Recommendation

1. IRPAC recommends that the effective date for the rule permitting withholding agents to rely upon an otherwise valid withholding certificate or other documentation received by facsimile or scanned and received electronically (such as by pdf attached to an e-mail) be modified to be effective for all certificates/documentation *furnished* after March 6, 2014, rather than only to *payments made* on or after that date.

#### Discussion:

The Temporary Regulations provide that withholding agents may rely upon an otherwise valid Form W-8 or other documentation received by facsimile or scanned and received electronically (such as by pdf attached to an e-mail) as long as the withholding agent does not know that the form or document was transmitted by a person not authorized to do so. Treas. Reg. § 1.1441-1T(e)(4)(iv)(C). This rule, however, is effective for *payments made* on or after March 6, 2014.

Treas. Reg. § 1.1441-1T(b)(7)(ii) permits a withholding agent who failed to collect an appropriate withholding certificate prior to payment to avoid withholding liability on that payment if it collects an appropriate withholding certificate after the date of payment containing a signed affidavit that states that the information and representations contained in the certificate were accurate as of the time of the payment.

By referencing the date payments were made, rather than the date the documentation is collected, the effective date on the facsimile/e-mail rule prevents withholding agents from using the new rule set forth in Treas. Reg. § 1.1441-1T(e)(4)(iv)(C) to cure documentation failures in connection with payments made before March 6, 2014. That is, any withholding agent who discovers incomplete documentation in its account must obtain mailed ink-signature forms (instead of facsimile or scanned forms) with the retroactive jurat.

We understand the policy reason for this effective date was to avoid "rewarding" withholding agents who failed to collect the documentation properly (i.e., mailed documentation) at the time payments were made. We believe this policy is short sighted. Most of the withholding agents are seeking to cure past documentation failures that arose inadvertently. The Chapter 3 withholding regime imposes a tremendous burden with significant costs on withholding agents. Most withholding agents attempt to put in place procedures, policies and systems that allow them to fully comply with these laws. But the regime is complicated and the number of payees can often be in the thousands. In this context, inadvertent mistakes can and do occur. We believe it is unlikely that any withholding agent purposely delayed documentation collection under Chapter 3 in hopes of making use of the anticipated, less costly new rule. Moreover, we believe applying the new rule to forms collected after March 6 would reward those

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withholding agents who undertake the efforts to self-cure past mistakes by allowing them to use any and all reasonable collection techniques to obtain the necessary documentation.

### C. Material Modification to a Grandfathered Obligation

#### Recommendation

1. IRPAC recommends that the events constituting a withholding agent's actual knowledge of a material modification to a grandfathered obligation be limited to specific, identifiable actions, such as (1) the receipt of a disclosure from either the issuer or the issuer's agent, or (2) the assignment of a new security identifier (such as a CUSIP number), as these are the only two reliable, and practical, indicators that may be used by withholding agents in a consistent manner.

#### Discussion

The final regulations issued in January 2013, provided that a withholding agent is required to treat a modification of an obligation as material if the withholding agent knows, or has reason to know, that a material modification has occurred. As a result of comments submitted by IRPAC and other stakeholders explaining that it is often difficult for a withholding agent to reliably make such a determination, the March 2014 temporary regulations (§ 1.1471-2T(b)(4)(ii)) modified the final regulations to provide that a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of an obligation as material only if the withholding agent has actual knowledge that a material modification has occurred.

These temporary regulations included an example of an event that will cause a withholding agent to have actual knowledge of a material modification – namely, when the withholding agent receives a disclosure from the issuer. This was an extremely helpful and welcomed change, but IRPAC remains concerned that further clarification and precision in this area may be needed.

To that end, IRPAC recommends that the incidents triggering a withholding agent's actual knowledge of a material modification be limited to specific, identifiable events, and further recommends that such triggering events only be those that may be applied in the most reliable and consistent manner by all withholding agents. In our estimation, these are (1) the receipt of a disclosure from either the issuer or the issuer's agent, or (2) the assignment of a new security identifier (such as a CUSIP number). IRPAC believes that by limiting the circumstances under which a withholding agent's actual knowledge is triggered in this manner, the end result will be a far more consistent and reliable application of the intended rule.

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### D. “It maintains for retail customers” in Treas. Reg. § 1.1473-1T(a)(4)(vi)

#### Recommendation

1. IRPAC recommends the elimination of the words “it maintains for retail customers” in Treas. Reg. § 1.1473-1T(a)(4)(vi), as we believe this phrase represents an unintended limitation to the transitional relief from withholding provided for certain offshore payments of U.S. sourced fixed or determinable annual or periodic (FDAP) income paid prior to 2017.

#### Resolution

Treasury and IRS adopted this recommendation in T.D. 9657 (July 1, 2014).

#### Discussion

In order to bring about a more orderly and effective implementation of FATCA, and to coordinate the final regulations’ withholding requirements with those of the Model 1 intergovernmental agreements (IGAs), the final regulations issued in January 2013 delayed withholding on certain offshore payments of U.S. source FDAP made before 2017. This was accomplished by modifying the definition of *withholdable payment* to exclude certain types of payments that, due to their nature, either represented a minimal risk for tax avoidance or have historically been excluded from the Chapter 3 reporting and withholding regime. These payments included, for example, those made with regard to short-term obligations, payments that are effectively connected with the conduct of a U.S trade or business and certain non-financial payments commonly made through an accounts payable function.

The temporary regulations issued March 07, 2014, made significant changes to these transitional rules, including a limitation on the types of debt obligations eligible for the offshore withholding relief. Specifically, Treas. Reg. § 1.1473-1T(a)(4)(vi) (March 07, 2014) essentially limits the relief to “interest payments made by a foreign branch of a U.S. financial institution (USFI) with respect to depository accounts it maintains for retail customers.” While some concerns remain as to the specific policy considerations that led to this change, IRPAC believes, more importantly, that this temporary relief for offshore payments was intended to apply to payments made on all offshore deposit accounts, not just those of retail customers. In fact, recent IRPAC discussions with IRS have shown that there is no clear cut definition or agreement as to what types of accounts constitute those maintained for retail customers.

Furthermore, this term may have disparate meanings for different USFIs, depending on their product offerings and client base – thus leading to conflicting interpretations and treatment by U.S. banks competing in the same market place. Finally, to exclude only specified types of offshore deposit accounts from the temporary withholding relief would require an investment in additional systems and operational development at a time when such resources are scarce.

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To strictly interpret this “retail” terminology would potentially result the transitional relief not applying to payments made with respect to significant numbers of deposit accounts maintained by foreign branches of USFIs for commercial or institutional clients, which IRPAC believes was not the intended goal. IRPAC has suggested, therefore, the most expedient way to clarify and resolve this ambiguity would be to eliminate the words “it maintains for retail customers” from the penultimate paragraph of Treas. Reg. § 1.1473-1T(a)(4)(vi), which Treasury and IRS have adopted.

### **E. Application of Coordinating Regulations on Offshore Obligations to Non-financial Entities**

#### **Recommendation**

1. IRPAC recommends that the coordinating regulations clarify the extent to which certain provisions in the coordinating regulations that apply to payments made "with respect to an offshore obligation" are limited in their application only to payors that are financial entities.
2. If the IRS and Treasury intend for the coordinating regulations applicable to payments made "with respect to an offshore obligation" to apply only to financial entities, IRPAC recommends that the regulatory language be revised to clearly provide for such a limitation and its effective date.

#### **Discussion**

Prior to the issuance of the March 2014 temporary coordinating regulations relating to payments made "with respect to an offshore obligation," there were several provisions relating to the Chapter 61 reporting rules that applied to payments made "to an offshore account." For example, under the prior rules of Treas. Reg. §§ 31.3406(g)-1(e) and 1.6049-5(c)(1), backup withholding did not apply and alternative documentation (in lieu of withholding certificates) was permitted for payments paid and received outside the U.S. "to an offshore account." An offshore account was defined to mean "an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the U.S. (i.e., other than in any of the fifty States or the District of Columbia) and outside of possessions of the United States." As written, the requirement that the payment be made "to an offshore account" could be made by either a financial institution (e.g., to its account holder) or by a non-financial institution who wires funds directly into a payee's offshore bank account. Nothing in the language of these rules specifically limited their application to only certain payors that were financial entities. However, we understand that some tax practitioners believe the rule was intended to apply only to financial institutions, despite the lack of any clear language so indicating.

The temporary regulations changed the regulatory language to require that payments must be made "with respect to an offshore obligation" rather than made "to an

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offshore account." The term "offshore obligation" is defined, in relevant part, to mean: "(A) [a]n account maintained at an office or branch of a bank or other financial institution located outside the United States; or (B) [a]n obligation as defined in § 1.6049-4(f)(3) (other than an account described in paragraph (c)(1)(i)(A) of this section), contract, or other instrument with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution (as defined in § 1.1471-5(e)) that engages in significant activities at an office or branch located outside the United States." Treas. Reg. § 1.6049-5T(c)(1)(i). Although the language of (B) is clearly limited to payments by financial institutions, brokers and dealers, the language of (A) by its terms is not so limited since it does not explicitly state that the payor needs to be a financial institution, broker or dealer. Moreover, the language of (A) is nearly identical to the prior definition of "offshore account" in Treas. Reg. § 1.6049-5(c)(1), which (as noted above) stated, "an offshore account means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the U.S. (i.e., other than in any of the fifty States or the District of Columbia) and outside of possessions of the United States."

One could read (A) as applying only to bank/financial institution payors because only bank/financial institution payors can make payments (presumably of interest) "with respect to an offshore obligation [i.e., an account maintained at a bank outside the U.S.]." However, that reading makes (A) redundant, because any payment by a bank with respect to its depositor's account is also covered by (B). In addition, the preamble to the temporary regulations states that, "these temporary regulations expand the circumstances in which documentary evidence may be relied upon by . . . allowing the use of documentary evidence beyond payments made to accounts of banks and other financial institutions." T.D. 9658, Preamble (Mar. 6, 2014). As such, the preamble suggests an intent to broaden the rules generally and does not illuminate whether (A) was meant to narrow or broaden the prior rules nor indeed, what the breadth of those prior rules was (i.e., whether they applied only to payors that were financial entities).

### **F. Definition of "banking or similar business" as Applicable to Non-banking Entities**

#### **Recommendation**

1. IRPAC recommends that the definition of "banking or similar business" under Treas. Reg. § 1.1471-5(e)(2) be modified to avoid the inadvertent treatment of ordinary non-banking business taxpayers as financial institutions by providing limited exceptions for entities that sell goods and services.
2. IRPAC recommends that an exception be made to the definition of "extensions of credit" to exclude local country customary trade receivables associated with the sale of goods or services.

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### Discussion

Although the final regulations issued in January 2013 clarify that an entity is not treated as a depository institution unless it both (i) accepts deposits, and (ii) regularly engages in certain specified "banking activities," these rules as currently drafted may pick up certain non-banking business taxpayers.

(1) Treas. Reg. § 1.1471-5(e)(2)(ii), which provides an exception from the "accepts deposits" rule for deposits "solely" accepted as collateral or security pursuant to a sale or lease of property or pursuant to a similar financing arrangement, is too narrow in cases in which a company takes deposits from its business (non-banking) customers for the customers' convenience ("convenience deposits"), and where those deposits make up a very small percentage of loans extended (to customers making purchases). An exception for convenience deposits that make up less than 5% of the outstanding loans would make this exception less likely to impact non-banking businesses. Customers who intend to purchase goods/services from sellers who provide cash discounted pricing might wish to deposit funds for their own convenience with that seller as a means to enhance cash savings. Without this exception, a non-banking business taxpayer that accepts such convenience deposits and also sells goods on standard delayed payment terms, as described below, may inadvertently be picked up by the current definition of a depository institution.

(2) The list of lending transactions treated as banking activities at Treas. Reg. §§ 1.1471-5(e)(2)(i)(A)-(F) includes the "extension of credit." Treating the extension of credit as a banking activity, without any qualification, would appear to impact entities that sell goods on delayed payment terms that are generally consistent with what we understand to be normal terms for trade receivables, i.e., payment required within 60-90 days of the purchase (and, in some countries that have customary longer terms for such receivables, terms of up to 180 days). Generally, no interest is charged under these typical delayed payment terms (i.e., no additional amount is due for payment received pursuant to these terms vs. upfront cash paid).

Delayed payment terms should not be treated as a banking activity because there is no profit potential associated with the delayed payment terms. This treatment would be consistent with IRC § 483 which does not treat as unstated interest any portion of a delayed payment that is due within six months of the date of sale. To avoid inadvertently impacting non-banking businesses entities that sell goods/services on typical delayed payment terms, IRPAC recommends that an exception be made to the definition of extensions of credit to exclude local country customary trade receivables associated with the sale of goods or services.

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### G. Hold Mail Address at Treas. Reg. § 1.1441-1T(c)(38)

#### Recommendation

1. IRPAC recommends that the definitions of “permanent residence address” contained in Treas. Reg. §§ 1.1441-1T(c)(38) and 1.1471-1(b)(99) be modified to make it clear that a hold mail instruction should not invalidate documentation used to establish a payee's status provided that the hold mail address is not the sole address on file for the payee. That is, as long as a second, non-U.S. address (which can be treated as the person's permanent residence address) is provided, either on the documentation itself or elsewhere, that second address may be considered a valid, permanent residence address.
2. IRPAC suggests adding a sentence to read: *“In the case of documentation including such a hold mail address, a second address provided in either the tax documentation or in the accountholder file may be treated as the person's permanent residence address.”*

#### Discussion

The definitions of permanent residence address set forth under Treas. Reg. §§1.1441-1T(c)(38) and 1.1471-1(b)(99) both contain the language that, “[f]urther, an address that is provided subject to instructions to hold all mail to that address is not a permanent residence address.” Some withholding agents have interpreted this language to mean that *any* hold mail instruction in documentation or the accountholder file invalidates documentation used to establish a payee's status and that the documentation is, thus, not “curable.” Based on IRPAC's conversations with the IRS, we understand that this was not the IRS's intent. That is, the IRS intended a hold mail instruction to invalidate tax documentation only in instances in which another, non-U.S. address (which can be treated as the person's permanent residence address) is not provided. IRPAC suggests the IRS clarify this interpretation. For example, IRPAC suggests adding a sentence after the above quoted language to read:

*“In the case of documentation including such a hold mail address, a second address provided in either the tax documentation or in the accountholder file may be treated as the person's permanent residence address.”*

### H. Special Rules for PFICs (Passive Foreign Investment Company)

#### Recommendation

1. IRPAC recommends that the IRS modify the exemption that eliminates a transfer agent's Form 1099 reporting obligations with respect to a FATCA compliant PFIC fund by permitting the transfer agent to rely on a statement provided by the fund until such time there is a change in circumstances or

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unless the transfer agent knows or has reason to know the statement is incorrect.

2. IRPAC recommends that the required statement may be provided by any party authorized to sign documents on behalf of the fund rather than by an “officer” of the fund.

### Discussion

Treas. Reg. §§ 1.6042-2T(a)(1)(i)(B) and 1.6045-1T(c)(3)(xiv) require a transfer agent to obtain an annual statement from a fund that the fund is a PFIC and will satisfy its reporting obligations under Chapter 4. In lieu of this requirement to obtain an annual statement, IRPAC recommends that such a statement remain valid until such time when there is a change in circumstances. Under this proposal, the fund would need to represent on its initial statement that it will notify the transfer agent if there is a change of circumstances that causes the entity to no longer be a PFIC or that it will not satisfy its reporting obligations under Chapter 4. Additionally, IRPAC recommends that the IRS adopt a requirement that would prevent a transfer agent from relying on a statement received from a fund if it knew or had reason to know that the fund is no longer a PFIC or will not satisfy its reporting obligations under Chapter 4. IRPAC understands that funds infrequently change status from PFIC to non-PFIC (or vice versa) and that transfer agents who typically are contractually obligated to prepare the fund’s FATCA reports will have insight regarding the underlying status of the fund.

The above regulations require “an officer of the corporation” to sign the statement. IRPAC recommends that this requirement be modified for reasons on administrative practicality. IRPAC understands that most PFICs do not have officers, therefore, it would be appropriate to permit the statement to be signed by any person who represents that they have the requisite authority to sign on behalf of the fund.

### I. Per Se Foreign Corporation

#### Recommendation

1. IRPAC recommends that the phrase “(other than a name which contains the designation “corporation” or “company”)” be removed from Treas. Reg. § 1.1441-1T(b)(3)(iii)(A)(1)(iii).

#### Discussion

Treas. Reg. § 1.1441-1T(b)(3)(iii)(A)(1)(iii) provides, in general, that if a withholding agent cannot reliably associate a payment with documentation from the payee and the payee is an exempt recipient, the payee is presumed to be a foreign person and not a U.S. person if the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in Treas. Reg. § 301.7701-2(b)(8)(i), other than a name which contains the designation corporation or

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company. This is a longstanding presumption rule, except that the exception for entities the name of which contains the designation corporation or company was added by FATCA coordinating regulations, presumably to preclude a domestic (U.S.) corporation from being treated as a foreign person. We find this exception unnecessary because a withholding agent would need an indicator that an entity is formed in a jurisdiction other than the U.S. in order to presume the entity is foreign based on the per se list. For example, a withholding agent would need an indicator that an entity, the name of which contains the designation “Public Limited Company,” was formed in the United Kingdom or one of the other applicable jurisdictions listed in Treas. Reg. § 301.7701-2(b)(8)(i) in order to treat the entity as a per se foreign corporation. Accordingly, the likelihood that a withholding agent would treat what is a domestic corporation as a foreign person based on the application of the per se list in Treas. Reg. § 301.7701-2(b)(8)(i) is remote. For this reason, IRPAC recommends that the phrase “(other than a name which contains the designation “corporation” or “company”)” be removed from Treas. Reg. § 1.1441-1T(b)(3)(iii)(A)(1)(iii).

### J. Source of Brokerage Fees

#### Recommendation

1. IRPAC recommends that IRS and Treasury add a sourcing rule that presumes commissions for trades of securities issued by non-U.S. issuers to be foreign source income if paid to a broker that is a non-U.S. person or can be presumed to be a non-U.S. person, unless the withholding agent knows or has reason to know that the broker executed the trade inside the U.S., such as when the trade is of American depository receipts traded on a U.S. securities market.

#### Discussion

Treas. Reg. § 1.1441-3T(d)(1) provides that when the source of a payment is not known at the time of payment, the payment must be presumed to be U.S. source and, in turn, is subject to Chapters 3 and 4 withholding. Certain withholding agents have taken the position that, absent an affirmative statement by a broker that the broker did not perform its services (i.e., the execution of a trade) inside the U.S., the commission paid to the broker for the trade must be presumed U.S. source income, even if the trade is executed by a non-U.S. broker on a non-U.S. security. This is a conservative position taken because of (i) the risk that the IRS would take the position that the withholding agent may not assume that none of commission on the trade was for services performed inside the U.S. and (ii) the liability that arises for underwithholding.

A withholding agent can generally eliminate its requirement to withhold if it obtains a statement from the non-U.S. broker that the broker did not perform services inside the U.S. Unfortunately, this statement is cumbersome to obtain in practice. Consider, for example, a U.S. pension plan which hires an investment advisor which, in turn, hires, in its capacity as an agent for the pension plan, a non-U.S. broker to sell a

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non-U.S. security, the trade of which is settled at the pension plan's U.S. custodian. The pension plan, which is the obligor of the broker commission, would typically have no direct interaction with the broker and, therefore, typically could not readily ask the broker for a statement on where the broker performed its services. In addition, unlike for a typical vendor payment, the pension plan would not receive an invoice from the broker, which, if one existed, the pension plan could pay less any applicable withholding. Instead, the broker takes its commission directly from the sale amount, and remits the net proceeds to the custodian who, in turn, would have no way to withhold on the commission on the plan's account since the broker already paid itself the commission. The investment advisor does have a working relationship with the broker and, therefore, could ask the broker for the above statement, but the typical investment advisor does not have experience or a process in place on U.S. tax withholding and reporting matters. IRPAC believes that putting a process in place to collect location of services statements from putative non-U.S. brokers, which could number in the hundreds for each investor and/or investment advisor, is a wasteful undertaking with respect to non-U.S. securities, as the probability of non-U.S. brokers performing services inside the U.S. on non-U.S. securities is remote.

### **SECTION II – RECOMMENDATIONS ABOUT THE FORMS AND INSTRUCTIONS**

#### **K. Time Period for Acceptance of Pre-FATCA Forms W-8**

##### **Recommendation**

1. IRPAC recommends that IRS issue guidance providing that withholding agents may continue to accept pre-FATCA Forms W-8 through December 31, 2014.

##### **Resolution**

IRS has adopted this recommendation for Forms W-8 for entities by adding a cover page to the above effect to the 2014 Form W-8BEN-E, Certificate of Entities Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities), 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, Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting, and Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.

##### **Discussion**

Most FATCA Form W-8 types were posted to the IRS website on different dates, some after the revision date shown on the form. The instructions for these forms were typically posted on different dates and after the forms themselves. As a result, the forms will sunset on different dates if, in accordance with Treas. Reg. § 1.1471-

## International Reporting and Withholding Subgroup Report

3(c)(6)(vii), the revision date shown on the form is the only consideration. Further, because each form and/or set of instructions were generally not made available until after the revision date shown on the form (sometimes, months after), withholding agents will have less than the six months allotted in Treas. Reg. § 1.1471-3(c)(6)(vii) to transition to the new form.

To allow for an orderly transition from the pre-FATCA Forms W-8 to the new Forms W-8, including to allow additional time for withholding agents to update validation procedures and for customers to become familiar with the new Form W-8 requirements, IRPAC has recommended that withholding agents be permitted to continue to accept pre-FATCA Forms W-8 through December 31, 2014. IRS has adopted this recommendation, except for the February 2014 Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, for individuals, the acceptance of which will be required beginning September 1, 2014 (six months after the revision date shown on the updated form).

### L. “Other income” Example in Line 15 Instructions for Form W-8BEN-E

#### Recommendation

1. IRPAC recommends that the Instructions for Form W-8BEN-E, Part III, Line 15, fourth bulleted item (see page 10), be eliminated.

#### Resolution

IRS adopted this recommendation in the [Cover Sheet to Update 2014 Instructions for Form W-8BEN-E published October 7, 2014](#).

#### Discussion

Part III of Form W-8BEN-E is used by beneficial owners to claim a reduced rate of withholding under an income tax treaty on certain types of payments that are subject to Chapter 3 withholding. In most instances, a beneficial owner that is an entity is only required to complete Part III by checking boxes 14a, 14b and 14c (if applicable), and by entering the name of the country in which the entity is a resident on line 14a.

If, under the provisions of the applicable income tax treaty, a treaty claim requires the beneficial owner to meet special conditions that are not already covered in the representations included on boxes 14a, 14b and 14c, Line 15 of Part III must also be completed. For example, if the beneficial owner is claiming a preferential rate of withholding on dividends that is based on their ownership of a specific percentage of the stock of the entity paying the dividend, Line 15 must be completed to include the specific article of the treaty under which the claim is made, the particular rate of withholding that applies, the specific type of income (in this example, dividends), and an explanation of why the beneficial owner meets those terms (e.g., an ownership threshold of 15% is met). Another example of when a Line 15 entry may be required is for a claim of reduced withholding under the terms of a “Business Profits” treaty article,

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which is generally permitted only when the beneficial owner does not maintain a permanent establishment in the U.S.

Unlike the examples described above, the “other income” article of U.S. income tax treaties prescribes only one rate of withholding, and requires no special conditions (e.g., special tax status, classification or ownership percentages) that must be satisfied in order to apply this article other than those already covered on boxes 14a – 14c of the form. In fact, previous versions of the Instructions to Form W-8BEN (including the version (February 2006) used immediately before the new FATCA version) make no reference to this requirement. IRPAC members are unable to understand the rationale for this new requirement, or what type of compelling (or useful) explanation is expected to be entered on Line 15 in the case of an other income claim. Nor do we understand what possible enforcement value this information will have for the IRS.

Finally, for withholding agents, this additional condition for other income treaty claims will result in unnecessary re-documentation efforts and adverse customer services issues, or the possible denial of reduced rates of withholding in cases where it should be appropriate. For these reasons, it is recommended that the fourth bullet (“Persons claiming treaty benefits under an “other income” treaty article”) be deleted in its entirety.

### **M. Instructions for the Requestor of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY Regarding Print Name**

#### **Recommendation**

1. IRPAC recommends that the Instructions for the Requestor of Forms W-8 be modified to provide that a validation of the new field appearing on Form W-8BEN-E, Form W-8ECI and Form W-8EXP, in which the person signing the form is also required to print their name on the signature line, be optional.

#### **Discussion**

Form W-8BEN-E, Form W-8ECI and Form W-8EXP all include a new data field adjacent to the signature line on which the signer is asked to print their name. In addition, the Instructions for the Requestor of Forms W-8 state, on page 13 -

“...for a Form W-8 for which the person signing the form does not also print a name before the signature when required on the form, the withholding agent need not treat the form as incomplete if the withholding agent has documentation or information supporting the identity of the person signing the form.”

In an apparent effort to mitigate potential form validation issues, the above-quoted text provides that a withholding agent may treat a form that does not include a printed name as an inconsequential omission (and thus need not invalidate a form on

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this basis) if documentation or information supporting the identity of the person signing the form is already on file. Unfortunately, withholding agents typically do not maintain documentation or information supporting the identity of the person signing tax forms for entities. Therefore, treating this as an inconsequential omission in this fashion will offer little relief for withholding agents. Withholding agents typically do not need to know the identity of or interact with the person who has signed a Form W-8 for an entity, and should not be burdened with tracking down the signer's identity (or rejecting a form) if the signer's name is not printed. Nor should withholding agents be required to make subjective calls as to whether the printed name corresponds to the signature. For these reasons, IRPAC recommends that a validation of the print name field not be mandatory.

### N. Translation of Forms W-8 and Instructions

#### Recommendation

1. IRPAC recommends that the IRS issue official foreign language translations of the W-8 series of Forms and Instructions, as it does for certain other forms and publications directed to a non-English speaking audience.

#### Discussion

FATCA generally requires that individual non-U.S. persons provide withholding agents with withholding certificates, such as an IRS Form W-8BEN, to certify that such individual is not a U.S. person. Similarly, non-U.S. entities are generally obligated to provide withholding agents with an IRS Form W-8BEN-E to certify their Chapter 4 status. In as much as these forms must be completed and signed by non-U.S. persons who may not be conversant in English and may not previously had any reason to interact with the IRS or U.S. tax counsel, in order to facilitate the provision of the requested information it would be appropriate to create official translations of these IRS forms. While the regulations currently contemplate financial institutions may create substitute forms in foreign languages, it is our understanding that financial institutions may be reluctant to do so due to the risks associated with creating a substitute form. Moreover, the risk that substitute forms from various financial institutions may use different language increases the confusion associated with non-U.S. persons completing complex U.S. tax forms. Therefore, the IRS, just as it currently does for certain IRS forms and publications directed to non-English speaking stakeholders (e.g., [Pub. 4261 \(SP\)](#) "Do You Have a Foreign Bank Account (Spanish Version)"), should create a single official translation of each Form in the W-8 series (prioritizing the IRS Form W-8BEN, Form W-8BEN-E, and Form W-8IMY and their respective instructions) in several foreign languages (such as Spanish, French, German, Chinese, Japanese, Russian, Korean, and such other languages as are needed). It is expected that creating official translations of these forms will greatly enhance compliance with FATCA and reduce most errors associated with a non-English speaker preparing the forms. IRPAC recommends that the IRS and Treasury seek the assistance of its IGA partners in identifying the languages into which the W-8 series of forms should be translated, and perhaps, in obtaining assistance in preparing such local translations.

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### **O. Form W-9, Request for Taxpayer Identification Number and Certification: FATCA Jurat, Exempt Payee Code, Exemption from FATCA Reporting Code**

#### **Recommendation**

1. IRPAC recommends that the fourth certification of Form W-9, Part II (regarding the FATCA code) be removed. If this recommendation is not adopted, IRPAC recommends that IRS issue guidance specifying that, for accounts maintained in the United States, a substitute version of Form W-9 is not required to include the fourth certification in Part II of Form W-9.
2. IRPAC recommends that the Instructions for the Requester of Form W-9 be modified to clarify that the exempt payee code and the exemption from FATCA reporting code are not required fields, and do not affect the validity of the form for purposes of withholding.

#### **Discussion**

The fourth certification of Part II of Form W-9 was added pursuant to FATCA. IRPAC recommends that this certification be eliminated, as we see neither regulatory authority for it (see Treas. Reg. §§ 31.3406(h)-3(a)(1)-(2) regarding the statements that must be made under penalties of perjury on Form W-9), nor a need for a penalties of perjury statement with respect to a field that, according to our understanding, merely affects information reporting. If the recommendation in the preceding sentence is not adopted, IRPAC recommends that IRS issue guidance that the fourth certification in Part II of Form W-9 need not be included on a substitute version of Form W-9 for an account that is maintained in the United States. Since this certification is not relevant for such an account, we believe this certification would serve as a possible source of confusion for requesters in the United States and their payees.

On a related matter, IRPAC believes that the exempt payee code and the exemption from FATCA reporting code are not relevant for withholding purposes, and solely affect whether a payee or account holder may be subject to information reporting. Consider, for example, a U.S. bank (an exempt recipient) that submits a Form W-9 to a payor but fails to provide its exempt payee code. It is our understanding that the absence of an exempt payee code would not be a reason to invalidate the form for backup withholding purposes, as this code is not a requirement for a valid Form W-9 (see Treas. Reg. § 31.3406(h)-3(a)(2)). Yet, it is our understanding that certain payors do reject Forms W-9 and backup withhold when an exempt payee code is not provided. The absence of an exempt payee code could, however, require a payor to treat such a payee as a U.S. nonexempt recipient and, accordingly, subject to information reporting. Similarly, the new exemption from FATCA reporting code may, in some cases, lead to unnecessary rejections of Forms W-9 and potential overwithholding. It is our understanding that this code, like the exempt payee code, is relevant only for reporting purposes. Accordingly, to limit the opportunities for payors to misinterpret the exempt

## International Reporting and Withholding Subgroup Report

payee code and the exemption from FATCA reporting code, IRPAC recommends that the Instructions for the Requester of Form W-9 be modified to clarify that these codes do not affect withholding.

### SECTION III – RECOMMENDATIONS ABOUT INTERGOVERNMENTAL AGREEMENTS AND FATCA REGISTRATION

#### P. Self-Certifications For New Accounts Under Intergovernmental Agreements (IGAs)

##### Recommendation

1. IRPAC recommends that IRS and Treasury clarify with FATCA partner countries the consequences of a reporting Model 1 or 2 FI not obtaining a self-certification or, when permitted under Annex I of the applicable IGA, alternative documentation, to establish the FATCA status of a new account.

##### Discussion

A reasonable position could be taken that Annex I of the Model 1 or 2 IGAs provides that if a self-certification (or, for an entity account, alternative documentation, when permitted in the Annex) is not obtained for a new account, the account cannot be opened or must be closed. See, Sections III(B) and V(B)(3) of Annex I of the Model 1 Agreement (Updated 6-6-2014), which state, in relevant parts (emphasis added):

“With respect to New Individual Accounts...upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described [as a low-value account], the Reporting [FATCA Partner Financial Institution] **must** obtain as a self-certification....”

“In all other cases, a Reporting [FATCA Partner] Financial Institution **must** obtain a self-certification from the [entity] Account Holder to establish the Account Holder’s status.”

Certain FATCA partner countries have taken the position and issued official guidance that if a self-certification (or, for an entity account, alternative documentation, when permitted in the Annex), is not obtained for a new account, the account may be opened or need not be closed but must be treated as a reportable account. The Canada Revenue Agency has issued guidance that such an account of an individual may be opened (or remain open) and is reportable only if there are U.S. indicia for the account. See Sections 9.18-9.21 of the “Guidance on enhanced financial accounts information reporting, Part XVIII of the Income Tax Act” (June 20, 2014). FATCA partner countries have taken varying positions presumably because Annex I is not entirely clear on the consequences of not obtaining a self-certification.

## International Reporting and Withholding Subgroup Report

IRPAC believes that the consequences of a reporting Model 1 or 2 FI not obtaining a self-certification for a new account should be consistent across all IGA jurisdictions, or else reasons could exist to shift accounts to FIs in partner countries which have less stringent requirements for new accounts and, thus, frustrate the purpose of FATCA. IRPAC recommends, therefore, that IRS and Treasury clarify with partner country jurisdictions the consequence of reporting Model 1 or 2 FIs not obtaining a self-certification for a new account.

### **Q. Effect of Signing FATCA Registration Form**

#### **Recommendation**

1. IRPAC recommends that the IRS adopt certain proposed Q&As IRPAC submitted to the IRS for inclusion in its list of Q&As posted on the IRS website, which are intended to clarify the certifications and liability of the person who acts as responsible officer for purposes of registering an FFI.

#### **Resolution**

The IRS adopted a portion of the proposed Q&A and has included it on its website [at FATCA – FAQs General, Responsible Officers and Points of Contact, Q&A 6](#). IRPAC recommends that the IRS fully adopt its proposed Q&A.

#### **Discussion**

During the course of the past year, IRPAC had several discussions with the IRS regarding stakeholder concerns relating to FFI registration and the potential for individuals who sign the registration statement as responsible officer to misinterpret the certifications they have made and to be held personally liable for the underlying compliance of the FFI with its respective obligations under an FFI Agreement, a Model 1 or Model 2 IGA or as a registered-deemed compliant FFI pursuant to the regulations or an applicable IGA.

IRPAC urged the IRS to both explain the certifications and clarify that the person executing the jurat contained on the registration website would not be personally liable for any potential future non-compliance by the FFI. In this regard, IRPAC submitted a proposed Q&A to the IRS that clarified the certifications and that the responsible officer would only be held accountable for errors or omissions relating to the registration and not to any potential future non-compliance by the FFI. The IRS adopted the portion of the proposed Q&A which explained the certifications. IRPAC recommends that the IRS fully adopt its proposed Q&A.

Appendix A:

Mockup of Possible Location on IRS.gov for Cost Basis Reporting FAQs

Appendix B:.

IRS Notice 2014-18: 2014 -2015 Priority Guidance Plan Comment Letter

Appendix C:

Additional IRPAC recommendations made in connection with FATCA



# **Appendix A**

**Mockup of Possible Location on  
IRS.gov for Cost Basis  
Reporting FAQs**



# Mockup of Possible Location on IRS.gov for Cost Basis Reporting FAQs

The screenshot shows the IRS.gov website's 'Help & Resources' section. At the top, there is a search bar and a navigation menu with categories: Filing, Payments, Refunds, Credits & Deductions, News & Events, Forms & Pubs, Help & Resources (highlighted), and for Tax Pros. Below the navigation is a large banner for 'Help & Resources' featuring an image of hands on a keyboard. The main content area is titled 'Help and Resources' and includes a sub-section for 'Individuals'. Under 'Individuals', there are several topic boxes: 'Accessibility' (with a link to download accessible forms), 'Fraud, Identify Theft & Phishing' (with links to report suspicious emails and tax fraud), 'Email Updates' (with a 'Subscribe to e-News' button), 'Filing' (with links for amending returns, notices, PINs, and the Affordable Care Act), 'Payments & Refunds' (with links for payment options and tax refund status), and 'Tax Records' (with links for address changes, transcripts, and offshore accounts). A 'Questions?' box on the left offers an interactive tax assistant. Below it, an 'Additional Resources' list includes 'Businesses', 'Charities & non-profits', 'Tax', 'IRS', 'Online tools', 'Tax code & regulations', 'Tax topics', and 'Tax treaties'. A red arrow points from 'Charities & non-profits' to the 'More Frequently Asked Questions (FAQs)' link. Below the navigation menu, there is a 'Frequently Asked Questions and Answers' section with a search bar and a list of 'Top Frequently Asked Questions'. The 12th item in the list is 'Cost Basis Reporting FAQs', which is highlighted with a red arrow. A second red arrow points upwards from below the page towards this link.





# **Appendix B**

**IRS Notice 2014-18: 2014 -2015  
Priority Guidance Plan  
Comment Letter**



# INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

Boyd Brown, Chairperson

**Burden Reduction**

**Sub-Group:**

Julia Chang, Chair  
Paul Banker  
Mary Kallewaard  
Patricia Schmick

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2014-18)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

**Emerging Compliance  
Issues**

**Sub-Group:**

Julia Shanahan, Chair  
Beatriz Castaneda  
Darrell Granahan  
Lynne Gutierrez  
Victoria Kaner

May 27, 2014

Re: IRS Notice 2014-18: 2014-2015 Priority Guidance Plan

**Employee**

**Benefits/Payroll**

**Sub-Group:**

Rebecca Harshberger,  
Chair  
Robert Birch  
Ernesto Castro  
Michael Gangwer  
Holly Sutton

Dear Commissioner Koskinen:

The Information Reporting Program Advisory Committee (IRPAC) appreciates the opportunity to recommend items that should be included on the 2014-2015 Priority Guidance Plan in response to Notice 2014-18.

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 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. Recent 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 such legislation include the addition of the Foreign Account Tax Compliance Act (FATCA) under sections 1471 through 1474 of the Internal Revenue Code (IRC), 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.

Considering these recent changes and consistent with IRPAC's comments over the last several years, we continue to recommend that the Priority Guidance Plan include a new subcategory under "Tax Administration" entitled "Information Reporting" that focuses on the fair and efficient implementation and administration of information reporting. Along this line, areas for consideration include (i) an understanding of the lead times needed by the reporting community to implement both new programs and changes to existing programs, (ii) the data requested in light of the availability and

**International Reporting &  
Withholding**

**Sub-Group:**

Frederic Bousquet, Chair  
Roseann Cutrone  
Carolyn Diehl  
Mark Druckman  
Jonathan Sambur

cost associated with producing such data, and (iii) the usefulness of the data collection.

IRPAC recommends that the following items, in suggested order of importance, be added to this proposed new subcategory of the Priority Guidance Plan or, alternatively, be added to the applicable current categories within the Priority Guidance Plan:

**1. TIN matching**

The 2013-2014 Priority Guidance Plan includes an item under Tax Administration regarding regulations for TIN matching for Form W-2G. This should be maintained on the Priority Guidance Plan and consideration should be given to expanding the TIN matching program to additional (or new) information return forms series, including all Forms 1098 and 1099.

**2. Identity theft information reporting.**

We welcomed the IRS's issuance of proposed regulations that will allow payers to truncate individual taxpayer identification numbers (SSN, ITIN and ATIN) on a permanent basis, and for expanding the use of truncated numbers to forms provided electronically.

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 being created that show withholding amounts being applied by a payer, such as the Form 1099-OID showing a withholding amount just slightly less or equal to the income amount.

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 #8 below for additional reasons as to why this program should be expanded.

### **3. FATCA guidance.**

The effective implementation of FATCA is dependent on the full suite of form instructions, corrections to regulations, and the amended QI agreement all being issued as soon as possible. Certain other guidance, including clarification on interpretive matters in the regulations and the interaction between the regulations and IGA rules, is also needed. In addition, proposed regulations on the FATCA treatment of gross proceeds are needed (well in advance of the 2017 effective date). FATCA is unparalleled in its complexity, size, and global reach, and, accordingly, there are many matters, some known and others to be discovered, which will necessitate an ongoing open dialogue between IRS and industry and the issuance of additional IRS guidance. Continued IRS publication of FATCA frequently asked questions on matters requiring speedy guidance to the industry, or not requiring regulatory changes, would also be helpful.

### **4. *De minimis* threshold for Form 1099 corrections.**

As IRPAC has noted over the past several years, 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. For example, 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). When considering the cost to financial institutions (printing, mailing, reputation, etc.), taxpayers (filing a corrected tax return), and the IRS (processing and data matching), a *de minimis* threshold would promote sound tax administration by eliminating 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.

### **5. Clarification of terms for Form 1098-T**

Additional guidance is needed to 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." These terms are not defined the Internal Revenue Code, or any of the Treasury Regulations, causing confusion within the College and University community, and resulting in possible inconsistent reporting from institution to institution. This inconsistency may result in additional burden to the millions of taxpayers who receive Form 1098-T, in particular, those taxpayers who receive the form from different institutions who may report differing costs due to the ambiguity of the terms. This guidance would promote sound tax administration by providing consistent definitions of terms used by colleges and universities in the preparation of Form 1098-T.

The term "cost of attendance" is defined in section 472 of Title IV of the Higher Education Act of 1965. The IRS should adopt this definition to provide clarity to colleges and universities that the IRS acknowledges this as the official designation.

Further, the IRS should provide a definition of "administered and processed" with specific examples of what is considered as falling within this term. A uniform definition understood by colleges and universities and the Service will bring the regulations up to date and will reduce the burden on taxpayers and the Service in understanding what is required to be reported in box 5.

#### **6. TIN solicitation under IRC §6055**

TD 9660 contains final regulations providing guidance to providers of minimum essential health coverage that are subject to the information reporting rules of IRC §6055. The preamble to the regulations identified comment letters which raised concerns about the timing and manner of TIN solicitation required to satisfy the requirements regarding acting in a responsible manner for waiver of penalties under IRC §6724. Page 16 of the preamble notes:

Treasury and the IRS recognize that the existing solicitation rules under Section 6724 may not address certain circumstances that may arise with respect to reporting under Section 6055. Although the final regulations do not revise the regulations under Section 6724 to specifically address these circumstances, Treasury and the IRS will continue to study the issue and may provide additional clarification if appropriate through guidance or forms or instructions.

Additional clarification should be issued in the form of new regulations under IRC §6055 which explain the timing and manner of TIN solicitation unique to IRC §6055. Specifically, it is critical to clarify that an enrollment form for minimum essential coverage *required to be reported under IRC §6055* is an initial solicitation. This clarification would address the situation of a customer having completed an enrollment form without a TIN many years prior to enactment of IRC §6055.

In addition, new regulations under IRC §6055 should be constructed so that health insurance companies may rely upon solicitations performed by the sponsor of an employer-sponsored group health plan, in order that duplicate efforts to obtain TIN's can be avoided. This is supported by IRC §6056(d) which provides: "To the maximum extent feasible, the Secretary may provide that (1) any return or statement required to be provided under this section may be provided as part of any return or statement required under section 6051 or Section 6055...."

#### **7. Guidance concerning the merchant reporting rules under IRC §6050W.**

Guidance is needed to address open questions related to IRC §6050W, 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.

Further, 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 an 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 and 200 transactions, whereas the aggregated payee rules do not include a *de minimis* rule. Now that the IRS has received Forms 1099-K from payment settlement entities ("PSEs"), it should be in a better position to understand the challenges facing PSEs and putative PSEs and should issue such additional guidance.

#### **8. Electronic furnishing of tax information forms to payees.**

Guidance would be welcome that expands the authority of parties responsible for issuing information returns (*e.g.*, payers, withholding agents, business entities, etc.) to electronically furnish to recipients payee statements and like documents not permitted to be issued electronically under current guidance. 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 furnish electronically 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 (Treas. Reg. §31.6051-1(j)(2)), affirmative consent of the payee is currently required before Form W-2 payee statements can be delivered electronically.

A change away from an affirmative consent and towards a negative consent, in order to expand the usage of electronic payee statements, would promote more efficient tax reporting administration and likely reduce incidents of identity theft. 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 with missing statements and concerning 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. The IRS should 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.

**9. 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 Treas. Reg. §1.1275-4(b)(8). The primary reason is that the Form 8949 and Form 1040 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 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.

**10. Electronic filing currently not available for Form 2439.**

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, the Form 2439 cannot be filed electronically. Financial services firms must deliver boxes of paper Forms 2439 to the IRS annually and, therefore, the creation of electronic filing provisions for the Form 2439 would help the IRS, payers, and taxpayers.

**11. 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 2013 annual report. 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 of items to include in the 2014-2015 Guidance Priority List. We look forward to continuing our work with you in creating a more efficient and sound tax administration system.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "David J. Brown". The signature is written in a cursive style with a large initial "D".

2014 IRPAC Chair



# **Appendix C**

**Additional IRPAC  
recommendations made in  
connection with FATCA**



## International Reporting and Withholding Subgroup Report

Below are additional IRPAC recommendations made in connection with FATCA that are not included in the International Reporting and Withholding Subgroup Report itself.

The following are recommendations that have already been adopted in substance by the IRS:

1. Issue guidance promptly (in any form) on the Q3/4 2014 FATCA tax documentation and withholding requirements of a withholding agent paying an intermediary. Common questions in the withholding agent community that this guidance could address were submitted by IRPAC. IRS adopted this recommendation in IRS FATCA FAQ General Compliance Q&A #7 posted 8/8/2014.
2. Issue guidance clarifying whether Treas. Reg. §1.1471-2T(a)(2)(v) provides that a nonqualified intermediary (NQI) branch of a USFI in a Model 2 IGA country must apply the prima facie rules. IRS FATCA FAQ Financial Institutions Q&A #1 updated 7/23/2014 clarifies that such a branch must apply the prima facie rules if it applies the due diligence procedures set forth in Treas. Reg. §1.1471-3, but not if it applies the procedures set forth in Annex I of the applicable Model 2 IGA.
3. Modify Treas. Reg. §1.1441-1T(e)(4)(ix)(C)(1) to provide that an agent may rely on “documentation” (e.g., Forms W-8 and W-9) collected by its principal (so long as the agent validates the documentation), regardless of the status (USWA (U.S. withholding agent), QI, etc.) of the principal. This recommendation was adopted in T.D. 9658 Correction (Jul. 1, 2014).
4. Modify Treas. Reg. §1.1441-1T(b)(3)(iii) to provide that an undocumented entity presumed to be a partnership, and for which the withholding agent has foreign indicia, is presumed to be a foreign partnership. This recommendation was adopted in T.D. 9658 Correction (Jul. 1, 2014).
5. Substitute “other than a preexisting obligation” for “that is a preexisting obligation” in Treas. Reg. §1.1441-7T(b)(2). This recommendation was adopted in T.D. 9658 Correction (July 1, 2014).
6. Modify Treas. Reg. §§ 1.1471-3T(c)(6)(iv) and 1.1471-3T(c)(3)(iii)(B)(1), consistent with Chapter 3, to enable withholding agents to accept faxed and e-mailed Forms W-8 and withholding statements for Chapter 4 purposes. This recommendation was adopted in T.D. 9657 Correction (July 1, 2014).
7. Add back a definition of “prima facie FFI” to Treas. Reg. §1.1471-2(a)(4)(ii)(B). This recommendation was adopted in T.D. 9657 Correction (Jul. 1, 2014).
8. Expand the name field beyond 40 characters, as FFIs would prefer their full legal name, and GIIN matching would be simpler with the full legal name. Effective October 6, 2014, the name field was expanded to accept up to 150 characters.
9. Instructions for the Requester of Forms W-8, pg. 9, under heading “Form W-8IMY,” 1st paragraph, 5th sentence – Eliminate the words “when the QSL (qualified securities lender) provides a written statement that it is not acting as an intermediary with respect

to such payments associated with the form, or certifies its status as a QI.” A QSL that is not a QI should not have to provide such a statement with respect to substitute dividends, since Notice 2010-46 provides that a QSL is to receive substitute dividends gross, regardless of whether the QSL is acting as a principal or an intermediary. This recommendation has been adopted in substance, as described in the [Cover Sheet to Update Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY](#) published October 7, 2014.

The following are other IRPAC recommendations, the majority of which we understand are under consideration by IRS as of the date of the 2014 IRPAC Public Report:

1. Form W-8BEN-E:

- a. Line 5 – Remove the words “unless otherwise indicated,” as multiple Chapter 4 statuses should not be permitted to be entered on Form W-8BEN-E. (IRS has provided an interim solution by clarifying in the instructions for line 15 that only one of the line 5 boxes may be checked.)
- b. Expand line 9a (GIIN) to accept larger numbers.
- c. Line 26, 3<sup>rd</sup> bullet – Substitute “my GIIN is on line 9a” for “provide your GIIN: \_\_\_\_\_” to eliminate the same GIIN being entered twice on a Form W-8BEN-E, uncertainty about whether a different GIIN belongs on line 26 and line 9a, and the risk that this form will be rejected because the GIIN is not on both of these lines.

2. Instructions for Form W-8BEN-E:

- a. Pg. 2, under heading “Who Must Provide Form W-8BEN-E,” 5<sup>th</sup> bullet – Reword to clarify that you do not use Form W-8BEN-E for yourself (instead the single owner should provide Form W-8BEN or Form W-8BEN-E) if (A) you are not a hybrid entity claiming treaty benefits and (B) you are either (i) a disregarded entity with a single owner that is not a U.S. person or (ii) a branch of an FFI claiming its status for Chapter 4 purposes.
- b. Pg. 7, instructions for “Line 4” – Add statement that you cannot check the “No” box (regarding whether making a treaty claim) if you are a disregarded entity.
- c. Pg. 7, instructions for “Line 5” – Add instructions that payees will generally need to have their FATCA status in place with withholding agents in advance of the dates listed in these instructions (July 1, 2016 and January 1, 2015) to avoid undue withholding, as withholding agents generally cannot implement a form the same day it is received.
- d. Pg. 9, under heading “Part II – Disregarded Entity of Branch Receiving Payment,” 1<sup>st</sup> sentence – Eliminate the words “as an intermediary.”
- e. Pg. 14, under heading “Entities Providing Certifications Under an Applicable IGA,” 2<sup>nd</sup> paragraph – Eliminate 2<sup>nd</sup> sentence which reads “However, if you determine your status under an applicable IGA as an NFFE, you must still

determine if you are an excepted NFFE (non-financial foreign entity) under the Regulations in order to complete this form,” and enable an entity which is resident in an IGA jurisdiction to determine if it is an excepted NFFE under this IGA and, if it is such an NFFE, apply this status for all FATCA purposes, i.e., regardless of whether it provides its FATCA status to an IGA FFI or an onshore USFI.

- f. Page 3, under heading “Expiration of Form W-8BEN” – These instructions should list specific validity periods. They currently refer the reader to the Treasury regulations for validity periods.

### 3. Instructions for Form W-8IMY:

- a. Pg. 8, instructions for “Line 11” – Add words “on line 5 of this form” to the end of the last sentence.
- b. Pg. 10, Examples 2-4 – These examples should state how each recipient (not merely a subset of the recipients) should be allocated, which form, if any, must be collected for each recipient, and why. For example, Example 2 should state how recipient C should be allocated, if a Form W-9 is required for recipient D, and why. Also, the cross reference to Treas. Reg. §1.6049(c)(4)(iii) in Example 4 should be changed to §1.16049-4(c)(4)(iii). Consideration should also be given to clarifying in these examples the meaning of the phrases “not subject to withholding under chapter 4 or to backup withholding under section 3406” in §1.16049-4(c)(4)(i) and “not subject to withholding under chapter 3...or backup withholding...” in §1.16049-4(c)(4)(ii); specifically, whether “not subject to” means not required to be subjected to withholding.

### 4. Instructions for the Requester of Forms W-8 [series]

- a. Add a table listing specific entities for which a GIIN must be obtained and validated. (IRPAC has already submitted a proposed table to IRS)
- b. Pg. 1, last bullet – Substitute “Form W-8BEN-E” for “Form W-BEN-E.”
- c. Pg. 2, right column, 2<sup>nd</sup> full paragraph, 1<sup>st</sup> sentence – Eliminate the text “or an exempt beneficial owner under Regulations section 1.1471-6,” as such an owner is not subject to FATCA withholding.
- d. Pg. 6, under heading “Alternative Certifications Under an Applicable IGA” – Add one or two examples to illuminate the 1<sup>st</sup> paragraph.

### 5. Qualified Securities Lender:

- a. Clarify in the Instructions for Form W-8IMY that a QSL need not provide a withholding statement with respect to substitute payments.
- b. Add a QSL Chapter 3 status box to Form W-8BEN-E, similar to boxes 14f and 15d on Form W-8IMY, to enable a QSL that receives payments (other than substitute dividend payments) in a principal capacity to be able to provide a

single Form W-8BEN-E to cover, for example, a treaty claim for securities lending fees in addition to substitute dividends.

- c. Clarify whether Treas. Reg. §1.1473-1T(a)(4)(vi) (last sentence) operates to require a Model 1 FFI that is a non-QI QSL acting as a principal to subject substitute payments to FATCA withholding prior to 2017.
6. Instructions for Form W-8ECI, pg. 4, instructions for “Line 10” – These instructions should be made consistent with the corresponding instructions for Form W-8BEN, which provide that a date of birth is only required if a foreign TIN is not provided.
7. Add Form 8966 to the list of forms that are not subject to the rules requiring return preparers to obtain Preparer Tax Identification Numbers (PTINs), as this form is most comparable to the Form 1099 series, which is not subject to the PTIN rules.
8. 2014 Form 1042-S – Renumber the majority of the boxes to make it clearer which boxes are for the withholding agent, the recipient, the primary withholding agent, and the intermediary or flow-through entity. For example, consider using the boxes 13 only for the withholding agent, the boxes 14 for the recipient, the boxes 15 for the primary withholding agent, and boxes 16 for the intermediary or flow-through entity.
9. 2014 Instructions for Form 1042-S:
  - a. Pg. 8, middle column, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence (regarding when withholding agents are no longer permitted to report multiple types of income on a single form) – Clarify that this provision applies beginning for tax year 2015 reporting, due in 2016, and only for substitute payee statements, as multiple income codes on one official Form 1042-S have never been permitted.
  - b. Pg. 11, under heading “Payments allocated, or presumed made, to U.S. non-exempt recipients, 1<sup>st</sup> paragraph, last sentence – Clarify that the “certificate” referred to in this sentence is already embedded in Part III of Form W-8IMY, i.e., it need not be included in a separate statement.
  - c. Pg. 15, under the heading “Avoid Common Errors,” 6<sup>th</sup> bullet from the top – Substitute “16b” for “16g,” and “compliant” for “complaint.”
  - d. Pg. 21, under heading “Boxes 13a-f, Withholding Agent’s Name, Global Intermediary Identification Number (GIIN), Country Code, Foreign TIN (if any), and Address” – Remove the third paragraph (regarding entering your Chapter 3 and Chapter 4 status codes). Also, provide instructions for boxes 13c-f.
  - e. Pg. 25, under heading “Country Codes” – Substitute “box 14b” for “box 16,” and “box 16c” for “box 18.” Also, add text for box 13c.
10. 2014 Form 1042, Section 3 – Consider whether to change the phrase “that reference (in whole or in part) a U.S. security” to “that give rise to Section 871(m) payments.”
11. 2014 Instructions for Form 1042:

- a. Pg. 4, under heading “Chapter 3 and 4 status codes of withholding” – The instructions should explain these codes, rather than referring the reader to the Form 1042-S.
- b. Pg. 6, under heading “Section 2. Reconciliation of U.S. Source FDAP Income,” “Line 2” – These instructions should clarify on which line 2 to enter amounts that could belong on more than one line 2. For example, IRPAC recommends that if an amount of income is paid both “to recipients whose chapter 4 status established no withholding is required” and “with respect to grandfathered obligations,” the amount be includable only on line 2a (“to recipients whose chapter 4 status established no withholding is required”), and that line 2c (“with respect to grandfathered obligations”) be limited to amounts which would be subjected to Chapter 4 withholding but for the grandfathered obligation exception.
- c. Pg. 6, under heading “Section 2. Reconciliation of U.S. Source FDAP Income,” Line 2” – Add instructions for line 2b (regarding excluded nonfinancial payments). (Line 2b of 2014 Form 1042 states “(see instructions),” but the instructions do not exist.)

## 12. FATCA Registration:

- a. Add an FFI’s GIIN issue date to the IRS FFI list. This would, among other things, enable withholding agents to satisfy Treas. Reg. §1.1471-3T(d)(4)(v) (last sentence) by refunding, when necessary, retroactively to the precise date an FFI became a PFFI/RDCFFI.
- b. For branches, include the name of corresponding financial institution in the “Financial Institution Name” field of the IRS FFI list. (Currently, this field typically merely states “Branch.”)
- c. Enable a discrete FFI branch to separately register, and assign its own responsible officer.
- d. Clarify in an FAQ that Model 1 Annex I entities do not have to register, and certain Model 2 Annex II entities must register.
- e. FATCA Registration System (listed in priority order):
  - i. Add functionality to change large amounts of data for registration, e.g., enable an FFI to upload a file with replacement values for selected fields.
  - ii. Add functionality to edit a point of contact (POC) so that a POC does not need to be deleted and re-entered to make a change.
  - iii. Change the term of the different responsible officers on the registration system to something other than “responsible officer,” as this title should be limited to persons required to certify to the IRS under Treas. Reg. §1.1471-4.

- iv. Enable POCs who are not members of the email address in the registration system for the responsible officer to receive emails.
  - v. Make the field “State/Province/Region” optional when the country is other than the United States.
  - vi. Add functionality to jump from Part to Part by clicking on the top band via a hyperlink.
  - vii. Add functionality to arrive at the Edit/Review page, i.e., the summary page, for each Part to enable a reviewer to review just the three Edit/Review summary pages, rather than have to review every interview screen.
  - viii. Add functionality to enable a reviewer to click on a link from the Edit/Review page to arrive directly at an individual question.
13. Treas. Reg. §1.1471-6 – Provide guidance on what constitutes “foreign law similar to 22 U.S.C. 288-288f” and “a headquarters agreement with a foreign government.”
14. Treas. Reg. §1.1473-1(a)(3)(ii)(C) – Provide guidance on how regulated investment company (RIC) short-term capital gain (STCG) distributions that are not attributable to sales of U.S. securities held by the RIC must be treated for Chapter 4 purposes.
15. Treas. Reg. §1.1441-1T(e)(3)(iv)(C), Example 3 – Clarify that the sentence “Because NQI has certified its status as a participating FFI, withholding under chapter 4 is not required **with respect to NQI**” (emphasis added) does not mean that withholding under Chapter 4 is not required on payments allocated to the pool of recalcitrant account holders in the example.
16. Treas. Reg. §1.1471-5T(f)(2)(v) – Substitute “Investment advisors, investment managers, and certain other investment entities” for “Investment advisors and investment managers.”
17. Treas. Reg. §1.1471-4(d)(3)(ii) – Clarify whether this section requires reporting for each joint owner and, if so, how this can be achieved given that the Form W-9 requires only one TIN with respect to a joint account owned by two U.S. persons.
18. Make Annex I(II)(B)(1)(g) of the Models 1 and 2 Agreements consistent with Treas. Reg. §1.1471-4(c)(5)(iv)(C), which provides that an in-care-of address (even one inside the U.S.) is not U.S. indicia for a low-value account.

## Information Reporting Program Advisory Committee 2014 Member Biographies

### Paul Banker

Mr. Banker is Vice President of Global Accounts at Convey Compliance Systems in Minneapolis, Minnesota. He has over 22 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 states, US territories, and IRS. He currently works with global clients on implementing firm wide FATCA, CRS, and ACA tax reporting initiatives. 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)**

### Robert Birch

Mr. Birch is Director of Corporate Tax at Wellmark, Inc., in Des Moines, Iowa. Wellmark Blue Cross and Blue Shield is an independent Licensee of the Blue Cross and Blue Shield Association doing business in Iowa and South Dakota. He has over 35 years of experience with tax information reporting. He advises senior management on all corporate income tax and information reporting matters and is leading an internal project to implement the new information reporting that will be required of health insurance companies. He is a former member of the Board of Directors of the Tax Executives Institute, Inc. (TEI) and was the former Chair of the TEI Employee Benefits and Payroll Committee, former Region V Vice President and the first president of the Iowa TEI Chapter and the 2006 recipient of the Iowa Chapter Meritorious Service Award. Mr. Birch, a CPA, received an AA from North Iowa Community College and a BBA in Accounting from the University of Iowa. **(Employee Benefits and Payroll 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 20 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. **(Chair, International Reporting and Withholding Subgroup)**

### 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,

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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 Chair)**

### **Beatriz Castaneda**

Ms. Castaneda is a Managing Director of Client Reporting Tax Reporting and Escheatment at Charles Schwab & Co., Inc. in San Francisco, California. She has over 15 years of tax reporting experience at Charles Schwab. She is responsible for ensuring that the firm correctly implements information reporting requirements for all new tax and cost basis legislation. She is a member of the Financial Information Forum (FIF) Cost Basis Working Group and FATCA Group. She is also a member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance Committee and Cost Basis Working Group. Ms. Castaneda received her BA from Dominican College of San Rafael. **(Emerging Compliance Issues Subgroup)**

### **Ernesto S. Castro**

Mr. Castro is Manager, Government Relations of Ultimate Software Group Inc., in Santa Ana, California. He has over 20 years of experience working with tax information reporting with a concentration in compliance and problem resolution. The Ultimate Software Group is a leading human resources management system services provider in the U.S. Mr. Castro has regularly attended the IRS Reporting Agents' Forum and was a private industry representative on an IRS penalty and industry task force and was a Tax Law Specialist at the IRS National Office. He is a founding member of the National Association of Tax Reporting and Payroll Management. He has also been a contributing writer for the Bureau of National Affairs (BNA). He received a BA and a JD in Comparative Law from Tulane University. **(Employee Benefits & Payroll Subgroup)**

### **Julia K. Chang**

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

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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)**

**Roseann M. Cutrone** Ms. Cutrone, an attorney, is a Counsel at Skadden, Arps, Slate, Meagher & Flom LLP in Washington, DC. Her practice includes advising clients, including large domestic and foreign commercial banks, investment funds, multi-national corporate groups and other entities with respect to all aspects of their information reporting and withholding obligations under Chapter 3, Chapter 4 (FATCA) and Chapter 61 of the Internal Revenue Code. Ms. Cutrone also represents clients in achieving voluntary disclosures agreements with the IRS for previous non-compliance with respect to information reporting/withholding obligations. Ms. Cutrone received a BA in psychology from Bucknell University and a JD from Harvard Law School. **(International Reporting and Withholding Subgroup)**

**Carolyn Diehl** Ms. Diehl is Tax Compliance Officer and Vice President, National Financial Services LLC a Division of Fidelity Investments in Jersey City, New Jersey. She has worked in the financial industry for over 35 years as both a tax preparer and compliance officer for a leading financial services firm specializing in high net worth clients and as a compliance officer for a large broker/dealer organization. She has interpreted laws and regulations including identification of the impact of FATCA and the cost basis regulations on the institutional brokerage business. Ms. Diehl is a member of the SIFMA tax compliance committee and participates in dialogue on cost basis and FATCA with the Financial Information Forum (FIF). Ms. Diehl received a BS in Economics from the Wharton School, University of Pennsylvania, and an MBA from the University of Delaware. **(International Reporting and Withholding Subgroup)**

**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)**

**Michael W. Gangwer** Mr. Gangwer is Associate Tax Advisor, Legal Department of The Vanguard Group, Inc. in Valley Forge, Pennsylvania. He has worked at

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Vanguard in information reporting for over 10 years. He currently serves as the lead technical consultant for information reporting and tax withholding for Vanguard's retail, institutional retirement, brokerage, and cost basis departments. These departments annually produce information returns for millions of investor accounts and retirement plan subaccounts. He also monitors legislative, regulatory and judicial developments related to information reporting and tax withholding matters, as well as advising Vanguard's tax reporting departments as they implement new tax law. He is a member of the Society of Financial Service Professionals, Investment Company Institute and the Securities Institute and Financial Markets Association. Mr. Gangwer received a BS in Economics from West Chester University and a Masters of Taxation & Financial Planning from Widener University. **(Employee Benefits & Payroll Subgroup)**

### **Darrell D. Granahan**

Mr. Granahan is Vice President, Financial Services Control Officer at First Data Corporation in Omaha, Nebraska. He has worked for First Data Corporation for 18 years. First Data is the global leader in payments processing and electronic commerce solutions, serving more than 6.2 million merchant locations and 4,000 financial institutions. Mr. Granahan was involved in building a team to ensure compliance with IRC §6050W Payment Card and Third Party Network Transactions. Mr. Granahan serves on Thomson Reuters – ONESOURCE Tax Information Reporting Advisory Board, is a member of Information Systems Audit and Control (ISACA), and Institute of Internal Auditors (IIA). He received a BS in Electronics Management from Southern Illinois University and an MA in Management from Bellevue University. **(Emerging Compliance Issues 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-five 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

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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)**

### Mary C. Kallewaard

Ms. Kallewaard is a Principal and co-founder of COKALA Tax Information Reporting Solutions, LLC in Ann Arbor, Michigan. She has focused on tax technical advisory services for information reporting compliance for the past 18 years. Working with clients in mid-and large-size industry and the service sector, colleges and universities, and nonprofit institutions, she has developed an understanding of how current business practices and technology integrate with tax reporting and withholding requirements. She is a member of the American Payroll Association and is co-author of the APA Guide to Accounts Payable. Ms. Kallewaard has a BA in American Studies from the University of Michigan.

### 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 Taxation from Chicago-Kent College of Law. **(Emerging Compliance Issues 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

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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)**

### **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 International Business from Ecole Nationale Des Ponts Et Chausees and a JD from Seattle University School of Law. She will complete the LLM in Taxation at the University of Washington in 2014. **(Chair, Emerging Compliance Issues)**

### **Holly L. Sutton**

Ms. Sutton, CPA, is a Director of Income Tax at Tyson Foods, Inc. in Springdale, Arkansas. The Company produces a wide variety of protein-based and prepared food products and is the recognized market leader in the retail and foodservice markets it serves. Tyson provides products and services to customers throughout the United States and approximately 130 countries. The Company has approximately 115,000 Team Members employed at more than 400 facilities and offices in the United States and around the world. Prior to joining Tyson she spent 20 years as a tax professional in the healthcare service industry. Her experience includes federal and state income tax, sales and use and property tax compliance and audit defense, Form 1099 issues, high-level legislative support for payroll issues and a multitude of tax experience related to large

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corporation tax matters. 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)**