issued as a result of the Pension Protection Act of 2006 to provide guidance regarding the definition of a qualified appraiser and a qualified appraisal. As a result, business valuation appraisers are advised to follow these standards. [47]

Recommendation

The 2015 IRSAC concurs with the following conclusions in the 2011 IRSAC Report:

- Having the USPAP as an objective and widely accepted standard as a key component of OPR's due process would be mutually beneficial to both OPR and the appraisal community;
- The USPAP could serve as a guide for both judging conduct and professional practice remediation; and
- In a proceeding before an administrative law judge, the ability to reference an objective and widely accepted standard would be of great benefit.[48]

Accordingly, we recommend that the IRS encourage, and as appropriate require, application of the USPAP for judging appraiser conduct and professional practice remediation. Practical steps toward this goal would include references to the USPAP in Circular 230 governing professional conduct and also throughout the valuation provisions relating to Title 26, including the relevant provisions of the regulations and I.R.M. We recommend that the enhanced requirements incorporating the USPAP will be considered satisfied if the appraisal complies with similar standards that are at least as strict as the standards of the USPAP.

[47] Gary R. Trugman, Understanding business valuation: a practical guide to valuing small to medium-sized businesses 15, 59 (2012).
[48] http://www.irs.gov/Tax-Professionals/2011-IRSAC-Public-Meeting-Briefing-Book.

APPENDIX

References to the USPAP in the United States Code and Regulations

While not all-inclusive, below are some references to USPAP (in **bold** font).

The USPAP in the United States Code

Title 12 U.S.C. §.3339: Functions Of The Federal Financial Institutions Regulatory Agencies Relating To Appraisal Standards.

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality. These rules shall require, at a minimum—

(1) that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(2) that such appraisals shall be written appraisals; and

(3) that such appraisals be subject to appropriate review for compliance with the **Uniform Standards of Professional Appraisal Practice**.

Each such agency or instrumentality may require compliance with additional standards if it makes a determination in writing that such additional standards are required in order to properly carry out its statutory responsibilities.

[Added by Title XI of Public Law 101-73 (August 9, 1989); paragraph (3) added by Public Law 111-203 (July 21, 2010)]

Title 15 U.S.C. §.1639e: Appraisal Independence Requirements

(i)(2) Fee appraiser definition. For purposes of this section, the term "fee appraiser" means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the **Uniform Standards of Professional Appraisal Practice**; or

(B) a company not subject to the requirements of section 3353 of

title 12 that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the **Uniform Standards of Professional Appraisal Practice**.

[Added by Public Law 111-203 (July 21, 2010)]

Title 16 U.S.C. §.6205: Appraisals

(a) Requirements for conducting appraisals

In implementing and conducting an appraisal process for determining cabin user fees, the Secretary [of Agriculture] shall—

(1) complete an inventory of improvements that were paid for by—

(A) the agency [the U.S. Forest Service];

(B) third parties; or

(C) cabin owners (or predecessors of cabin owners),

during the completion of which the Secretary shall presume that a cabin owner, or a predecessor of the owner, has paid for the capital costs of any utility, access, or facility serving the lot being appraised, unless the Forest Service produces evidence that the agency or a third party has paid for the capital costs;

(2) establish an appraisal process to determine the market value of the fee simple estate of a typical lot or lots considered to be in a natural, native state, subject to subsection (b)(4)(A) of this section;

(3) enter into a contract with an appropriate professional appraisal organization to manage the development of specific appraisal guidelines in accordance with subsection (b) of this section, subject to public comment and congressional review;

(4) require that an appraisal be performed by a State-certified general real estate appraiser, selected by the Secretary and licensed to practice in the State in which the lot is located;

(5) provide the appraiser with appraisal guidelines developed in accordance with this chapter;

(6) notwithstanding any other provision of law, require the appraiser to coordinate the appraisal closely with affected parties by seeking information, cooperation, and advice from cabin owners and tract associations;

(7) require that the appraiser perform the appraisal in compliance with-

(A) the most current edition of the **Uniform Standards of Professional Appraisal Practice** in effect on the date of the appraisal;

(B) the most current edition of the Uniform Appraisal Standards for Federal Land Acquisitions that is in effect on the date of the appraisal; and

(C) the specific appraisal guidelines developed in accordance with this chapter;

(8) require that the appraisal report—

(A) be a full narrative report, in compliance with the reporting standards of the **Uniform Standards of Professional Appraisal Practice**; and

(B) comply with the reporting guidelines established by the Uniform Appraisal Standards for Federal Land Acquisitions; and

(9) before accepting any appraisal, conduct a review of the appraisal to ensure that the guidelines made available to the appraiser have been followed and that the appraised values are properly supported.

[Added by the Cabin User Fee Fairness Act of 2000, Public Law 106-291, Title VI (October 11, 2000)]

The USPAP in the Code of Federal Regulations

Title 12 C.F.R. § 323.4 Minimum Standards For Federally Related Transactions (FDIC)[49]

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the ***Uniform Standards of Professional Appraisal Practice*** **(USPAP)** promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards.

[49] https://www.fdic.gov/regulations/laws/rules/2000-4300.html#fdic2000part323.4.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

LARGE BUSINESS AND INTERNATIONAL
SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC LB&I Subgroup (hereinafter "Subgroup") consists of four tax professionals with a variety of experience in large corporate tax departments, large public accounting firms, government, and academia. We have been honored to serve on the Council and appreciate the opportunity to submit this report.

The Subgroup has had the opportunity to discuss several topics throughout the year with LB&I management. This report is a summary of those discussions and the Subgroup's recommendations with respect to each topic. We would like to thank LB&I Commissioner Doug O'Donnell and the professionals on his staff for their time spent discussing these topics with the Subgroup and for their valuable input and feedback.

The Subgroup is reporting on the following five issues:

1. **Improving Penalty Administration — General Comments and Recommendations**

IRSAC believes that two general goals should undergird the enactment and the IRS' administration of the Internal Revenue Code's penalty provisions:

- Ensuring that penalties are proportionate to the taxpayer's errors or misconduct; and
- Ensuring that penalties be designed, interpreted, and applied in a manner that encourages compliance and self-correction.

To this end, IRSAC urges the IRS to limit the automated assertion (or collection) of penalties and, more broadly, to interpret and administer the statutory reasonable cause exception that exists for many penalties in a manner that strengthens rather than diminishes the fairness of the tax system. Specific recommendations are set forth in Issues Two, Three, and Four.

2. **Penalty for Erroneous Claim for Refund or Credit**

To combat IRS concerns about abusive refund claims, in 2007 Congress enacted section 6676, which imposes a penalty for excessive claims that lack a reasonable basis. While appreciating the overarching goal of the relatively new penalty, IRSAC is concerned about the potential application of the penalty in non-abusive situations. For this reason and because a forthcoming change in LB&I examination policy that will likely prompt more formal refund claims, this report makes several recommendations to reduce the likelihood of inappropriate assertion of the penalty.

3. **Application of Qualified Amended Return Rules to Regularly Examined Taxpayers in a Post-CIC Environment**

The IRS' procedures relating to qualified amended returns (including Rev. Proc. 94-69 which applies to Coordinated Industry Case (CIC) taxpayers) provide taxpayers the means to avoid potential penalties by making disclosures after the filing of an original return. Because LB&I's phasing out of the CIC program (in favor of a risk-assessment focus on issues) could effectively render Rev. Proc. 94-69 moot, the incentive to self-correct errors discovered after the filing of an original return may disappear. In this report, IRSAC recommends that LB&I develop a new procedure to preserve the benefits of Rev. Proc. 94-69 and, indeed, possibly expand them to a broader group of taxpayers that, while not part of the CIC program, could respond positively to an incentive for self-correction.

4. **International Information Return Penalties**

The Internal Revenue Code provides a $10,000 penalty for the failure to timely file certain international information returns, even when there is no underreporting of

income or underpayment of tax liability. When a taxpayer files one of these forms delinquently, the IRS may assess the penalty immediately and the collection process may begin. Taxpayers may seek abatement of the penalty when the delinquency is due to reasonable cause and not willful neglect. Our recommendations concern ways to ensure that the penalties are applied to bad conduct and not to innocent errors.

5. **Implementation of the Tangible Property Regulations**

At the request of LB&I, IRSAC developed recommendations for risk assessment, examination approach, and additional guidance related to taxpayer implementation of the Tangible Property Regulations (TPR).

ISSUE ONE: IMPROVING PENALTY ADMINISTRATION — GENERAL COMMENTS AND RECOMMENDATIONS

Executive Summary

IRSAC believes that two general goals should undergird the enactment and the IRS' administration of the Internal Revenue Code's penalty provisions:

- Ensuring that penalties are proportionate to the taxpayer's errors or misconduct; and
- Ensuring that penalties be designed, interpreted, and applied in a manner that encourages compliance and self-correction.

To this end, IRSAC urges the IRS to limit the automated assertion (or collection) of penalties and, more broadly, to interpret and administer the statutory reasonable cause exception that exists for many penalties in a manner that strengthens rather than diminishes the fairness of the tax system. Specific recommendations are set forth in Issues Two, Three, and Four.

Background

In 1954, there were only 14 civil tax penalties in the Internal Revenue Code. Today, there are more than 10 times that number, with new (or increased) penalties being enacted seemingly every year.[50] While Congress in last enacting major penalty reform in 1989 embraced several principles that — if adhered to — would advance good tax administration,[51] penalty provisions continue to proliferate. Good intentions

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[50] In 2008, the National Taxpayer Advocate pegged the number of civil tax penalties at more than 130, and by last year, her count reached 170. Taxpayer Advocate Service, Internal Revenue Service, *National Taxpayer Advocate: 2008 Annual Report to Congress, Vol. 2* (section entitled "A Framework for Reforming the Penalty Regime") (2008) (hereinafter "2008 Taxpayer Advocate Report"), at 4; Taxpayer Advocate Service, Internal Revenue Service, *National Taxpayer Advocate: 2014 Annual Report to Congress* (2014), at 10; *see generally* Jeremiah Coder, *Achieving Meaningful Civil Tax Reform and Making It Stick*, 27 Akron Tax Journal 153 (2012).

[51] *Improved Penalty Administration and Compliance Tax Act (IMPACT)*, Public Law No. 101-239, 101st Cong., 1st Sess. (1989) (subtitle G of the Omnibus Budget Reconciliation Act of 1989).

The section 6676 penalty was enacted after the IRS attributed an increase in the number of "abusive refund claims" by corporate taxpayers to the absence of such a penalty.[57] In endorsing enactment of the penalty, the Senate Finance Committee said:

> [T]he filing of erroneous refund claims is being used by some taxpayers to put a strain on IRS resources and to delay the resolution of tax matters. The Committee believes a meaningful penalty on a refund claim with no reasonable basis for the claimed treatment will deter the use of such claims for the purpose of impeding effective tax administration.[58]

Regrettably, section 6676 provides little guidance on when or how the penalty should apply, and no Treasury regulations have yet been promulgated to interpret it. The statute explains that the "excessive amount" upon which the penalty is imposed is the amount by which the claim exceeds the amount allowable,[59] but does not define the term "reasonable basis," other than to provide (by virtue of a 2010 amendment) that transactions lacking "economic substance" shall not be treated as having a reasonable basis. *See* I.R.C. § 6676(c).[60]

The Internal Revenue Manual (IRM) includes guidance on section 6676 that makes the penalty particularly severe. Perhaps most notably, the statutory reasonable cause defense does not apply to this penalty.[61] While taxpayers can avoid a penalty on a position taken in a refund claim by showing a "reasonable basis" for the position, that standard is an objective one that considers only whether the position was supported by a

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[57] See Hearing Before the Senate Comm. on Finance: A Tune-Up on Corporate Tax Issues: What's Going on Under the Hood?, 109th Cong., 2d Sess. 7, 58 (2006).

[58] S. Rep. No. 109-336, 109th Cong., 2d Sess. 65-66 (2006). The Senate Finance Committee (and full Senate) originally approved the penalty as part of the Telephone Excise Tax Repeal and Taxpayer Protection and Assistance Act of 2006, but that earlier legislation was ultimately not enacted. The formal legislative history of section 6676 contains nothing suggesting the IRS' concern about abusive refund claims had abated in the least.

[59] *See* I.R.C. § 6676(b).

[60] The penalty does not apply to a claim for refund or credit relating to the earned income credit under section 32. *See* I.R.C. § 6676(a). Nor does it apply to any portion of an excessive amount which is subject to the accuracy-related and fraud penalties set out in sections 6662 through 6664. *See* I.R.C. § 6676(d).

[61] *See* I.R.M. 20.1.5.16.5(3) (January 24, 2012).

certain level of authority (as contrasted with the "reasonable cause" standard, which has a subjective component).[62] Thus, as interpreted by the IRS, the taxpayer's effort to comply with the tax law is irrelevant to whether the penalty applies.[63] The reasonable basis/reasonable cause distinction is especially important in connection with emerging issues for which there is little authority.

In addition, the IRS has concluded that deficiency procedures do not apply to penalties imposed under section 6676.[64] Thus, to contest the penalty in court, taxpayers must first fully pay the liability and (somewhat counter-intuitively) file a refund claim before seeking review in a U.S. District Court or the U.S. Court of Federal Claims.[65]

Most of the guidance that has been issued on the penalty is summarized in the IRM and a set of 14 frequently asked questions initially made available to examiners.[66] The FAQs contain helpful guidance, including the statement that the penalty only applies

[62] The IRS has said that it will define "reasonable basis" in the same way the term defined in Treas. Reg. § 1.6662-3(b)(3) for purposes of avoiding the negligence penalty. *See* I.R.M. 20.1.5.16.2(13) (January 24, 2012). That regulation defines "reasonable basis" as "a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim." A return position will generally have a reasonable basis if it is reasonably based on one or more of the authorities set out in Treas. Reg. § 1.6662-4(d)(3)(iii), taking into account the relevance and persuasiveness of the authorities, and subsequent developments. *See* Treas. Reg. § 1.6662-3(b)(3).
[63] In a Program Manager Technical Assistance document on the section 6676 penalty, the IRS explained "that consideration of whether a claim has a reasonable basis is different from the typical exception to many other penalties for taxpayers acting with reasonable cause and good faith." PMTA 2010-003 (February 26, 2010). The PMTA explained that unlike the reasonable cause defense, whether a claim has a reasonable basis "is not dependent on the subjective state of mind of the taxpayer presenting the claim or the actions of the taxpayer in determining the appropriateness of the claim. The statute requires an examination of the claim itself to determine whether it has a reasonable basis." *Id*. That said, the Internal Revenue Manual states that an examiner should assert the penalty only after "consideration of all the facts and circumstances," *see* I.R.M. 20.1.5.16.2(6) (January 24, 2012), which arguably is inconsistent with the other informal guidance that focuses on the legal authority for the position.
[64] *See* I.R.M. 20.1.5.16.2(12) (January 24, 2012). The IRS has stated, however, that deficiency procedures may apply to the extent the excessive amount is attributable to a refundable credit. *See* Memorandum on Implementing the Section 6676 Penalty, PRENO-137143-14 (Oct, 27, 2914), *available at* www.irs.gov/pub/irs-utl/PMTA-2014-020.pdf.
[65] *See* I.R.M. 20.1.5.16.4(4) (January 24, 2012).
[66] *See* Jeremiah Coder, "News Analysis: Behind the Scenes of the Erroneous Refund Penalty," 2010 TNT 153-1 (August 10, 2010) (including the FAQs as an attachment).

to claims for refund or credit with respect to income tax and not to other types of taxes such as excise tax. The FAQs also state that the penalty applies to both formal and informal refund claims.

The IRM puts some taxpayer protections in place. Examiners must obtain managerial approval to open a penalty examination and, as required by section 6751(b), obtain managerial approval to assert the penalty. The IRM also instructs examiners to offer taxpayers a meeting with the manager to discuss the un-agreed issue. Finally, the IRM explains that taxpayers may contest the penalty at appeals.

Many questions, however, remain unanswered, such as whether the IRS will apply the penalty on "protective" refund claims, whether it applies to claims for interest or penalties related to income tax, and whether there is a statute of limitations on the time that the IRS has to assess the penalty.

B. Application of the Penalty

In a 2013 report, TIGTA reported that the IRS "assessed only 84 erroneous refund penalties totaling $1.9 million between May 2007 and May 2012."[67] There is reason to believe, however, that the section 6676 penalty is proposed by exam in many more cases than reflected in the TIGTA report, in part because experience teaches that numerous penalties have been proposed by exam but conceded by appeals. There are several indications that the penalty may be asserted more in future exams:

- The IRM was revised in early 2012 to require examiners to document the basis for non-assertion of the penalty when claims are disallowed. *See* I.R.M. 20.1.5.16.2(13) (stating that a "standard statement such as 'Erroneous claims penalty deemed not applicable' is not sufficient."). Further, the examiner's

[67] Treasury Inspector General for Tax Administration, *The Law Which Penalizes Erroneous Refund and Credit Claims Was Not Properly Implemented*, Report **No. 2013-40-123** (September 26, 2013).

manager must sign off on the decision *not* to assert the penalty when a substantial portion of the claim for refund or credit is disallowed. *Id.*

- In response to the 2013 TIGTA report, the IRS formed a cross-representational team of affected stakeholders to determine the operational and procedural changes needed to integrate assessment of the erroneous refund penalty into the campus environment.
- In a 2013 report, the AICPA concluded that the penalty was "being imposed automatically and regularly when a claim for refund is denied, without any consideration of whether the position has a reasonable basis."[68]
- Finally, the changes announced by LB&I in draft Publication 5125 regarding requirements for refund claims, discussed immediately below, have focused the attention of affected taxpayers on such claims.

C. <u>Refund Claims by LB&I Taxpayers</u>

Corporate taxpayers typically file refund claims following the discovery of new facts or changes in relevant law. Regarding the former, many large taxpayers do not expect their original returns to be final because they do not have all the information necessary to accurately complete their returns when they are due. For example, information from passthrough entities may be provided to the taxpayer too late in the filing season to be reflected on the original return; similarly, information from foreign related entities with different reporting periods, or information regarding state taxes, may not be received in time to be reflected on the original returns. These corporate taxpayers anticipate they will need to make adjustments to the original return.

Most corporate taxpayers subject to continuous audit under the Coordinated Industry Case (CIC) program make refund claims "informally." An informal claim typically consists of a short explanation of the favorable adjustment without any tax computation and is provided to the exam team at the commencement of or during the audit. Corporate taxpayers prefer this process to avoid the administrative and

[68] *See* American Institute of Certified Public Accountants, *Report on Civil Tax Penalties: The Need for Reform* (April 11, 2013).

computational burdens that would be associated with filing formal refund claims on Form 1120X or Form 843, especially since such computations would likely be superseded by the final computations necessary to close an audit.

Taxpayers occasionally first report positions on refund claims for strategic reasons. Some corporate taxpayers prefer to test uncertain positions in refund claims because such claims were generally thought to be immune from penalties before the enactment of section 6676. This process does hold some benefit for the IRS, since a refund claim "must set forth in detail each ground upon which [it] is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof,"[69] a more exacting standard than applies to positions reflected on a large corporate taxpayer's original return. Moreover, in the claims context, the Treasury has the taxpayer's payment for which it is claiming a refund, whereas in the original return situation the Treasury will never obtain those funds (even temporarily) if the uncertain position escapes audit detection or is ultimately sustained.

IRSAC appreciates that some corporate taxpayers have strategically raised informal claims late in the examination process as a means of distracting the examination team. In late 2014, LB&I released a draft of new rules intended to impede taxpayers from strategically using refund claims to distract the examination team from other issues or perhaps to offset any possible deficiency that might arise out of the audit. (As noted, such concerns seemingly played a role in enacting section 6676.) LB&I explained the new procedure in draft Publication 5125 (which was released in July 2014):

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[69] *See* Treas. Reg. § 301.6402-2(b)(1).

Expectations with Respect to Claims

> To deploy our resources efficiently, all claims for refund should be brought to the attention of the exam team as soon as the taxpayer becomes aware of any potential overpayments of tax. LB&I will only accept informal claims that are provided to the exam team within 30 days of the opening conference. After the 30-day period, claims for refund must be filed using either Form 1120X or Form 843 with supporting documentation. Claims filed after the 30-day window create resource challenges and may result in unnecessary refund litigation which reasonably can be avoided if taxpayers act in a timely fashion.
>
> All claims must meet the standards of Treasury Regulation Section 301.6402-2, which provides that a valid claim must:
>
> - Set forth in detail each ground upon which credit or refund is claimed
> - Present facts sufficient to apprise the IRS of the exact basis for the claim and
> - Contain a written declaration that it is made under penalties
>
> Transparent and cooperative taxpayers will provide fully documented and factually supported claims that may permit the exam team to make a tax determination of the claims without requiring the use of IDRs. This will allow the exam team to quickly determine whether to accept or examine a claim. Claims will be risk assessed in the same manner as any other audit issue. If the claim warrants examination, the exam team and the taxpayer will discuss the potential need for additional resources, and extend the examination timeline, as necessary[,] or LB&I could decide that the claim will be worked separate from the current examination. Claims will be disallowed for failing to meet the standards of Treasury Regulation Section 301.6402-2.

The Subgroup is concerned that the process envisioned by draft Publication 5125 for handling refund claims after the beginning of an examination may make assertion of the erroneous refund claim penalty more common and lead to imposition of penalties in cases where taxpayers are not trying to misdirect audit resources.

Recommendations

The IRSAC recommends that for any refund claim filed by a taxpayer within 30 days of the opening conference an examiner be required to obtain approval to assert the penalty from the pertinent Director of Field Operations, and that affected taxpayers be offered a

conference with the DFO before assertion of the penalty.[70] Such a rule would not frustrate the congressional intent undergirding section 6676 (or the goal of draft Publication 5125) — deterring taxpayers from filing refund claims late in the audit cycle for strategic advantage — while both ensuring that taxpayers are not unfairly penalized and providing taxpayers with an additional incentive for filing claims early in the cycle.

Moreover, the IRSAC recommends that the IRS consider the timing of the claim in assessing whether the taxpayer had a reasonable basis for the claim. Section 6676 was clearly prompted by concern over the burden caused by late filed claims, and although neither the statute nor any Treasury regulation defines "reasonable basis" for purposes of section 6676, the IRSAC believes the IRS has discretion to define a clause intended to prevent unjustified penalties in a manner that takes account of the concerns that gave rise to the penalty. Sound tax administration is served, not undermined, when taxpayers are transparent regarding their uncertain positions and the IRSAC thus believes the IRS should encourage not discourage taxpayers from testing positions in refund claims — with the attendant level of disclosure inherent in such claims — so long as the claims are provided to the IRS in a time and manner that do not impede the audit.

Alternatively, we recommend that the IRS seek a legislative change to allow taxpayers to avoid the erroneous refund claim penalty if they acted reasonably and in good faith. The Taxpayer Advocate has endorsed this ameliorative change in her 2011 and 2014 annual

[70] To the extent express authority is required for this approval requirement, section 6751(b) prohibits the assessment of any penalty unless "the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate."

reports to Congress. In the more recent report, the Taxpayer Advocate explained that the Office of Chief Counsel (Procedure and Administration) likewise recommended that change in suggestions for the Treasury's 2012 Green Book.

ISSUE THREE: APPLICATION OF QUALIFIED AMENDED RETURN RULES TO REGULARLY EXAMINED TAXPAYERS IN A POST-CIC ENVIRONMENT

Executive Summary

The IRS' procedures relating to qualified amended returns (including Rev. Proc. 94-69 which applies to Coordinated Industry Case (CIC) taxpayers) provide taxpayers the means to avoid potential penalties by making disclosures after the filing of an original return. Because LB&I's phasing out of the CIC program (in favor of a risk-assessment focus on issues) could effectively render Rev. Proc. 94-69 moot, the incentive to self-correct errors discovered after the filing of an original return may disappear. In this report, IRSAC recommends that LB&I develop a new procedure to preserve the benefits of Rev. Proc. 94-69 and, indeed, possibly expand them to a broader group of taxpayers that, while not part of the CIC program, could respond positively to an incentive for self-correction.

Background

Rev. Proc. 94-69, 1994-2 C.B. 804, provides special procedures for taxpayers subject to the IRS' large-case program (formerly named the "Coordinated Examination Program" but currently the Coordinated Industry Case (CIC) program) to show additional tax due or make adequate disclosure with respect to an item or a position to avoid imposition of certain accuracy-related penalties. The revenue procedure treats a written statement containing certain required information provided by CIC taxpayers to the IRS within 15 days of request (or otherwise agreed time on a showing of reasonable cause) as a "qualified amended return" for purposes of the negligence, disregard of rules and regulations, and substantial understatement penalties.

A qualified amended return (QAR) is an amended return filed after the due date of the original return but before the happening of certain events, including the date the taxpayer is first contacted by the IRS concerning an examination of the return. *See* Treas. Reg. § 1.6664-2(c)(3). The effect of a qualified amended return is that the amount of tax shown on the qualified amended is included in the amount of tax shown on the original return for purposes of computing any underpayment. *See* Treas. Reg. § 1.6664-2(c)(2). The QAR rules are intended to encourage transparency by encouraging taxpayers to self-correct errors discovered after the filing of an original return.

The predecessor to Rev. Proc. 94-69 (Rev. Proc. 85-26, 1985-1 C.B. 580) explained that in the case of a large-case taxpayer, "the time of the first contact concerning an examination of the return is not an appropriate criterion" for allowing such a taxpayer to file a qualified amended return "because, generally, all returns of CEP [now CIC] taxpayers are examined." It therefore provided that a disclosure, made within the time frame specified in the revenue procedure, would be treated as having been made on a qualified amended return. Rev. Proc. 94-69 cautions, however, that the ameliorative relief provided would cease (after a safe harbor period) to any taxpayer that "no longer meets the criteria for a CEP taxpayer." The disclosure procedure set forth in Rev. Proc. 94-69 effectively encouraged a continuously audited taxpayer to disclose errors while avoiding the cost and administrative burdens entailed in filing a formal amended return, which could likely trigger correlative burdens related to state, foreign, and financial reporting requirements.

In late 2014, LB&I officials announced that LB&I intends to move away from the CIC program toward centralized risk assessments. LB&I officials have explained their

expectation that the new program will stop continuous audits for some CIC taxpayers, while acknowledging that certain large taxpayers will continue to be continuously audited by virtue of their size or other demographic attributes, notwithstanding any eventual termination of the CIC program. Absent clarification, the elimination of the CIC program would concomitantly eliminate the option of making disclosures pursuant to Rev. Proc. 94-69.

Recommendation

Underlying the qualified amended return rules of Treas. Reg. § 1.6664-2(c) and Rev. Proc. 94-69 is a recognition that a large taxpayer's understanding of the operative facts underlying a transaction (or position) and the state of the governing legal rules could change between the time a return is filed and its examination. The rules also recognize that it would be unfair and even counterproductive to penalize a taxpayer in such a situation. Hence, they provide an incentive — in the form of penalty relief — for the taxpayer to self-correct erroneous return positions. Without the relief afforded by Rev. Proc. 94-69, a taxpayer discovering an error — say, upon preparing a subsequent year return or its financial statements — would have no incentive to correct or even disclose it unless it were willing to accept the burden of preparing a formal QAR.

The IRSAC is concerned that, absent the development of a new procedure, LB&I's phasing out of the CIC program would render Rev. Proc. 94-69 inapplicable and greatly diminish, if not eliminate entirely, the existing incentive for self-correction. Obviously, if the CIC program were ended, a taxpayer could still make a valid disclosure by filing an actual qualified amended return. Given the administrative burdens of filing a formal

amended return (including correlative burdens related to satisfying state, foreign, and financial reporting filing requirements), the IRSAC believes there is significant potential for the number and quality of disclosures to decline. We therefore recommend that the LB&I develop a new procedure to preserve the benefits of Rev. Proc. 94-69 and, indeed, possibly expand them to a broader group of taxpayers that, while not part of the CIC program, could respond positively to an incentive for self-correction. Since the contours of LB&I's reorganization are still being formulated, it is not possible to make specific recommendations at this time. IRSAC recommends therefore that this issue be carried over to the LB&I subgroup's 2016 agenda.

ISSUE FOUR: INTERNATIONAL INFORMATION RETURN PENALTIES

Executive Summary

The Internal Revenue Code provides a $10,000 penalty for the failure to timely file certain international information returns, even when there is no underreporting of income or underpayment of tax liability. When a taxpayer files one of these forms delinquently, the IRS may assess the penalty immediately and the collection process may begin. Taxpayers may seek abatement of the penalty when the delinquency is due to reasonable cause and not willful neglect. Our recommendations concern ways to ensure that the penalties are applied to bad conduct and not to innocent errors.

Background

Section 6038 and the applicable regulations require U.S. persons with a certain level of control in certain foreign corporations to file a Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations," reporting information with respect to each of such foreign corporations. The Forms 5471 must be filed with the U.S. person's income tax return on or before the date required by law for the filing of that person's income tax return. Section 6038(b)(1) provides for a monetary penalty of $10,000 for each Form 5471 that is filed after the due date of the income tax return (including extensions) or does not include the complete and accurate information required by section 6038(a). In addition to the monetary penalty, section 6038(c) provides for a 10% reduction of the foreign taxes available for credit under sections 901, 902, and 960.

Following the enactment of FATCA, the IRS began automatically asserting section 6038 penalties on late filed Forms 1120 that had Forms 5471 attached. While

taxpayer exposure to penalties for late filed Forms 5471 was not new, the IRS had not historically focused on section 6038 penalties for this type of late filed information returns. Typically, the penalty was considered under examination when an unfiled Form 5471 was discovered. However, with more Forms 1120 being electronically filed, the IRS is able to determine quickly which returns with Forms 5471 attached are late filed, and to identify late Forms 5471.

Later, the IRS added late Forms 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business," to the same program. Section 6038A requires U.S. corporations with a certain level of foreign ownership to file Forms 5472 to report information with respect to transactions with related parties, and section 6038C requires foreign corporations engaged in U.S. business to file Form 5472 reporting similar information.

Like Form 5471, Form 5472 must be filed with the U.S. corporation's Form 1120 (or foreign corporation's Form 1120-F) on or before the date required by law for the filing of corporation's return. Similarly, there is a penalty of $10,000 for each Form 5472 that is filed after the due date of the income tax return (including extensions) or that does not include the complete and accurate information.

Unlike the penalty for the failure to file income tax returns (under section 6651(a)(1)), which is based on the tax shown on the return, the penalties for late filed Forms 5471 and 5472 apply even if no tax is due on the Form 1120. That said, taxpayers may avoid these penalties if reasonable cause exists for the failure to file timely the Forms 5471 and 5472. In addition, penalties asserted for omissions of, or errors with respect to, information contained in otherwise timely filed Forms 5471 and 5472 may be

avoided if the taxpayer can show substantial compliance with the information reporting requirements.

Obtaining abatement of the penalty, however, is frequently difficult, even for benign and essentially inconsequential failures (or late filings). First, the IRS unit assigned to review the abatement request often is unable to do in a timely manner. The present budget and resource constraints within the IRS only exacerbate this situation. Second, because the tax may be assessed immediately, the taxpayer often has to deal with IRS collection (rather than the compliance function), where the volume of work and training provided to the personnel could affect the quality of the reasonable cause review. Often, the taxpayer must request repeated stays of collection to allow for consideration of the abatement request.

Finally, there can be inconsistent consideration of the abatement requests. "Reasonable cause" can be very fact specific, and thus, there can be differing results for similarly situated taxpayers. When this happens, the taxpayer may be forced to seek an administrative appeal to seek an independent review. All of this not only lengthens the time required to resolve a matter and increases the taxpayer's cost, but it can consume considerable IRS resources.

Recommendations

1. Reconsider the automated process (or at least delay assessment until the request for abatement and appeal are final). Assessment triggers the collection process and adds additional pressure to both the IRS and the taxpayer. If the IRS delayed assessment until consideration of the abatement request is final, much of the stress on the IRS system and the taxpayer would be reduced.
2. Acknowledge innocent errors and not assert (or abate) the penalty. The purpose of the IRS program is to encourage compliance with foreign information reporting, and the assertion of the penalty for minor, often benign, non-volitional failures can be counterproductive. Encouraging voluntary compliance should properly be the sole objective of any penalty regime, and IRSAC does not believe that objective is advanced by the assertion of penalties in these situations since (1) the taxpayers involved are not non-filers, but merely delinquent (often for innocent reasons), (2) they self-correct their compliance without prompting, and (3) the late filing has no adverse effect on the IRS' need for information or payment of any tax. A few examples of benign noncompliance are —

    - Problem with Filing Extension. The taxpayer files a late or incorrect Form 7004. When it files its return on September 15th, penalties are assessed on all "untimely" Forms 5471, even though they are received by the extended due date.
    - E-filing Problems. The taxpayer has an issue with the e-filing of its return that it cannot resolve until after midnight on September 15th. Again, penalties are assessed.
    - Penalty Is Disproportionate when No (or Little) Tax Due. Common situations are:
        a. Form 5472 for unknown permanent establishment of a small U.S. entity
        b. Late return that reflects a net operating loss

3. "First Time Abate" Consideration. In many other penalty situations (*e.g.*, failure to file, failure to pay, and failure to deposit penalties), the IRS will abate penalties for a first time failure if the taxpayer has a history of compliance. *See* I.R.M 20.1.1.3.6.1 (August 5, 2014) "First Time Abate (FTA)." The same policy, i.e., the promotion of voluntary compliance, supporting FTA for those other failures should apply here.
4. Refine the training provided to agents and managers to facilitate the policy goals underlying the foregoing recommendations.

ISSUE FIVE: IMPLEMENTATION OF THE TANGIBLE PROPERTY REGULATIONS

Executive Summary

At the request of LB&I, IRSAC developed recommendations for risk assessment, examination approach, and additional guidance related to taxpayer implementation of the Tangible Property Regulations (TPR).

Background

In September 2013, the Department of the Treasury and the IRS issued final regulations on the application of section 263(a) of the Internal Revenue Code to amounts paid to acquire, produce, or improve tangible property.[71] The regulations, which are generally applicable to tax years beginning after December 31, 2013, apply to all taxpayers who acquire, produce, improve, repair, or dispose of tangible property — virtually all business taxpayers.

To implement many of the changes, taxpayers must submit Form 3115, "Application for Change in Accounting Method." Given the nearly universal application of the regulations, during the 2014 filing season the IRS received several hundred thousand Forms 3115. LB&I has requested IRSAC's recommendations on (1) how to risk assess these applications and (2) how to effectively and efficiently examine the ones selected for audit.

Recommendations

1. Risk Assessment. IRSAC recommends that LB&I take into consideration the following factors in selecting applications for accounting method changes for

[71] T.D. 9636, 78 Fed. Reg. 57686 (September 13, 2013).

examination. None of these factors should be considered dispositive, but taken collectively in light of the taxpayer's facts and circumstances, they should facilitate a better use of the IRS' resources.

a. General factors:

   i. What is the taxpayer's industry? The TPR will have a greater effect on manufacturing, retail, and utilities companies because they have many fixed assets. On the other hand, tax-exempt entities, financial services enterprises, and software companies often have fewer fixed assets, so one might expect the TPR to have a smaller effect.

   ii. What is the relative size of the taxpayer? While the TPR may significantly affect the largest companies, experience teaches that most of them have a greater awareness of, as well as more resources to implement correctly, the TPR. At the opposite end of the spectrum, smaller companies will also be affected by the TPR, but they may pose less risk to the revenue. Thus, from a risk assessment perspective, mid-sized companies may merit greater attention because they may have many fixed assets but not the wherewithal and means to comply with the many provisions of the TPR.

b. Taxpayer specific facts:

   i. Did the taxpayer file a TPR Form 3115? Because the TPR will affect almost all business taxpayers, the absence of a single Form 3115 may indicate a compliance risk.

   ii. Did the taxpayer file a repair Form 3115 before the issuance of the final TPR? Several years ago before the TPR became final, many taxpayers changed their method of accounting for repairs from capitalization to expensing. Often, these changes reflected large favorable section 481(a) adjustments (i.e., a cumulative adjustment to carve out the repair expenses). The TPR may operate to reverse some of those favorable adjustments, so IRS sensitivity to when the change-in-method application was filed may be warranted.

   iii. What type of change is included in the Form 3115? Similar to the last point, current year method changes for repairs or improvements may reflect a larger compliance risk than other changes (e.g., a change for materials and supplies).

   iv. Did the Form 3115 have a "zero" section 481(a) adjustment? Most taxpayers will have either a positive or negative cumulative adjustment. Stated generally, the TPR require the taxpayer to review its fixed assets and determine how historic costs should be treated under these new guidelines. A taxpayer's having no cumulative adjustment may suggest that the taxpayer has made a prospective-only change and not reviewed its historic costs.

v. In what year were the TPR adopted? Almost all taxpayers are required to implement the TPR no later than their 2014 return. Thus, taxpayers who do not implement the TPR in a timely manner may not be in compliance.

c. Future risk consideration: Filing of an amended return for 2014 with a more favorable section 481(a) adjustment. LB&I may wish to scrutinize future amended 2014 returns where the taxpayer has increased its section 481(a) adjustment to claim a significant refund. The claim will be made after the initial consideration of implementation of the TPR and guidance thereunder. Thus, the taxpayer's amended return may signal reliance on a new or creative position not originally anticipated when the TPR were implemented.

2. Observations about the examination of TPR implementation.

   a. Discuss the taxpayer's specific situation with them. While the TPR will apply to nearly all business taxpayers, their effect will vary broadly. There are more than 20 potential method changes to be considered in the TPR. Some will be fairly common while others will not. Consideration of questions such as the following may shed light on the level of the taxpayer's TPR compliance:

      i. Describe the process used in assessing the implications of the TPR for your business.

      ii. Which methods did you adopt (or not adopt)? Why?

      iii. How did you document this analysis?

1. Did you engage with any tax professionals to assist in the implementation?
2. Did your advisers provide you with any recommendations? In what form did you receive those recommendations?
3. If you follow the recommendations received? If not, why?

b. Review the Forms 3115 and, specifically, the section 481(a) computations. Because the TPR may affect particular taxpayers in unique ways, scrutiny of the taxpayer's implementation process and computations may be appropriate. Moreover, the quality of the taxpayer's work around the implementation may be apparent from a close review of these items.

c. Examination procedures for repairs, improvements, and dispositions where records are not readily available. The examination of adjustments made for repairs and dispositions where historical records are incomplete or not available may be a challenge. Although the TPR described how historical calculations should be performed in such cases, the specified methods may result in overstatement of costs and disparity between taxpayers in the same industry. IRSAC recommends that LB&I review and adopt some of the techniques described in the IRS' Cost Segregation Audit Technique Guide.[72] Specifically, Chapter 4 of the Guide outlines the elements of a Cost Segregation Study, and many of the areas discussed are directly relevant to the implementation of the TPR. Additionally, the Audit Technique Guide discusses the use of interviews with Subject Matter Experts (SMEs) as a

[72] Accessible at http://www.irs.gov/Businesses/Cost-Segregation-Audit-Technique-Guide-Chapter-4-Principal-Elements-of-a-Quality-Cost-Segregation-Study-and-Report.

form of support in Chapter 4.4. Further guidance on application of this concept to determination of repairs and dispositions is recommended.

d. Recommended guidance on establishing a capitalization policy that "clearly reflects income." Section IV of T.D. 9636 addresses the *de minimis* safe harbor exception permitting a taxpayer to deduct certain amounts paid for tangible property. For taxpayers with an audit financial statement, the *de minimis* threshold is set at $5,000 per invoice (or item). For taxpayers without an audited financial statement, the amount is set at only $500 per invoice (or item), or an amount that "clearly reflects income." IRSAC recommends that the IRS consider further guidance on the definition of "clearly reflects income" in this context. Many mid-sized companies, particularly S-corporations and partnerships, do not have audited financial statements, but nevertheless rely on the practices of companies with financial statements in adopting a $5,000 deduction policy. Although this may be appropriate for many taxpayers, it represents an increase from prior capitalization policy thresholds resulting in significant deductions and bares scrutiny.

Internal Revenue Service Advisory Council
2015 Member Biographies

Patricia Atwood

Ms. Atwood is an Accredited Senior Appraiser in the field of Personal Property and the owner of Timely Antique Appraisals, LLC, in Rockford, IL. She currently serves on the Appraisal Standards Board of The Appraisal Foundation and teaches Principles of Valuation courses for the American Society of Appraisers (ASA). A current member of ASA, Ms. Atwood was previously on the ASA International Personal Property Committee and president of the ASA Chicago Chapter. Ms. Atwood holds a B.A. from Cornell University, an M.A., from Columbia University and an M.A., from Princeton University. **(OPR Subgroup)**

Ronald D. Aucutt

Mr. Aucutt, J.D., has 40 years' experience in taxation and is a partner with McGuireWoods, LLP in Tysons Corner, VA. Mr. Aucutt's past experience includes corporate reorganizations, the investment tax credit, tax-exempt financing, TEFRA partnership audits and tax treatment of inventories, as well as tax-exempt organizations, estate and gift taxes and the income taxation of estate and trusts, which in time became his areas of concentration. Prior to joining McGuireWoods LLP he was a partner with Miller & Chevalier, where he handled tax planning matters and tax audits and appeals throughout the country. He compiled the factual background and analysis that was adopted by the Senate Finance Committee in changing the effective date of the first generation-skipping transfer (GST) tax in the Tax Reform Act of 1976 to June 12, 1976. Mr. Aucutt is a member and past President (2003-2004) of the American College of Trust and Estate Counsel (ACTEC) and the past Chair of its Washington Affairs Committee (2009-2013). He is also a member of the American Bar Association. He holds a J.D. and a BA from the University of Minnesota. **(OPR Subgroup Chair)**

F. Robert Bader

Mr. Bader, J.D., EA, is the Director of Tax Operations for the Baltimore CASH Campaign in Baltimore, Maryland. Mr. Bader was introduced to free tax preparation services while managing a partner program of the Baltimore CASH Campaign. In 2008, he became Director of its tax programs and now coordinates organizations throughout the Baltimore area that prepare returns for 8,000-10,000 low-income working families. Mr. Bader is an active member of the Taxpayer

Opportunity Network (TON), an organization that represents Volunteer Income Tax Assistance (VITA) programs and Low Income Tax Clinics (LITCs). In addition, Mr. Bader is Chair of the Maryland Board of Individual Tax Preparers and a member of the Maryland Society of Accounting and Tax Professionals. He is a member of the Maryland bar and previously represented low-income individuals as a legal aid attorney in Massachusetts and Pennsylvania. He served in the United States Peace Corps in the countries of Côte d'Ivoire and Ghana. He holds a J.D. from the University of Toledo School of Law and a B.A. in Political Science with a certificate in Peace Studies from Siena College. **(SBSE/W&I Subgroup)**

Eunkyong Choi

Ms. Choi, J.D., L.L.M, is a lecturer in law and supervising attorney for Washington University School of Law's Low Income Taxpayer Clinic (LITC) in St. Louis, MO. She is a business-oriented attorney with diverse experience in developing and delivering complex tax planning strategies. Her responsibilities include advising and representing low-income taxpayers in controversies with the IRS and before the U.S. Tax Court as well as providing on-the-job training and guidance for the tax clinic staff, volunteers, and student attorneys to ensure that members of the clinic possess the knowledge and skills necessary to effectively represent clients. Before joining the law school, she was the program director and supervising attorney for Nevada Legal Services-LITC program. Ms. Choi holds an LL.M. and J.D. from Washington University School of Law and a B.A. from the University of Akron. **(SBSE/W&I Subgroup)**

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Mr. Cullinan, J.D., is a Partner with Sutherland Asbill & Brennan LLP in Atlanta, GA. Mr. Cullinan is a member of Sutherland's Tax Practice Group, who focuses his practice on tax controversies against the Internal Revenue Service (IRS). He has represented a large number of corporations, partnerships, and high net-worth individuals in all phases of tax controversy, including IRS audits, appeals, and tax litigation. Mr. Cullinan has extensive experience settling tax cases and is well-versed in tax litigation when the parties cannot agree to an administrative resolution. He has worked on cases involving the research tax credit, the foreign tax credit, corporate-owned life insurance, "tax shelters" and "listed" transactions, and transactions alleged

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Ms. Fischer, CPA, is a Partner with Moss Adams LLP, in Seattle,, WA. Ms. Fischer has over fourteen years' experience in taxation as a Certified Public Accountant (CPA). Her primary responsibility is to provide clients with tax consulting services regarding the tax treatment of R&D expenditures. Mr. Fischer's specialties include R&D Tax Credit (IRC 41), R&D Expenditures (IRS 174), General Business Credits (IRC 38 & 39), IRS various state examination defense regarding R&D credits and expenditures. Her clients' base is predominately compromised of middle-market companies. Although she has been involved in R&D tax credit analyses for all entity types and sizes, the focus on middle-market companies has allowed her to gain experience in the complexities of S-corporations and Partnerships claiming the R&D Credits. She partners with the Examination and Appeals functions to help resolve complex cases. Ms. Fischer is a member of the American Institute of Certified Public Accountants (AICPA), and the Washington Society of Certified Public Accountants (WSCPA). Ms. Fischer holds a Bachelor of Science Degree (Accounting), from Central Washington University. **(LB&I Subgroup)**

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Neil H. Fishman, CPA, CFE, FCPA, CAMS is Vice President/co-owner of Fishman Associates CPAs PA in Boynton Beach, Fl. Mr. Fishman has over 25 years' experience in taxation, specializing in the preparation of federal, state and local corporate, partnership, fiduciary, gift, estate, not-for-profit and personal income tax

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Michele J. Gaines, the owner of Jackson, Jackson & Jackson in Pittsburgh, Pennsylvania, has more than 40 years of experience in taxation. Gaines specializes in tax preparation for individuals, businesses and organizations which includes the preparation and filing of all federal, state and local tax returns, which she highlights in her tax books, ***Top Ten Tax Series***: ***Know the Game and Save on taxes.*** Michele's practice includes providing the Pittsburgh community with tax information and ways to monitor and manage one's tax life through her TV show, ***Tax Central***. As a Tax Professional, Jackson, Jackson & Jackson handles all aspects of taxation especially business, corporate, partnerships and Pennsylvania inheritance tax returns. Gaines also represents clients before the IRS on the Examination level and provides strategies that reduce tax debt. Prior to owning and operating Jackson, Jackson, & Jackson, Gaines' professional work experience included teaching, grant writing, negotiating federal contracts in addition to the preparation of individual/business taxes and preparing clients for tax audits. Gaines is a member of the Allegheny County Bar Association, (ACBA) the National Association of Tax Professionals, (NATP), National Society of Accountants (NSA) and is a Court Appointed Special Advocate (CASA). Michele J. Gaines holds a B.A., from Shaw University, Raleigh, NC. **(SBSE/W&I Subgroup)**

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Mr. Murray, JD, CPA, is a Managing Director, Tax Accounting, Risk Advisory, and International Tax Services, at Grant Thornton, LLP, U.S. member of Grant Thornton International, a major international accounting network with more than 500 offices in 113 countries, in its Washington, DC office. He is a member of the Firm's

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Walter Pagano

Mr. Pagano, CPA, has worked in the tax field for more than 35 years and is a Tax Partner with EisnerAmper LLP, Accountants and Advisors in New York City, NY. Mr. Pagano concentrates his practice in tax controversy examinations and investigations, commercial and civil litigation, accounting investigations, internal investigations, financial statement omissions, misrepresentations and fraud, with an emphasis on civil and criminal tax

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Andre' L. Re

Mr. Re has worked in the field of taxation for over 41 years and is the owner of Andre' L. Re, in McDonough, GA. Mr. Re worked for the Internal Revenue Service (IRS) for over 30 years, 12 as an Executive. He is a tax consultant and has represented large and medium size corporations before the IRS regarding complex issues at the group and Appeals level. His responsibilities include research and development, travel and entertainment, insurance, tax exempt status, large partnership, and many other issues. Prior to owning his own business he worked for Ernst & Young where his responsibilities included IRS income tax examinations, Service Center processes, employee plans and exempt organizations, tax controversy, and collection matters. He has had numerous opportunities to work with IRS Service Center Campuses to resolve issues with account records, sub S elections, collection procedures, entity elections, and AUR notices. In addition, he worked as a VITA volunteer and has assisted taxpayers with offers in-compromise, installment agreements and other individual and small business tax issues. Mr. Re holds a BS in accounting from Ferris State University, Big Rapids, MI, and an MA in Public Administration from Syracuse University. **(SBSE/W&I Subgroup Co-Chair)**

Donald H. Read

Mr. Read, J.D., LLM, is an attorney and is certified as a taxation law specialist by the Board of Legal Specialization of the State Bar of California. He has worked in the tax field for more than 40 years. A former Attorney-Adviser in the Treasury Department's Office of Tax Legislative Counsel, he has been a tax partner in law firms in Honolulu, San Diego and San Francisco. He is currently the owner of the Law Office of Donald H. Read, in Berkeley, CA and tax counsel to both Lakin-Spears in Palo Alto and Severson & Werson in San Francisco. His recent practice focuses on advising family law attorneys on tax issues related to divorce and the tax problems of same-sex couples. In 2010 he obtained a landmark private letter ruling in which the IRS first recognized community property rights of registered domestic partners. Mr. Read also advises clients on general individual and business tax matters and has obtained private letter rulings for his clients in areas as diverse as partnerships, S corporations, stock redemptions, like-kind exchanges, stock options, deferred compensation and community property income of registered domestic partners. He is a former adjunct professor at the USF School of Law, former chair of the

Taxation Committee of Family Law Section of the American Bar Association, and former vice-chair of the Domestic Relations Committee of the ABA's Taxation Section. He is a member of the East Bay Tax Club and QDRONES. A graduate of Deep Springs College (of which he was later a member of the Board of Trustees), Mr. Read holds a B.A. from the University of California at Berkeley; a J.D. *cum* laude, from Columbia University and an LL.M. (in taxation) from New York University. **(OPR Subgroup)**

Karen Salemi

Ms. Salemi, CPP, FLMI, is Learning Consultant with Zero Chaos, which provides high-quality contingent workforce solutions. Previously, she was a Global Training Leader at International Business Machines (IBM) Corporation, in Pepperell, MA, where she created and delivered payroll related courses including COBRA, 401k, Stock options, accounting, balancing and reconciling, year-end W-2c, multistate issues and local tax classes. Prior to working at IBM, Ms. Salemi, was a Solutions Consultant and Training Manager at Kronos, Inc., a management software and services company, where she helped define their work requirements and building the technical specifications document that is used to configure the HR and payroll systems. She also worked as a Practice Leader of the Employment Tax Consulting group in Ernst & Young's Dallas office, assisting small business and other clients with various process and tax compliance issues, as well as systems implementations. Ms. Salemi is a member of the American Payroll Association (APA) and currently serves as its treasurer. She also serves on APA board of contributing writers, where she publishes and reviews articles dealing with payroll tax and compliance issues, and the Government Affairs Task Force (GATF) for Paycards subcommittee. Ms. Salemi holds a MBA from Seton Hall University, South Orange, NJ and a BA in Accounting from William Paterson University, Wayne, NJ. **(SBSE/W&I Subgroup)**

Sherrill L. Trovato

Ms. Trovato, EA, is the Principal/Owner of Sherrill L. Trovato, MBA, MST, EA, USTCP in Fountain Valley, CA. Ms. Trovato has over twenty-five years of compliance expertise in tax preparation and consulting for her small business and individual tax clients. Her firm specializes in tax controversy representation before the IRS and in the Tax Court and provides other financial and business

services. She has authored published articles and has been interviewed numerous times for print and on air for radio. Three times she was a guest on Tax Talk Today, and twice on NBC's Today Show where she was part of a panel offering last minute tax tips to viewers. Since 2002 she has been a regular speaker at the National Association of Enrolled Agents' (NAEA) National Tax Practice Institute where she teaches on a variety of representation related topics. She also speaks nationwide on various topics for other professional groups. On her first attempt, in 2000 she passed the difficult Tax Court nonattorney admission exam; in 2002 she developed and still teaches a program that successfully assists other tax professionals who also want to be admitted to practice before the US Tax Court. Ms. Trovato is a past president of NAEA, where she was recognized with their lifetime achievement Founder's Award for her exemplary volunteer leadership. Ms Trovato holds a Master of Science Degree in Taxation, a Master of Business Administration in Finance, and a BA in Business Administration with an accounting specialization, all from California State University, Fullerton. (**SBSE/W&I Subgroup Co-Chair**)