

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

GENERAL REPORT

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A. TIN Matching Penalty Relief

Recommendation

Until legislation is enacted expanding eligibility to use the TIN Matching Program to include filers of information returns in addition to returns that report payment types subject to backup withholding, the IRS should provide special relief from assessment of incorrect-TIN penalties for filers of non-wage information return types for which current rules do not permit TIN validation in the TIN Matching Program. In addition, a checkbox should be added to Form W-9 and Form W-4P which the payee/recipient can check to specifically authorize the information return filer to validate the payee's name-TIN combination through the IRS TIN Matching Program.

Discussion

It has become widely recognized that use of the IRS TIN Matching Program by filers of non-wage information returns to validate reportable name-TIN combinations prior to IRS filing is an essential tool for a process that results in more accurate information return data being furnished to the IRS in original timely information returns, which the IRS can use to prevent income tax fraud, uncover identity theft and find underreporting of tax liabilities. In addition, more accurate name-TIN data in original information returns leads to a reduction in IRS administrative costs because fewer penalty notices must be prepared and mailed and fewer penalty abatement and penalty assessment cases must be processed.

Through TIN Matching, filers obtain early warning of name-TIN combinations that appear in their records but do not match a valid name-TIN combination in IRS files. TIN Matching does not show filers the taxpayer identification numbers of their payees; TIN Matching only alerts filers to problems with TINs which payees previously furnished to the filers. Filers can then contact those reportable taxpayers to seek correct information prior to filing with the IRS.

Because use of the TIN Matching Program is presently limited to filers of just seven information return types for payments subject to backup withholding under section 3406, IRPAC continues to recommend expanding the program to cover many additional information returns. The most recent written recommendations can be seen in the 2014 and 2013 IRPAC Public Reports. IRPAC appreciates the interest the Commissioner has shown in this issue, and that TIN Matching Program expansion has been made a legislative proposal in the Fiscal Year 2016 Revenue Proposals of the Obama administration (Greenbook released February 2015).

Until the TIN Matching Program is opened to filers of additional types of information returns, in light of the hardship which the current limitation imposes on filers of return types for which TIN Matching is not permitted, relief from incorrect-TIN penalties should be available to such filers under a special temporary procedure such as self-certification under penalty of perjury that the necessary initial TIN solicitation and

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any annual solicitations following notice of incorrect TINs were performed in a responsible manner. In addition, a checkbox should be added to Form W-9 and Form W-4P which the payee/recipient can check to specifically authorize the information return filer to validate the payee's name-TIN combination through the IRS TIN Matching Program.

B. W-9 Revision

Recommendations

1. With all possible speed, incorporate into the Instructions for Form W-9 all of the clarifications which were issued April 10, 2015, but are not commonly consulted by taxpayers because they are only available on an IRS webpage and that webpage is not linked to nor mentioned in the Form W-9 and Instructions on irs.gov.
2. Insert in the Instructions for Form W-9 and Instructions for the Requester of Form W-9 a clarification that a substitute Form W-9 that will be used only for accounts not subject to FATCA may omit the fourth jurat statement which says "The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct."

Discussion

In late December 2014, a new Form W-9 was released for use. It contained a number of enhancements, many of which were recommended by IRPAC in its 2013 Public Report, to elicit better information from persons filling out Forms W-9. Clarity in the line captions on the form and clear instructions for the form make it more likely that the person who fills out the form will provide accurate status, name and TIN information that will support accurate information reporting and efficient tax administration.

Some clarifying changes recommended by IRPAC in the fall of 2014 were not incorporated into the December 2014 Form W-9 and Instructions. After IRPAC discussed these with representatives of the Wage and Investment Division and the Office of Chief Counsel in January 2015, the IRS prepared clarifications to the instructions for lines 3, 4 and 5 of Form W-9 and posted these April 10, 2015, at <http://www.irs.gov/portal/site/irspup/menuitem.143f806b5568dcd501db6ba54251a0a0/?vgnextoid=90bb58621b3ac410VgnVCM2000003c4d0a0aRCRD&vgnnextchannel=21c31c39af0c6310VgnVCM10000024150a0a&vgnnextfmt=default>. These are important form instructions but they only appear on that webpage which is not linked to the Form W-9 or instructions on the IRS Forms & Publications site. Taxpayers and information reporters need these clarifying instructions but are unlikely to find them until they become part of a new Form W-9 and instructions that replace the December 2014 edition. The IRS should make this a high priority.

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In addition to the clarifications for lines 3, 4 and 5, IRPAC requested in the above-mentioned January 2015 meeting that a substitute Form W-9 without the number four jurat statement should be permitted to be used for accounts not subject to FATCA. This fourth jurat statement, which a Form W-9 signer certifies under penalties of perjury, states "The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct." This is a confusing statement for many persons who fill out Form W-9, including for accounts of individuals maintained inside the U.S. (to which FATCA never applies) and accounts of entities furnishing the form for payments that are not income subject to FATCA. They are crossing out the fourth jurat before signing, or at least raising concerns about it and asking whether they can cross it out. Moreover, information reporters who will be relying on such forms are concerned that in the event of an examination Forms W-9 with the fourth jurat crossed out might be deemed invalid.

The IRS has already clarified in the Instructions for the Requester of Form W-9 that if a FATCA exemption code is not needed for a particular account, then the space in line 4 of the form where a FATCA exemption code can be written may be pre-filled with "Not Applicable," "N/A," or a similar indication that an exemption from FATCA reporting does not apply. IRS should add to this the clarification that the fourth jurat is not needed on a substitute W-9 for an account not subject to FATCA.

C. Assisting SBSE and OSP to Improve the Penalty Abatement Process

Recommendation

The IRS should continue to work closely with IRPAC as the Office of Servicewide Penalties (OSP) develops a strategy for, and implements improvements in, administration of the reasonable cause penalty abatement process. IRPAC has furnished numerous examples of typical problem situations in IRS handling of various civil penalty notices, letters and taxpayer penalty abatement requests relating to information return penalties.

Discussion

The Small Businesses & Self Employed (SBSE) Division requested advisory feedback from IRPAC on SBSE's 2015 issue The Penalty Abatement Process and Reasonable Cause Assistant. SBSE and the OSP had determined that the penalty abatement process for first time and reasonable cause abatement requests should be reviewed to determine what can be done to resolve such requests more efficiently and effectively. IRPAC accepted the request to assist by furnishing information OSP can use to develop a strategy and make improvements so penalty abatement requests can be resolved more efficiently and effectively and the compliance burden, cost and time for taxpayers and the IRS can be reduced.

IRPAC's 2014 and 2013 Annual Reports mentioned problems in administration of the reasonable cause penalty abatement process for information returns. The

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“reasonable cause” regulations (Reg. §301.6724-1) provide for penalty abatement where the filer acted in a responsible manner and errors were due to events beyond the filer’s control. Filer experience has been that even where these factors are documented, an initial IRS denial of the penalty waiver request is common and the filer then must invest additional time and expense to restate its case to the IRS. Filers often must submit the same documentation to the IRS multiple times, abatement requests can take years to resolve and filers have difficulty reaching persons in the IRS who can access information about the filer’s penalty waiver request or civil penalty.

In 2015 IRPAC has assisted the OSP by identifying problem areas that should be addressed in the reasonable cause penalty abatement process. IRPAC looks forward to an ongoing dialogue with OSP on these issues and providing input on improvements to procedures and taxpayer communications that will reduce burdens for taxpayers and the IRS.

D. Suggestions for Improvements to the IRS Use of FAQs

Recommendations

1. IRPAC recommends that the IRS create an archived, searchable database for past FAQs so that information reporters who rely on an FAQ in filing information returns can later demonstrate the basis for the position taken.
2. In addition, where practical, IRPAC recommends that the IRS enunciate the reasons supporting any changes to or deletions of prior FAQs to enhance transparency.

Discussion

In matters relating to information reporting, the IRS often posts on its website informal frequently asked questions with answers (FAQs) to provide real time assistance for the information reporting community. FAQs are extremely helpful to the information reporting community as they typically answer procedural questions in the absence of formal guidance. In this regard, FAQs are akin to form instructions and publications, but can be issued more quickly so that the information reporting community can utilize the FAQs in preparing and filing timely information returns.

Although IRPAC finds FAQs to be a very helpful tool for the information reporting community, there can be a problem with this tool when the IRS modifies or deletes FAQs from the website. These modifications/deletions are not consistently highlighted in the newly posted FAQs (date stamped with a later date) nor is the rationale for these modifications/deletions provided. Unexplained FAQ modifications/deletions give rise to uncertainty in the information reporting community because even if the modifications/deletions are noticed, the community is often left without an understanding as to what, if any, action should be taken with respect to past reports issued following the recommendations provided by the prior FAQ.

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IRPAC recommends that the IRS create an archived, searchable database for past FAQs so that information reporters who rely on an FAQ in filing information returns can later demonstrate the basis for the position taken. Currently many information reporters are forced to print hard copies of the website with date stamps to support any position taken in reliance on an FAQ should the content of the FAQ later change or be deleted. Where practical, the IRS should also enunciate the reasons supporting its changes/deletions made to prior FAQs to enhance transparency.