

2015 IRPAC Public Report Letter from the Chair

October 28, 2015

Dear Commissioner Koskinen:

Today we deliver the report of your Information Reporting Program Advisory Committee (IRPAC) for the 25th year of its work in the public interest. Information reporting by third parties is a vital function in our system of funding the government largely through taxpayers' voluntary compliance with our tax laws. Information returns are vehicles that can deliver data to the Internal Revenue Service to be used for fair and efficient administration of the revenue collection system. Under the IRPAC Charter our duty is to identify, and make specific recommendations for, areas of the information reporting program which can be improved by some change in operations, clarification of policy or communication with the public.

The importance of IRPAC's contributions continues to grow as the committee addresses, just as the IRS must address, the continual expansion of information reporting. The number of reportable taxpayers and reportable transactions is increasing dramatically – 2.29 billion information and withholding documents including transmittals are projected to be filed for 2015 and 2.32 billion for 2016 as reported by the IRS Office of Research in Publication 6961 (rev. 7-2015) – in part driven by complex tax law changes that include Cost Basis Reporting, the Affordable Care Act and the Foreign Account Tax Compliance Act (FATCA).

In this environment IRPAC addresses a very broad range of issues but one major concern has cast a shadow on all information reporting recommendations this year. That concern is the underfunding of the IRS.

IRPAC was established upon recommendation of Congress but many recommendations made by IRPAC cannot be implemented or at least not in a timely manner, and taxpayers will not receive the resulting benefit of having their tax compliance burdens reduced in the areas affected by our recommendations, unless Congress can adequately fund the IRS. This year the negative impact of underfunding has been apparent in three categories of IRPAC's work.

- First, in protection of taxpayer information and prevention of identity theft and related tax fraud, the IRS understandably and laudably focused on individual income tax return filing and through the Security Summit and collaboration with the tax industry new safeguards have been introduced – but resources are also needed to implement changes within the IRS that will protect against business identity theft including its devastating effects on small businesses.
- Second, in technology improvement, the IRS has developed a new system that shows great promise for processing information returns required by the Affordable Care Act and has created the systems needed for foreign entity registration and data exchange under FATCA – but much more technology funding is needed to bring IRS systems into the 21st century, convert some

processes from manual to electronic functions and provide means of communicating with taxpayers that will be more efficient, safe, trackable and timely.

- Third, in taxpayer guidance, the IRS has produced thousands of pages of regulations needed under several very complex new laws – but when these take effect real-world experience inevitably shows where timely clarification is necessary to enable information reporting sufficient to fulfill the intent of the new laws, and funding is required for adequate staffing to provide the additional guidance as well as meet newly recognized needs and recommendations.

We thank you, Commissioner, for your continuing efforts to educate people about the extent and seriousness of the underfunding situation.

IRPAC works best when in a productive partnership with the IRS. This year IRPAC reorganized, as a direct result of austerity measures under which the IRS is operating, from four working subgroups to just three subgroups. These are the Emerging Compliance Issues subgroup chaired by Julia Shanahan, the Employer Information Reporting and Burden Reduction subgroup co-chaired by Pat Schmick and Bob Birch, and the International Reporting and Withholding subgroup chaired by Fred Bousquet. Because we use this structure instead of mirroring the Operating Divisions, each subgroup works with various offices or teams within the IRS during the year according to the subject matter of the issues we are researching and will advise upon. We have mentioned in previous years that some offices involve IRPAC early in their process of developing forms, publications or guidance, while others have seemed reluctant to do so.

Early IRPAC input is the most efficient and productive way to take advantage of the assistance IRPAC offers. IRPAC members bring years of experience and knowledge about implementing information reporting compliance and effectively communicating the requirements in the private business sector. And though IRPAC appointees are volunteers from the private sector, each IRPAC member has signed the pledge of confidentiality contained in the non-disclosure agreement and we are governed under the Federal Advisory Committee Act. These facts set us apart from the general public which, for example in the context of new and revised forms, can view and comment on draft forms at what is called the “early release” stage of posting on the public IRS webpage. In the timeframe of the development of forms and instructions it is evident that by the time drafts are posted on irs.gov the process is already very near to final publication and there may be too little time left in which to make alterations based on comments sent in response to the public posting, so these comments might be held over until the next time the form comes up for revision (the following year for annual forms or several years later for other forms). In contrast, where IRPAC is able to provide comments on form development at an earlier stage than the public posting, there is time to incorporate suggested improvements. We appreciate that there has been progress on this issue in 2015. We remain committed to building mutually respectful partnerships in which early IRPAC input is regularly employed.

I thank my fellow IRPAC members for their dedication, hard work and many hours of service this year. Our specific recommendations to you are presented in the enclosed reports, but these are some of the issues covered:

General Issues All members of IRPAC worked together on four issues of broad general concern. We developed recommendations for improving the IRS use of frequently asked questions with answers (FAQs) that are posted on its website; improving the administration of the penalty abatement process for reasonable cause; issuing a new version of Form W-9 that incorporates important clarifications which currently are available only on an IRS webpage; and penalty relief relating to information returns for which TIN validation in the TIN Matching Program is not currently permitted. In addition, recommendations for guidance projects were described in our May 12, 2015 letter to you which is reproduced in Appendix A to this report. We continue to endorse a safe harbor for de minimis corrections to information returns and payee statements which was a recommendation in our 2012-2014 reports and can be found in the Appendix B.

Emerging Compliance Issues IRPAC continues to recommend clarifying guidance for information returns required under IRC §6050W for payments made in settlement of payment card and third party network transactions, where key terms are undefined and some rules are not clear. IRPAC has met with IRS representatives since 2011 on these issues and is concerned that with no new guidance some merchants and processors may not be reporting accurately; IRPAC understands that the long wait for guidance could be another example of the negative impact of underfunding the IRS. In regard to Form 1099-B reporting, IRPAC thanks the IRS for responding to several of our 2014 recommendations and presents a request for a new rule permitting brokers to aggregate sales for trades from a single order executed in a single day in multiple fills, irrespective of whether there is a single confirmation issued. You will also see recommendations relating to transfers of section 1256 options and certain calculations and reporting of complex debt. In addition this subgroup worked with the IRS on issues of Form 1098-T, Tuition Statement, and IRPAC applauds the IRS for penalty relief to colleges and universities for tax years 2013 and 2014.

Employer Information Reporting and Burden Reduction A new recommendation this year is to permit employers to transmit employer-withheld tax levy proceeds electronically instead of mailing individual physical checks to the U.S. Treasury; this will permit levies to be deposited sooner, reduce misapplication of payments, and protect the SSNs of individual taxpayers. Recommendations are presented in relation to payments from qualified plans to nonresident alien plan participants, where IRPAC believes there are gaps in the withholding and information reporting guidance and the IRS is not receiving accurate and complete information. IRPAC also recommends clarifications and additions to Publication 1586, Reasonable Cause Regulations; several measures that will help protect small businesses from business identity theft and reduce tax fraud; and multiple improvements to forms and publications. In this, the first year for mandatory reporting by employers and health insurance providers under the Affordable Care Act, IRPAC applauds the development of the new AIR system for electronic filing

of the new 1095/1094 series forms. IRPAC also appreciates IRS outreach and education through webinars and FAQs on the IRS website, and has multiple additional recommendations for education.

International Reporting and Withholding The subgroup continues to work closely with the IRS and Treasury on numerous issues relating to implementation of the Foreign Account Tax Compliance Act. IRPAC recommends clarification of certain regulatory provisions; modifications to the instructions for Form 1042-S and substitute Form 1042-S payee statements; new instructions for the treaty claims section of Form W-8BEN-E; and clarifications and limitations in regard to a new reportable item the IRS has added to the 2016 draft Form 1042-S, one of 11 Limitation on Benefits codes the choice of which depends on facts the withholding agent is typically unequipped to know about a treaty claimant. You will find FATCA and nonresident alien related recommendations presented in 19 categories in the enclosed report and the Appendix lists 15 additional recommendations made this year on issues pertaining to IRC chapters 3 and 4. In addition, the subgroup has continued to meet with IRS representatives about Notice 2015-10 regarding the allocation of a withholding agent's withholding deposits to the accounts of foreign payee recipients, a matter of concern which was the subject of IRPAC's June 25, 2015 letter to you (Appendix E).

IRPAC's work this year would not have been possible without the support of the office of National Public Liaison and we thank NPL Director Candice Cromling, Program Manager Caryl Grant, our Designated Federal Official John Lipold, and our subgroup liaisons Michael Deneroff, Margaret Martin and Michael Singleton.

On behalf of IRPAC I thank you, Commissioner, for your sustained interest in the work of this advisory committee and your attention to the recommendations we offer you.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary Kallewaard". The signature is written in a cursive, flowing style.

Mary Kallewaard
2015 IRPAC Chair