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NOVEMBER 16, 2016

GENERAL REPORT

OF THE

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

The Internal Revenue Service Advisory Council (IRSAC), the successor to the Commissioner's Advisory Group which was established in 1953, is chartered as a Federal Advisory Committee. Designed to serve as an advisory body to the Commissioner of the Internal Revenue Service, the IRSAC was established to provide an organized public forum between IRS officials and representatives of the public for discussing relevant tax administration issues. The IRSAC suggests operational improvements, offers constructive observations about IRS' current or proposed policies, programs, and procedures, and advises the IRS on particular issues having substantive effect on federal tax administration.

The IRSAC membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, academia, and the payroll community. The IRSAC currently consists of 20 members with substantial experience and diverse tax backgrounds, many active in professional organizations but all selected in their individual capacities because of their interest in and commitment to improving federal tax administration. Specific subject matter and technical expertise in federal tax administration issues is generally required to advance the IRSAC's mission. Accordingly, the IRSAC members usually include enrolled agents, certified public accountants and lawyers, and representatives from academia, businesses, and other

organizations of varying sizes. The members are volunteers, and receive no compensation for their service.

Working with IRS leadership, the IRSAC reviews existing practices and procedures, and makes recommendations on both existing and emerging tax administration issues. In addition, the IRSAC suggests operational improvements, conveys the public's views on professional standards and best practices for tax professionals and IRS activities, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the Commissioner and senior IRS executives on substantive tax administration issues.

The members appreciate the invaluable assistance, dedication, and support provided by personnel from the IRS Office of National Public Liaison (NPL) and the operating divisions — Candice Cromling, Director, NPL; Carl Medley, Chief, Liaison Advisory Groups, NPL; Patricia Young, Acting Branch Chief, NPL; Lorenza Wilds, the IRSAC Program Manager, NPL; Anna Millikan, NPL; Maria Jaramillo, NPL; Brian Ward, NPL; Johnnie Beale, W&I; Tonjua Menefee, SB/SE; and Kate Gregg, LB&I. Special mention is owing Candice Cromling and Lorenza Wilds who are retiring from the IRS this year. Both of these colleagues leave a legacy of outstanding service to the IRSAC and to the tax system as a whole.

The Council is grateful for the support provided by IRS executives and other personnel throughout the year and we thank them for their commitment to the IRS' (and the IRSAC's) mission and for engaging in the meaningful discussions and dialogue that each subgroup held on numerous important issues. The IRSAC members are honored and privileged to have the opportunity to collaborate with and to learn from these dedicated,

knowledgeable individuals. Their committed service to the IRSAC, the IRS, and the public should be recognized as truly exemplary.

We acknowledge the many challenges that the IRS has recently experienced and, knowing the demands on IRS executives and operating division representatives, we also sincerely appreciate and want to recognize the time and effort devoted by them to the IRSAC activities during the year.

The IRSAC is currently organized into three subgroups — the Small Business/Self-Employed and Wage and Investment (SBSE/W&I) Subgroup, the Large Business and International (LB&I) Subgroup, and the Office of Professional Responsibility (OPR) Subgroup.

Issues selected for inclusion in this annual report represent those to which the IRSAC members have devoted particular attention during three working sessions and ongoing communications via telephone and email throughout the year. Most of the issues covered in this report originated from topics that members deemed particularly important and others were raised by IRS management as deserving attention. Nearly all issues involved extensive research efforts.

Although the IRSAC's charter anticipates that most of its activities will be internally focused, in 2016 we were asked to participate in one public event. Specifically, at the invitation of the National Taxpayer Advocate Nina Olson (NTA), in February 2016, members of the IRSAC participated in crafting a statement presented by the Council's Chair and Vice Chair at the first of a series of public forums devoted to evaluating and improving taxpayer service. The primary purpose of these forums was to garner taxpayer and tax industry perspectives on "what taxpayers want and need from the

IRS to comply with the tax laws" and, more specifically, the taxpayer and stakeholder needs and preferences that the IRS should consider as it develops and refines a plan to define the IRS' Future State initiative.

The Chair and Vice Chair's statement, which is attached to this report as Appendix 1, represented not a pronouncement of the IRSAC's views, but rather their individual views. Nevertheless, the statement benefited from the knowledge, experience, and perspectives of numerous members. The Chair and Vice Chair express their appreciation to NPL executives for their guidance in helping evaluate whether to accept the Taxpayer Advocate's invitation and thank their the IRSAC colleagues, especially the subgroup chairs, for their counsel, expertise, and assistance with crafting the final statement.

Subgroup Reports

The Small Business/Self Employed Wage and Investment (SBSE/W&I) Subgroup, chaired by Robert Bader, identified and made recommendations on three issues. The Subgroup made numerous recommendations addressing fraud prevention through individual and business authentication at the point of filing, provided input on mobile and electronic applications currently being developed by the IRS, and offered feedback on the number and frequency of publications the IRS sends to taxpayers and their representatives, which accompany various notices and letters.

The Office of Professional Responsibility (OPR) Subgroup, chaired by Ronald Aucutt, prepared recommendations on two issues. The first issue reiterates long-held concerns about tax preparer behavior and the need for legislative action to allow the IRS the ability to regulate tax preparers under 31 U.S.C. § 330. The Subgroup also

recommended that the IRS make necessary changes to Treasury Circular 230 to remove obsolete language and clarify inconsistent sections by including appraisers, to the extent their inclusion is codified in 31 U.S.C. § 330.

The Large Business and International (LB&I) Subgroup, chaired by Thomas Cullinan, made recommendations on two issues in their report. The first issue addresses refining the risk assessment process to acquire better information and more efficiently identify potential compliance risk, so that limited resources are utilized on higher risk taxpayers. At the request of LB&I leadership, the Subgroup also provided recommendations to promote and enhance the confidentiality of information disclosed to tax authorities in other countries pursuant to exchange-of-information treaties as part of the new Country-by-Country Reporting regime.

General Report

Issues covered in the IRSAC's General Report typically represent topics that have been identified by members as broad and Service-wide and do not fall under the purview of any particular subgroup.

The Council's General Report for this year addresses IRS-wide Penalty Administration and makes recommendations to evaluate the effects of penalties on voluntary compliance, to create greater fairness and consistency in penalty relief, and to consider developing rules of administrative convenience or other accommodations to improve administration of penalties under section 6662(b)(2).

Second, the Chair appointed a task force to study system-wide IRS practices and policies regarding valuations used in estate and gift tax and for charitable deduction purposes. The task force did an exemplary job and will continue its work in 2017.

Finally, as the IRSAC work proceeded this year, the adverse effects of long-term constriction of resources continued to be felt. Examination rates are low (and taxpayers are aware of it), training has been reduced even though congressional mandates have grown, and telephone assistance, while improved, continues to suffer to the detriment of the taxpayers who need and deserve assistance. Previous IRSAC reports have documented these problems and emphasized the need for increased funding, and while this year's report does not reiterate the numerous ways in which taxpayers are harmed by the lack of adequate budget resources, we again implore Congress to increase the IRS' funding.

ISSUE ONE: IRS SHOULD EVALUATE THE EFFECTS OF PENALTIES ON VOLUNTARY COMPLIANCE, STRIVE TO PROVIDE GREATER CONSISTENCY IN PENALTY DETERMINATIONS, AND CONSIDER DEVELOPING ONE OR MORE RULES OF ADMINISTRATIVE CONVENIENCE FOR PROVIDING RELIEF FOR PENALTIES ASSERTED UNDER SECTION 6662(b)(2)

Executive Summary

The IRSAC has identified several areas in which penalty administration can be strengthened or enhanced to improve the fairness and consistent treatment of taxpayers.

First and foremost, policy decisions need to be consistent with the universally agreed-upon purpose of penalties: encouraging voluntary compliance. To ensure this, the effect of penalty actions on voluntary compliance needs to be clearly understood. With serious budget constraints impairing the IRS' ability to provide high-quality taxpayer service, the IRSAC also believes that the streamlining and modest liberalization of penalty abatement decisions will create greater efficiencies for the IRS, reduce the burden on substantially compliant taxpayers, and increase voluntary compliance.

Background

In 1955, there were only 14 penalty provisions in the Internal Revenue Code. Today, the number of provisions in the Code that either authorize or require the IRS to impose penalties has increased to more than 170.

In November 1987, the Commissioner of IRS established a task force to study civil penalties and develop a fair, consistent, and comprehensive approach to penalty administration. In February 1989, the Commissioner's Executive Task Force issued the

Report on Civil Tax Penalties. The report embraced a philosophy concerning penalties, analyzed three broad categories of penalties (filing of returns, payment of tax, and accuracy of information), and made recommendations to resolve identified inconsistencies. In general, the report recommended that the IRS should take the following actions:

A. Develop and adopt a single penalty policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance.
B. Develop a single consolidated handbook on penalties for all employees (the handbook should be sufficiently detailed to serve as a practical everyday guide for most issues of penalty administration and provide clear guidance on computing penalties).
C. Revise existing training programs to ensure consistent administration of penalties in all functions for the purpose of encouraging voluntary compliance.
D. Examine its communications with taxpayers (including penalty notices and publications) to determine whether these communications do the best possible job of explaining why the penalty was imposed and how to avoid the penalty in the future.
E. Finalize its review and analysis of the quality and clarity of machine-generated letters and notices used in various areas within the IRS.
F. Consider ways to develop better information concerning the administration and effects of penalties.
G. Develop a Master File database to provide statistical information regarding the administration of penalties. The information in this database should be continuously reviewed for the purpose of suggesting changes in compliance programs, educational programs, penalty design, and penalty administration.[1]

Following the IRS' report, Congress passed the Improved Penalty Administration and Compliance Tax Act of 1989 (IMPACT), which affirmed that civil tax penalties exist for the purpose of encouraging voluntary compliance. In addition, IMPACT required the IRS to develop a policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance and to develop a handbook on penalties for employees.

[1] IRM 20.1, Penalty Handbook (11-25-2011).

IRS Policy Statement 20-1,[2] attached as Appendix 2, directs the IRS to evaluate penalties' effect on compliance, and establishes a structure within which the IRS may create administrative penalty waivers as part of an IRS-wide strategy to encourage both compliance and prompt, efficient resolution of cases.

Evaluating Penalties' Effect on Voluntary Compliance

In recent years, there has been no shortage of reports, as well as myriad anecdotal reports, documenting the need for streamlining and otherwise generally improving implementation of the penalty provisions of the Internal Revenue Code. In the quarter century since IMPACT was passed, the National Taxpayer Advocate (NTA), the Government Accountability Office (GAO), the Treasury Inspector General for Tax Administration (TIGTA), professional associations such as the American Institute of Certified Public Accountants and the American Bar Association's Section of Taxation, and the IRSAC itself have all called for improved penalty policies and administration.[3]

Virtually every one of these reports has embraced the principle that the sole purpose of civil tax penalties should be to encourage voluntary compliance, not to raise revenue, punish noncompliant behavior, or reimburse the government for the cost of compliance programs.

The IRSAC recognizes that the structure and specific provisions of many penalties in the Code constrain the IRS' authority to act. We also acknowledge that the

[2] IRS Policy Statement 20-1 (6/24/09) (formerly P-1-18).

[3] In her 2014 report, the Taxpayer's Advocate identified penalty administration as the eighth most significant problem in the tax system in a chapter of her report entitled "The IRS Does Not Ensure Penalties Promote Voluntary Compliance, as Recommended by Congress and Others." In that document, she cites and summarizes the research and recommendations made by the General Accountability Office, Treasury Inspector General for Tax Administration, AICPA, ABA, and other organizations. *Available at* https://taxpayeradvocate.irs.gov/Media/Default/Documents/2014-Annual-Report/PENALTY-STUDIES-The-IRS-Does-Not-Ensure-Penalties-Promote-Voluntary-Compliance-as-Recommended-by-Congress-and-Others.pdf.

agency has been criticized for either not asserting certain penalties or for abating them (or for not abating them).[4] That said, the IRS clearly has the authority to improve the implementation and fair administration of the Code's penalty regime.

Office of Servicewide Penalties

The mission of the Office of Servicewide Penalties (OSP) is to promote fair, consistent, and effective administration of the application of the Code's civil penalties across the entire IRS. To accomplish this mission, the OSP is charged with, among other things, soliciting and analyzing internal and external stakeholders' input and views on the effect of civil penalties on taxpayer compliance and incorporating that information in formulating policy and guidance.[5]

The OSP has been operating under extreme budget constraints over the past few years which has affected its ability to adequately analyze and evaluate the repercussions of broad penalty policy and administration. The NTA's 2014 Annual Report to Congress documented the detrimental effect of severe funding limitations on OSP and recommended that the IRS ensure the OSP has sufficient resources and support to conduct and publish appropriate studies. Although the OSP remains understaffed, key roles have been filled during 2016, and the IRSAC strongly believes the crucial function of IRS-wide evaluation and oversight should be a top priority of OSP.

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[4] *See* Treasury Inspector General for Tax Administration, *Improvements Are Needed in Assessing and Enforcing Internal Revenue Code Section 6694 Paid Preparer Penalties*, Report No. 2013-30-075 (September 9, 2013); Treasury Inspector General for Tax Administration, *Systemic Penalties on Late-Filed Forms Related to Certain Foreign Corporations Were Properly Assessed, but the Abatement Process Needs Improvement*, Report No. 2013-30-111 (September 25, 2013); 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).

[5] IRM 1.1.16.4.5.2.

Administration of Accuracy-Related Penalties under Section 6662(b)(2)

When a penalty under section 6662(b)(2) is proposed or assessed, taxpayers may request relief under the "reasonable cause" exception of section 6664(c). The disposition of requests for reasonable cause relief, however, varies widely. This is due not only to differences in the particular taxpayer's situation, but also to the training and experience of the IRS personnel making the determination whether the taxpayer's "facts and circumstances" merit relief. In addition, the automatic, computer-generated assertion of penalties in numerous cases has the effect of undermining the congressional directive that the IRS should make correct penalty assertion decisions in the first instance rather than mechanically asserting penalties and only later correcting cases meriting penalty relief.[6] This alternative "correct any errors later" approach has been repeatedly criticized by the NTA as creating an inconsistent and unfair environment for taxpayers.[7]

The Automated Underreporter (AUR) Program is a technology-based program that identifies discrepancies between the amounts of income that taxpayers reported on their returns and what income payors reported via Form W-2, Form 1099, and other information returns.[8] Although section 6751(b)(1) provides the general rule that IRS employees must have written supervisory approval before assessing any penalty, section 6751(b)(2)(B) allows an exception for situations where the IRS can calculate a penalty automatically "through electronic means." The IRS interprets this exception as allowing the use of its AUR system to propose the substantial understatement and negligence components of the accuracy-related penalty without human review. Only if a taxpayer responds to an AUR-generated proposed assessment will the IRS involve its employees

[6] H.R. Rep. No. 101-386, 101st Cong., 1st Sess. 661 (1989) (Conf. Rep).
[7] Taxpayer Advocate Service — 2013, 2014, 2015 Annual Reports to Congress, Pub 2104.
[8] *See* IRM 4.19.2, Liability Determination, IMF Automated Underreporter (AUR) Control (Aug. 16, 2013).

to determine whether the penalty is appropriate. If the taxpayer does not respond timely to the initial notice, the computers automatically convert the proposed penalty to an assessment.

The NTA has emphasized in several of her Annual Reports to Congress that "Although automation has allowed the IRS to more efficiently identify and determine when such underreporting occurs, the IRS' over-reliance on automated systems rather than personal contact has led to insufficient levels of customer service for taxpayers subject to AUR. It has also resulted in audit reconsideration and tax abatement rates that are significantly higher than those of all other IRS examination programs."[9]

While relief from AUR-generated penalties is theoretically available once these penalties have been asserted, the procedure for taxpayers to request abatement from the AUR Unit that processed the assessment is burdensome for taxpayers and also strains IRS resources. Policy Statement 20-1 states that "examiners and their managers must consider the elements of each potentially applicable penalty and then fully develop the facts to support the application of the penalty, or to establish that the penalty does not apply, when the initial consideration indicates that penalties should apply." However, this principle is regrettably bypassed in the case of penalties which are automatically generated, as are those asserted in the AUR.

For this reason (and others related to penalty administration), the National Taxpayer Advocate identified the administration of the accuracy-related penalties in section 6662(b) as a Most Serious Problem, as well as the single most litigated tax issue, in her Annual Reports to Congress for each of the past three years.[10] Failure to provide

[9] *See* National Taxpayer Advocate, 2007 Annual Report to Congress.
[10] Taxpayer Advocate Service — 2013, 2014, 2015 Annual Reports to Congress.

fair and balanced determinations of reasonable cause when abatement is requested has been cited repeatedly in the NTA Annual Reports to Congress as well.[11]

The IRSAC believes it is imperative for the IRS to address inconsistencies in the assertion and abatement of section 6662(b)(2) penalties. Discrepancies in treatment are attributable to the origins of the assertion of the penalties and are exacerbated by the divergent experience and expertise of employees making "facts and circumstances" decisions. For example, the employees who process requests for non-assertion or abatement in AUR Units are charged with determining whether facts and circumstances establish reasonable cause, but they typically do not have the experience, training, or the authority required to accomplish the complex decision-making process as spelled out in the IRM.[12]

Reasonable Cause Determinations

One example of the need for system-wide review of penalties is the lack of consistency in the application of the reasonable cause exception in section 6664(c). While there are cases fully justifying the assertion of the section 6662 penalties, the IRSAC remains concerned about the difficulties that compliant (or substantially compliant), honest taxpayers encounter when making diligent, good faith attempts to calculate and pay the correct amount of tax. Deficiencies subject to penalties under section 6662(b)(2) may be the result of misunderstanding because of the complexity in the tax code, reliance

[11] NTA 2013 Annual Report to Congress: "Do Accuracy-Related Penalties Improve Future Reporting Compliance Specific NTA studies include the 2014 Most Serious Problem (MSP) #8 - PENALTY STUDIES: The IRS Does Not Ensure Penalties Promote Voluntary Compliance, as Recommended by Congress and Others; and 2013 MSP #17 - ACCURACY-RELATED Penalties: The IRS Assessed Penalties Improperly, Refused to Abate Them, and Still Assesses Penalties Automatically.by Schedule C Filers?"

[12] IRM 20.1, Penalty Handbook.

on a generally competent but mistaken tax professional, or a simple mistake despite an overall history of diligence and compliance.

Reasonable cause is the category of relief most commonly used to abate penalties.[13] Treas. Reg. § 1.6664-4(b) defines the reasonable cause and good faith exception, as follows:

> The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case by case basis, taking into account all pertinent facts and circumstances…. Generally, the most important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all of the facts and circumstances, including the experience, knowledge, and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. Reliance on an information return or on the advice of a professional tax advisor or an appraiser does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice, or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith.

The evenhanded nature of the regulations is often undercut in practice, especially in respect of penalty assertions generated by the AUR Program.

The AUR closed more than 3.7 million cases during 2015 with 1,739 FTE employees in that year.[14] TIGTA reported that in 2013 the AUR was only able to review a fraction of the returns it identified as having mismatches between income reported on the return and income reported on information returns. In fact, during 2013, the AUR

[13] TIGTA Report: Automated Underreporter Program Tax Assessments Have Increased Significantly; However, Accuracy-Related Penalties Were Not Always Assessed When Warranted (May 8, 2015) Reference Number: 2015-30-037.
[14] IRS Data Book 2015, Table 14

reviewed less than a quarter of the potential cases identified by the program's inventory selection process.[15]

Given the relatively small number of employees in the AUR Units and the substantial training, judgment, and documentation necessary to determine and process a case when a reasonable cause exception applies, it is not surprising that — as the National Taxpayer Advocate has concluded — relief is frequently denied in meritorious cases. We suggest that a more streamlined approach may be in order, specifically, the possible expansion of the IRS' administrative waiver program.

Administrative Waiver

Policy Statement 20-1 allows for administrative remedies, stating that "[i]n limited circumstances where doing so will promote sound and efficient tax administration, the Service may approve a reduction of otherwise applicable penalties or penalty waiver for a group or class of taxpayers as part of a Service-wide resolution strategy to encourage efficient and prompt resolution of cases of noncompliant taxpayers."

The implementation of the First Time Abate (FTA) waiver program, currently available for automatic abatement of the Failure to Pay (FTP), Failure to File (FTF), and Failure to Deposit (FTD) penalties,[16] is a manifestation of this policy, one that we believe could optimally be expanded to other areas. Since the IRS' constrained resources simply do not allow AUR to pursue the vast majority of potential cases, logic suggests that the current FTA administrative waiver permits enhanced efficiencies of resources, permitting AUR to focus on more cases.

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[15] *Id* at 13.

[16] Penalty relief for the FTF (sections 6651(a)(1), 6698(a)(1), and 6699(a)(1)); FTP (sections 6651(a)(2) and 6651(a)(3)); and FTD (section 6656) penalties.

Specifically, the IRSAC recommends that OSP evaluate the feasibility of developing one or more rules of administrative convenience to abate section 6662 (b)(2) penalties in particular circumstances, for example, where the taxpayer has a history of prior good behavior and has not previously been penalized.

Recommendations:

1. Consistent with Policy Statement 20-1, items 2 and 12, the IRSAC recommends that the Office of Servicewide Penalties be directed to evaluate penalty programs, and in doing so:
    a. Undertake studies, soliciting and incorporating stakeholder input, to determine the effectiveness of penalties in promoting voluntary compliance.
    b. Evaluate the equity and consistency of penalty application and abatement across all divisions of the IRS.
    c. Consider developing rules of administrative convenience or other accommodations, consistent with Policy Statement 20-1, item 7, to empower IRS personnel to abate penalties to encourage efficient prompt resolution where the taxpayer has shown a history of substantial compliance.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

SMALL BUSINESS/SELF-EMPLOYED AND WAGE & INVESTMENT SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Small Business/Self Employed (SB/SE) and Wage & Investment (W&I) Subgroup (hereinafter "SBSE/W&I Subgroup") consists of a diverse group of tax professionals including attorneys, an enrolled agent, certified public accountants, a state revenue manager, and a software executive. The members of this Subgroup have a wide range of experience in taxation focused in many areas including individual taxpayers, businesses, software, state taxpayers and clients with both high and low incomes. We are honored to serve on the IRS Advisory Council and appreciate the opportunity to submit this report.

The SBSE/W&I Subgroup thanks former SB/SE Commissioner Karen Schiller and W&I Commissioner Debra Holland for their recognition of the value of the Subgroup as part of the IRS. The Subgroup and its predecessors have historically enjoyed a close working relationship with the professionals within various operating divisions of the IRS, and this year was no exception. The SB/SE and W&I divisions of the IRS helpfully provided the information, resources, guidance, and IRS personnel necessary to develop our report. We also appreciate the support provided by our designated liaisons who did a masterful job of helping us navigate the IRS and ensured that we had information necessary to develop our analysis and prepare our report.

The SBSE/W&I Subgroup researched and is reporting on the three issues summarized below. While the Executive Summary is limited to only a few of the recommendations, the full report presents them all.

1. **Fraud Prevention through Individual Taxpayer and Business Master File (BMF) Authentication**

The IRSAC was asked to make recommendations for authenticating individual and business taxpayers at the point of filing to combat constantly developing tax fraud. The IRS seeks solutions for businesses and individuals that are cost effective, accurate, cover all demographic groups, and include multiple layers of protection without over-burdening taxpayers. These recommendations include improved means to authenticate tax returns such as verifying information from Form W-2 and the bank account before direct depositing a refund. They also include means of preventing theft of individual and business taxpayer information by protecting business identification numbers, means to authenticate the IRS when it contacts taxpayers, and means to expand the IP PIN program. We also recommend that the IRS develop a program to match tax practitioner PTINs with EFINs in order to identify (and interdict) potentially fraudulent tax preparers.

2. **Enhancement of Mobile Applications and Online Accounts**

The IRSAC was asked to suggest new applications for the IRS mobile application IRS2Go and web-based online accounts. The SBSE/W&I Subgroup applauds the IRS' focus on online enhancements to make tax return preparation and interaction with the IRS a simpler process. Specific recommendations are set forth in the report. Generally speaking, the SBSE/W&I Subgroup believes the goal should be to provide guidance and information more quickly and easily. The IRS currently provides many online tools that are accessed separately, but the agency should move toward providing these tools on an integrated basis *(i.e.*, from a single app or website). While taxpayer and practitioner

convenience is a key goal, improvements to online accounts should not be launched until the IRS is confident the improvements are secure.

3. **Review Current SB/SE Practice of Enclosing IRS Publications in Mailings of Field and Campus Exam Letters**

IRS publications provide important information regarding taxpayer rights to explain the examination and appeal process. During the course of a Field or Campus Examination, certain IRS publications are mailed to the taxpayer multiple times. With the goal of improving efficiency and optimally reducing costs, the IRSAC was asked to review the current practice of providing multiple copies of publications to a taxpayer and to evaluate the effect of reducing the number of times particular publications are provided.

ISSUE ONE: FRAUD PREVENTION THROUGH INDIVIDUAL TAXPAYER AND BUSINESS MASTER FILE (BMF) AUTHENTICATION

Executive Summary

The IRS continually focuses on ways to combat tax refund fraud. The IRSAC was asked to make recommendations for authenticating taxpayers at the point of filing for both electronic and paper returns, with and without the involvement of a tax practitioner or other return preparer. In addition, the IRS has asked for the IRSAC's recommendations on the most effective methods of BMF authentication. The IRS seeks cost-effective and accurate solutions that will encompass all demographic groups and include multiple layers of protection without overburdening taxpayers.

Background

Fraudulently filed returns have dramatically increased affecting the security of taxpayer identity and loss of federal resources through theft of refunds. The IRS estimated that approximately $30 billion of identity theft-related refund fraud was attempted in 2013,[17] and approximately $5.8 billion was actually paid out. (Since some refund fraud remained undetected, the government's actual losses were greater.) These statistics relate to individual returns, and W&I's Return Integrity and Compliance Services (RICS) group has reported that as a result of W&I's development of tools and programs to better staunch refund fraud in respect of individual returns, the fraudsters have turned to business returns.

The exponential growth of refund fraud prompted IRS Commissioner John Koskinen to convene the Security Summit in 2015 to design strategies to combat stolen

[17] IDENTITY THEFT AND TAX FRAUD: Enhanced Authentication Could Combat Refund Fraud, but IRS Lacks an Estimate of Costs, Benefits and Risks, GAO-15-119 (January 20, 2015), *available at* http://www.gao.gov/products/GAO-15-119.

identity refund fraud (SIRF). This group consists of both government and private sector representatives and is charged with identifying steps to validate taxpayer and tax return information at the time of filing. Commissioner Koskinen commented: "Industry, the States and the IRS all have a role to play in this effort.… We all share a common enemy in those stealing personal information and perpetrating refund fraud and we share a common goal of protecting taxpayers. We want to build these changes into the DNA of the entire tax system to make it safer." [18]

A significant effort is underway at the IRS to authenticate taxpayers to ensure only valid tax returns are processed, but there is a correlative need for the public to be able to authenticate the IRS. While the IRS, other government entities and private businesses are under constant attack, individual taxpayers are subject to numerous attempts at coercing them to share their identity or make invalid payments. With the passage of the 2015 Fixing America's Surface Transportation Act, (FAST) the issue of authentication has become even more challenging for taxpayers because the new law mandates that the IRS utilize private debt collection agencies to collect "inactive tax receivables."[19] Without the ability for taxpayers to authenticate that the IRS is actually contacting them, they will have no way of knowing if the "debt collector" they are dealing with is truly representing the IRS or is in fact a thief.

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[18] *"Industry, States Take New Steps Together to Fight Identity Theft, Protect Taxpayers,"* 87 (June 11, 2015), *available at* https://www.irs.gov/uac/newsroom/irs-and-industry-and-states-take-new-steps-together-to-fight-identity-theft-and-protect-taxpayers.

[19] I.R.C. § 6306; *see* Public Law No. 114-94 (2015).

Recommendations

To address the constantly evolving authentication issues the IRSAC offers the following:

1. **Perform identity authentication and data matching procedures prior to issuance of refunds.**

   Wage data from tax returns are currently matched against documentation received from the Social Security Administration. It was reported to the SBSE/W&I subgroup that the IRS received much of the W-2 data for tax year 2015 from the Social Security Administration beginning on January 19, 2016. Unfortunately, the data is not processed into data capable of matching until much later in the year. In order to make this matching process more timely, the IRSAC recommends that the IRS develop a system to receive W-2 data directly from employers.

   Beginning in 2017, employers will be required to submit W-2 information to the IRS by January 31.[20] The matching process may take additional time and the refund processing time could exceed the 21-day time period currently in practice. In an effort to provide the IRS with potential matching information well in advance of filing season, we suggest that employers could provide certain items of key employee information on a quarterly basis when the quarterly Form 941 *Employers Quarterly Federal Tax Return* is filed. Most employers provide detailed employee information on a quarterly basis at the state or local level. At the most basic level, the IRS would be able to simply match employee names to

[20] Sections 201 and 202 of the Protecting Americans from Tax Hikes (PATH) Act of 2015, enacted as part of the Consolidated Appropriations Act of 2016, Public Law No. 114-113, adjusted the due dates for Forms W-2 and 1099.

their employers and flag any inconsistencies at a much earlier date. We believe an enhanced matching process is essential to combatting fraud and the resulting increase in refund processing time will provide for more accuracy.

The IRSAC also believes that better taxpayer communication and education regarding the refund process is essential. Most taxpayers understand the need for identity security, and with proper communication and education, they are more likely to accept the delay in the processing of their refund. Several states have implemented an extended refund time period to address identity theft issues. For example, in Illinois the combination of an extended refund processing period and a robust taxpayer education and communication effort has resulted in an approximate 50-percent decrease in taxpayer inquiries.[21]

2. **Continue and expand the Form W-2 code pilot program.**

The IRSAC commends the IRS on the Form W-2 code pilot program that uses verification codes on Forms W-2 to verify that both the information and taxpayer are valid. We understand that approximately 1.5 million Forms W-2 utilized the verification code for the 2015 filing season and that those returns had a 95-percent or greater accuracy rate. We recommend that this initiative be continued and expanded.

[21] *See* http://tax.illinois.gov/AboutIdor/PressReleases/PR-2016-01-04.pdf.

3. **Permit truncation of business identification numbers on any reporting forms not sent to the IRS.**

Given the increase in business identity theft, it is imperative to limit access to business identification numbers with safeguards and protections similar to those provided for social security numbers. Current guidance permits truncation of identification numbers of *payees*, but that protection is not currently extended to *issuers*. Whenever a Form 1099 is issued, the payer shares their identification number with someone they may not know (or trust). The information shared could include a social security number if the issuer does not have a separate business identification number. In addition, identification numbers of preparers of Forms 990 (for non-profit organizations) are published on various websites. The IRSAC understands that the truncation of business identification numbers on federal forms may not provide complete security to these identification numbers inasmuch as many states publish these numbers. Nevertheless, some protection is better than none, and if the IRS takes steps to permit truncated numbers, the states may follow. In addition, the IRS' communication strategy may include encouraging outside agencies that utilize identification numbers to take additional privacy steps. We recommend forming a cross-agency team to examine the issue and provide outside agencies with additional information and recommendations to ensure protections.

4. **Create a method for taxpayers to authenticate valid IRS representatives.**

There has been exponential growth in phone scams designed to elicit taxpayer identification and other sensitive information from an unsuspecting taxpayer. To address the onslaught of fraudulent phone calls received by taxpayers, the IRS has clearly communicated that they do not make initial contact with taxpayers by telephone. With the enactment of section 6306 of the FAST ACT relating to mandatory use of private debt collectors in respect of certain tax debts, it is imperative that taxpayers be provided with one or more means to verify they are dealing with properly authorized representatives. Regrettably, the IRS' use of private debt collectors may provide opportunities for people to fraudulently act as IRS agents. Currently, taxpayers who must authenticate their identity are asked specific questions that only the true taxpayer would be able to answer. A similar process could be implemented whereby taxpayers would ask the IRS representative to verify certain data that only the IRS would know. Since most communication from a private debt collector would relate to a specific issue or correspondence, the questions could be for the IRS representative to identify the issue, the date of any correspondence, the name of the individual who wrote the correspondence, and the name of the an authorized representative.

5. **Modify Form 1040 on Page 1, Line 6 and Page 2 in the signature block to show an existing IP PIN for ALL individuals who have been assigned one by the Internal Revenue Service, including the spouse and all dependents.**

As it currently exists, Form 1040 only provides an input area for one IP PIN. In addition, the IRS provides taxpayers with the ability to establish their identity with the IRS and obtain an IP PIN only in certain cases *(e.g.,* where taxpayer information has been compromised and for residents of specific locations where identity theft has been prevalent). The IP PIN program provides taxpayers with a proactive method to establish identity and allow the IRS to verify the return is filed by the legitimate taxpayer. In order for this program to work properly, it is essential that IP PINs be listed for all individuals listed on the return. Based on our research it appears that some tax preparation software provides input areas for all IP PINs, however, taxpayers who do not use a tax preparer and file on paper do not have the ability to provide this information.

6. **Create a pilot program that utilizes outside agencies to assist the IRS with identity verification**.

When in-person verification with the IRS is necessary, it can be difficult for taxpayers in many circumstances, such as an inconvenient location or limited hours of the nearest IRS office. We recommend the IRS consider utilizing outside identity verification methods to make verification simpler and more accessible to taxpayers. This could be accomplished through multiple institutions such as the banking industry Medallion program (an established program in the banking industry to establish identity), state departments of revenue, departments of motor

vehicles, or Certified Acceptance Agents (CAA). This would not require additional IRS resources and could provide a significant amount of convenience to taxpayers. We recommend creating a pilot program where outside agencies would verify identity and issue a unique code to a verified taxpayer that would then be provided to the IRS and be used in a way similar to the use of an IP PIN.

7. **Match Preparer Tax Identification Numbers (PTINs) with their corresponding Electronic Filing Identification Numbers (EFINs) and flag any inconsistencies.**

   Each PTIN issued to a tax return preparer is generally associated with a particular EFIN. If a tax return filed with a particular PTIN suddenly shows a new EFIN using it, it could indicate fraud. Alternatively, if a particular PTIN was consistently associated with a particular number of filings and that number of filings suddenly increased significantly that could also be an indicator of potential fraudulent activity.

8. **Provide tax return preparers with a method to verify returns filed under their PTIN and related EFIN as a means to notify the IRS of invalid returns filed using their credentials.**

   The IRS should provide preparers with education regarding how to monitor tax filings that utilize their PTIN's and EFIN's. Although IRS offers preparers the ability to look up the number of returns filed under their PTIN, this feature has not been sufficiently communicated to the preparer community. We recommend additional outreach to the preparer community to encourage use of this feature so that preparers can help monitor potential fraudulent activity.

9. **Verify taxpayer direct deposit account information with the banking institution before depositing refunds.**

In the 2016 report to Congress, the National Taxpayer Advocate addressed the situation where tax preparer fraud resulted in inflation of refunds and diversion of the inflated part of a taxpayer's refund to an account in the control of the unscrupulous preparer.[22] Adopting this recommendation would ensure that refunds issued via direct deposit are deposited only into an account controlled by the affected taxpayer. The banking industry has significant regulations that must be followed in establishing bank accounts including proper identification of individuals who open bank accounts. We encourage the IRS' ongoing efforts with the National Automated Clearing House Association (NACHA) to develop a process for rejecting improper direct deposits and ensuring they are coded by the bank as instances of potential identity theft so the IRS can investigate before issuing paper refunds. The state revenue departments and the Federation of Tax Administrators are also working collectively on this issue with the financial industry and planning to implement a pilot project on this initiative in the near future.

[22] *See* National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 22 (*The IRS Agrees It Should Issue Refunds to Victims of Return Preparer Fraud But It Has Been Slow to Develop Necessary Procedures*), *available at* http://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-JRC/Area_of_Focus_2_Refunds_for_Return_Preparer_Fraud_Victims.pdf.

ISSUE TWO: ENHANCEMENT OF MOBILE APPLICATIONS AND ONLINE ACCOUNTS

Executive Summary

The IRSAC was asked to provide recommendations regarding the IRS mobile application (IRS2Go) and Taxpayer Online Account application for individuals. We recommend applications, features, and functionalities that would be helpful to taxpayers and tax professionals and thereby improve the overall taxpayer experience. As these features are developed, they should provide taxpayers with a secure online system with reliable, efficient, and user-friendly applications.

Background

The IRS is developing its technology to provide online taxpayer services and tax administration. These efforts are being undertaken by various IRS departments and agencies and have been reported by the Electronic Tax Administration Advisory Committee (ETAAC),[23] the National Taxpayer Advocate,[24] the IRS itself in its *IRS Future State Initiative,*[25] and the 2016 Security Summit.[26] Developing these systems is an opportunity to make taxpayer interaction with the IRS simpler, more accurate and likely to save IRS resources.

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[23] The ETAAC was formed in 1998 to provide input to the IRS on the development and implementation of the IRS strategic plan for electronic tax administration. See Electronic Tax Administration Advisory Annual Report to Congress (June 2016), *available at* https://www.irs.gov/pub/irs-pdf/p3415.pdf (includes recommendations to improve tax administration and the need for end-to-end capabilities in online accounts for taxpayers and tax professionals).

[24] *See* National Taxpayer Advocate, Annual Report to Congress (2015) Vol 1: page 56

[25] *See* https://www.irs.gov/uac/newsroom/future-state-initiative.

[26] The 2016 Security Summit is a partnership between leaders from the IRS, state agencies, and representatives from the private sector who addressed a variety of issues including security and authentication, improved information sharing, greater education, and outreach to the public.

Currently, the IRS offers several separate, independent online applications, tools, webpages, and publications.[27] Taxpayers often need to search in many locations for information and applications. Each program or interaction is helpful, but could involve a different means of accessing the information — neither separately nor together do they guide the taxpayer to the information required based on their circumstances. Integrating all these processes in one, easily accessible, online account that combines various applications and directs a taxpayer to certain features will make the interaction simpler and likely more efficient and satisfying.

Also, taxpayers are currently unable to easily review their complete tax account or retrieve particular tax documents, such as Form W-2 and Form 1099, posted to their account on a timely basis. Having access to such information through the online account could assist taxpayers with the preparation of their annual tax returns and likely reduce errors. This should save IRS resources used to correct returns, issue notices, or process amended returns.

An online account should also provide taxpayers with a quick, easy, and automated means to authorize approved third parties to access their tax account and provide any needed assistance or support.

Any mobile or online account application that integrates these functions should be secure and protect taxpayer data from fraud and identity theft. Proper authentication must be in place. While online accounts will be helpful, they must not be released if they cannot be made secure.

[27] Some of these online tools are Get Transcript, Get IP Pin, Free File, Electronic Filing PIN, Where's My Refund, Interactive Tax Assistant, Direct Pay and Online Payment Agreement, Tax Map, Electronic Federal Tax Payment System (EFTPS), Earned Income Tax Credit Assistant, Withholding Calculator, and E-Services for Tax Professionals.

Applications should enhance customer service and provide detailed account information to taxpayers. Increased compliance and cost savings that may come from such improved technology and digital services should not adversely affect the overall taxpayer experience and should not dramatically reduce or eliminate the current methods of customer service. Taxpayers and tax practitioners with access to information online will invariably still need to talk with IRS representatives when their questions are not answered online or they need assurance regarding an issue, or assistance with complex tax situations. In addition, person-to-person services are still needed for those taxpayers who do not have internet access, mistrust technology, or lack basic computer skills.

The IRSAC's recommendations include the most important features we believe should be included on the IRS mobile application, IRS2Go, and online account application. Implementing these recommendations will likely require substantial funding to upgrade technology, implement security systems and procedures, and hire then educate qualified IRS personnel to ensure the best and safest taxpayer experience is provided, as well as to educate taxpayers and practitioners on the use, safety, and benefits of online account applications. Finally, the IRS should consider reaching out to state tax departments that currently utilize taxpayer online accounts, such as California, New York, and Massachusetts, and obtain information that may assist the IRS as they develop and improve their own online systems. The IRS should lead in the development of these systems and give taxpayers the option to utilize and depend on their online accounts for most IRS services.

Recommendations

1. **Security** — All mobile and online applications must include unparalleled security features and taxpayer authentication. The applications must not be introduced until it is clear the system is secure.
2. **Integration —** Most, if not all, of the features of the mobile and online account applications should eventually be integrated into one robust and secure system to provide taxpayers with a positive experience.
3. **Digital Communication with the IRS** — Online accounts should allow for secure electronic communication between taxpayers, their representatives, and the IRS to resolve certain tax situations, answer specific questions, obtain additional information regarding a tax issue, or provide requested information including backup documentation. Online or video chats with IRS representatives may be very useful in obtaining clarification or updates regarding the status of an ongoing issue. If such communication is not likely to be available from within a taxpayer's online account in the near future, we recommend the IRS develop systems to communicate digitally with taxpayers and representatives then preserve the communication on the taxpayer record. Digital communication is efficient and cost effective and is a high priority for many tax practitioners.
4. **Account Balances** — Account balances, the status of any outstanding tax issues, past compliance and the name of the IRS department currently handling an issue should be available at all times. Open tax years, unpaid balances, unclaimed refunds, and outstanding levies or liens should be predominately displayed when a taxpayer accesses their online account. Any amounts owed should include a link

to related tax notices explaining the tax issues involved and should also include a detailed breakdown of the tax, penalty, and interest.

5. **Payments** — Taxpayers should be given the option to securely store bank account information within their online account to simplify initiation and modification of one-time or recurring payments. Currently, payments can be made through IRS DirectPay but taxpayer information and authentication has to be entered each time a payment is made. Also, detailed payment history, including prior year overpayments applied to future tax years, should be available within their online account for a certain number of years. Such payment history would be extremely helpful if the IRS develops online accounts for business taxpayers. We also encourage providing a 36-month history for EFTPS payments to determine if a taxpayer is eligible for First Time Penalty Abatement.
6. **Installment Agreements** — Online accounts should allow taxpayers to enter into installment agreements if they are under a certain dollar amount. Installment agreements are currently completed through www.irs.gov. We encourage it to be available through the taxpayer's online account. The IRS should consider reducing or waiving the regular installment agreement user fee as an incentive for taxpayers to submit their installment agreement request from within their online account.
7. **Amendments and Corrections** — Simple amendments should be available online including the ability to self-correct certain items reported or missed on a previously filed tax return. For example, a dependent adjusting their return when

they inadvertently claim themselves for exemption purposes or to account for a small missed Form 1099.

8. **Transcripts** — Online access to transcripts should be uncomplicated, easy to process then download or print from within a taxpayer's online account.
9. **Tax documents** — Form W-2, Form 1099, and Form 1098 information should be posted to a taxpayer's online account in time to assist them in the preparation of their annual tax returns. This will enhance the taxpayer experience by making the collection of documents simpler and help ensure they have not missed any important tax documents. It will also assist the IRS as tax returns will be more complete and accurate.
10. **Third Party Authorization and Online Power of Attorney (POA)** — A secure system should be in place to allow certain qualified third-parties, such as Treasury Circular 230 practitioners, to have approved access to a taxpayer's online account. Also, a secure way to immediately provide an automated Power of Attorney would allow approved representatives to resolve a tax issue as quickly as possible. Separate online accounts for approved representatives that link to taxpayer online accounts would be extremely helpful to those retained to assist taxpayers. Improved, secure authentication and possible limitations to account access need to be developed to ensure unapproved representatives do not take advantage of the IRS and taxpayers.
11. **Notifications** — Taxpayer notifications such as filing deadlines, IRS alerts, and issuance of notices should be posted to a taxpayer's online account and supported by email or text messages announcing such notifications. If a message requiring

action is not manually confirmed as received, a notification should be sent by mail.

12. **Tax Calculators and Calendars** — Links to various tax calculators and tax calendars such as the W-4 calculator, the Earned Income Credit calculator, Affordable Care Act calculator, and the General Tax Calendar should be available from within a taxpayer's online account. If possible, the calculators could use information from the taxpayer's account to help taxpayers complete them.
13. **Taxpayer Education and Alerts** — Online accounts should be used to educate and alert taxpayers about issues that are specific to them. For example, the IRS may be able to provide information to a taxpayer regarding education credits based on the ages of a taxpayer's dependents or the need to update their Form W-4 if the IRS becomes aware they have changed employers or have an additional employer.
14. **Change of Information** — Taxpayers should be allowed to update their personal information online at any time. This could include information such as change of address or marital status.
15. **Sensitive Taxpayer Information** — Once a taxpayer's online account is established, individual identification numbers and other sensitive information such as bank account numbers should be truncated throughout the entire online account.
16. **Account Locking Feature** — Any mobile or online account should provide taxpayers with the ability to "lock" their account for a variety of reasons including suspicion of identity theft, previous unauthorized access to their account, or other

circumstances that make them feel insecure with the protection of their identity such as a recent divorce.

ISSUE THREE: REVIEW CURRENT SB/SE PRACTICE OF ENCLOSING IRS PUBLICATIONS IN MAILINGS OF FIELD AND CAMPUS EXAM LETTERS

Executive Summary

The IRSAC was asked to review the current SB/SE practice of providing multiple print copies of IRS publications to taxpayers during the course of Field and Campus Examinations. These publications provide important information that taxpayers are entitled to receive regarding their rights and the examination, collection, and appeal processes.

The efficiency of IRS operations would be improved and the costs of operations would be decreased if the IRS were able to reduce the number of printed copies mailed to taxpayers. The IRSAC was asked to review the requirements for providing print copies, to evaluate if the number of publications provided to a taxpayer could be reduced, and to comment on the effect of such changes on the taxpayer. Further, the IRSAC was asked to suggest alternative methods of providing the taxpayer with information contained in the publications.

The IRSAC believes that the IRS has an opportunity to reduce costs while maintaining the effectiveness of IRS communications by strategically selecting when to provide print copies, providing taxpayers with alternative means to access important and necessary information, and continuing to emphasize taxpayer rights in the training of IRS employees.

Background

In 2015 the SB/SE division mailed an estimated 13.6 million letters to taxpayers regarding adjustments and collection issues.[28] The mailings usually include a letter regarding the particular issue that precipitated the correspondence as well as IRS publications and notices that provide important information regarding taxpayer rights and procedures. During the course of correspondence and field exams, multiple letters are sent and some documents are provided more than once. While some of the attachments are required by law,[29] the IRSAC has not addressed the question of the legal obligation to provide particular notices or other documents to taxpayers, but we do have several recommendations.

[28] SB/SE does not track the exact number of letters that are issued. Estimates provided by SB/SE are based upon printings at the Correspondence Productions Services (CPS) print sites. Estimates are thought to be low because they do not include printings done at sites other than CPS. Accurate cost information for publications and mailings was not available.

[29] Section 6627 of the 1988 Omnibus Taxpayer Bill of Rights (enacted as part of the Technical and Miscellaneous Revenue Act of 1988 and published as a note to section 7801 of the Code) requires the Secretary of the Treasury to distribute to all taxpayers contacted with respect to the collection or determination of any tax a statement that sets forth in simple and nontechnical terms (i) the rights of a taxpayer and the obligations of the IRS during audit, (ii) the procedures by which a taxpayer may appeal any adverse decisions of the IRS, including administrative and judicial appeals, (iii) the procedures for prosecuting refund claims and filing of taxpayer complaints, and (iv) the procedures which the IRS may use in enforcing the internal revenue laws including assessment, jeopardy assessments, levy, and distraint, and enforcement of liens. In addition, section 7521(b)(1) of the Code requires, in the case of an in person interview regarding the determination or collection of any tax, that the IRS employee provide to the taxpayer an explanation of the collection process and the taxpayer's rights under such process. *See also* section 3201(d) of the Internal Revenue Restructuring and Reform Act of 1998 (published as a note to section 6013 of the Code) , which requires that any notice relating to a joint return must be sent separately to each individual filing the joint return. *See also* 5 U.S.C. § 522(e)(3) for Privacy Act Notice requirements.

The IRSAC reviewed the following publications and notices for content and for frequency of mailing:

Publication or Notice Number	Title	Revision Date	No. of Pages	Estimated Frequency of Issuance FY 2015
Pub 1	*Your Rights as a Taxpayer*	Rev. 12-2014	2	7,498,000
Pub 5	*Your Appeal Rights and How to Prepare a Protest if You Don't Agree*	Rev. 01-1999	2	217,000
Pub 556	*Examination of Returns, Appeal Rights, and Claims for Refund*	Rev. 09-2013	20	217,000
Pub 594	*The IRS Collection Due Process*	Rev. 01-2015	8	217,000
Pub 1660	*Collection Appeal Rights*	Rev. 02-2014	4	n/a
Pub 3498	*The Examination Process*	Rev. 11-2014	8	511,000
Pub 4134	*Low Income Taxpayer Clinic List*	Rev. 01-2016	4	984,000
Notice 609	*Privacy Act Notice*	Rev. 10-2013	2	289,000
Notice 746	*Information About Your Notice, Penalty and Interest*	Rev. 04-2016	4	n/a
Notice 1219	*Notice of Potential Third Party Contact*	Rev. 08-2005	1	n/a
Notice 9465	*Installment Agreement Request*	Rev. 12-2013	2	106,000

The IRSAC concludes that these publications and notices are generally well written, informative, and useful to the taxpayer and practitioners. All of the publications can be readily found and accessed at www.irs.gov.

While it is intuitive that a reduction of publications and mailings would reduce costs, the IRS does not track distribution, printing, and mailing costs in a manner that permits an analysis of exactly which publications might be cut and the savings that might result. Mapping of letter streams indicates that Publication 1 is mailed to a taxpayer as

many as three times during the course of a field or campus audit. Publication 3498 is another document that is often provided more than once. The multiple mailings of Publications 1 and 3498 appear to be intentional to ensure compliance with legal notice requirements. Data indicate opportunity exists to cut costs, but additional information needs to be developed to identify publications that can be reduced without adversely affecting taxpayers and the resulting cost savings.

The IRSAC notes one area where publications and notices might be reduced: eliminating them as attachments in copies of correspondence mailed to taxpayer representatives and appointees. Tax practitioners (including members of the IRSAC) uniformly acknowledge discarding attachments to IRS letters because they are familiar with the information and otherwise have ready access to the attachments either from professional tax services or www.irs.gov. It appears the IRS has a policy of not providing attachments to taxpayer representatives and appointees.[30] The instructions for line 2 of Form 2848 *Power of Attorney and Declaration of Representative* and a notation to line 5a of Form 8821 *Tax Information Authorization* both state that a representative or appointee "will not receive forms, publications, and other related materials" with the copies of the correspondence sent to the taxpayer. Nevertheless, tax practitioners (including the IRSAC members) report receiving attachments in correspondence received pursuant to Form 2848. The IRSAC believes it should be sufficient for a tax practitioner to be informed of the attachments provided to the taxpayer by listing on the letter sent to the taxpayer the attachments included with the letter. We therefore recommend that the IRS review its

[30] IRS Media & Publications Distribution, Office of Taxpayer Correspondence informed the IRSAC that taxpayer representatives pursuant to a Power of Attorney (Form 2848) do not normally receive attachments with copies of taxpayer correspondence.

procedures to ensure adherence to its stated IRS policy of not routinely providing attachments to taxpayer representatives.

In considering the effect on taxpayers, more is not necessarily better when providing information to a taxpayer. Of importance is the relevance and timeliness of the information. Many taxpayers fear the IRS and receipt of an unexpected letter provokes anxiety. Taxpayers want and need to know as clearly as possible what the issue is and what they need to do about it. Excess information can be overwhelming and wasteful of a taxpayer's mental and emotional energy and result in the taxpayer ignoring important information because of the fear the excess information engenders. For example, a Privacy Act Notice is required by law,[31] but while important in terms of apprising taxpayers of their rights, does nothing to assist the taxpayer address the relevant and pressing tax matter. Yet the taxpayer is compelled to read the notice. While Congress mandates certain statements be provided to a taxpayer, it further instructs action should be taken to ensure that duplicate statements *not* be sent to any one taxpayer.[32] In seeking to reduce duplication of publications and notices sent to taxpayers, IRS can minimize adverse effect, and perhaps improve the taxpayer experience, by providing publications and notices only when the information is most relevant and useful to the taxpayer.

Publication 1, *Your Rights as a Taxpayer*, is the predominant publication with an estimated 26.4 million copies distributed service-wide in 2015, [33] and with nearly 7.5 million copies enclosed with letters mailed in the course of campus and field exams. The

[31] *See* 5 U.S.C. § 522(e)(3) for Privacy Act Notice requirements.
[32] Section 6227(c) of the 1988 Omnibus Taxpayer Bill of Rights provides, "The Secretary shall take such actions as the Secretary deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer."
[33] Estimate provided by IRS Office of Taxpayer Correspondence.

IRS uses Publication 1 to comply with a legal requirement to provide the taxpayer with a statement setting forth the rights of a taxpayer during an audit.

At the time the IRS makes initial contact, it is important that taxpayers receive information informing them they have rights and there is a standard of conduct they are entitled to receive from IRS employees. This information helps relieve the taxpayer's anxiety of dealing with the IRS and encourages the taxpayer to participate in the process to resolve the tax matter.

Taxpayer access to the Taxpayer Bill of Rights (TBOR) and expanded explanations of what the rights mean are readily available at www.irs.gov.[34] Additionally, the Taxpayer Advocate Service provides comparable information.[35] While Publication 1 is dedicated to taxpayer rights, a notice of taxpayer rights, similar to Publication 1, is included in other publications. If taxpayers are provided a copy of Publication 1 when the IRS makes initial contact and informed to keep the publication for future reference, the distribution of duplicate copies or versions of Publication 1 can be eliminated without adversely affecting them. This is particularly true if other publications, such as Form 3498, contain a notice of taxpayer rights, and if subsequent letters advise how to access TBOR information at www.irs.gov.

The taxpayer's ability to enforce rights during the audit and collection process is limited to a request to speak to a manager or apply to the Taxpayer Advocate for a taxpayer assistance order. Access to IRS appeals, Tax Court, Court of Claims, and U.S. District Court is available only after the audit has been completed at the examinations level. An appeal to the IRS or the courts is fraught with technicalities, delay, and expense

[34] https://www.irs.gov/taxpayer-bill-of-rights#service
[35] http://taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights?_ga=1.103244992.1768099976.1473106793

requiring additional publications such as the 20-page Publication 556 to adequately inform and advise the taxpayer of the processes. The IRS needs to take action beyond sending notices so the realities of protecting taxpayers' rights are not illusory.

The most effective means of protecting taxpayer rights is for TBOR to be diligently observed and complied with by the IRS. To this end, Congress made it a statutory duty of the Commissioner to ensure that employees of the IRS are familiar with and act in accord with taxpayer rights.[36] The IRSAC members' experiences with IRS employees confirms that most IRS employees are aware of and respectful of taxpayer rights. Annual continuing professional education (CPE) training about TBOR is available, but it is not currently mandatory. The IRSAC understands that SB/SE is considering making TBOR training a universal CPE mandatory topic. We support the mandatory training which emphasizes TBOR as a core value of IRS operations.

Recommendations

1. Study IRS operations to compile data necessary to identify duplicative publication and mailing costs and determine potential cost savings.
2. Review legal requirements for providing information contained in IRS publications and limit mailing of printed copies to meet the legal requirements and needs of taxpayers for timely, relevant information.
3. Provide a prominent notice to the taxpayer to retain a copy of all publications until the tax matter for which the taxpayer received a letter from the IRS has been resolved. The notice might be part of the initial contact letter or it might be a separate notice enclosed with the publication. The notice should inform the taxpayer that it contains important information for the taxpayer and only one print

[36] I.R.C. § 7803(a)(3).

copy will be automatically provided. For example, a notice accompanying Publication 1 might say, "You have rights as a taxpayer. Enclosed with this correspondence is Publication 1 which explains your rights. You should retain this copy of Publication 1 until your tax matter has been resolved. This is the only printed copy that will be provided to you unless you request another copy. Additional information regarding your rights can be found at www.irs.gov."

4. Provide a list of attachments previously sent to the taxpayer in all subsequent letters together with information on how the taxpayer can alternatively access the attachments, such as by visiting www.irs.gov, by calling or writing to request a copy, by picking up a copy at a local IRS office, or by requesting a copy or assistance in obtaining a copy from the taxpayer's representative.
5. Review IRS operations to determine if copies of attachments, such as publications and notices, are being provided to taxpayer representatives and appointees despite statements to the contrary in instructions to Form 2848 and on Form 8821. The IRSAC endorses the stated IRS practice of not routinely providing copies of attachments to taxpayer representatives and appointees as being efficient and effective for both the IRS and the taxpayer appointees.
6. Inform taxpayer representatives of attachments that were provided to the taxpayer by causing the letter to the taxpayer, a copy of which will be sent to the taxpayer appointee, to include a list of attachments. This would also be accomplished by implementing Recommendation 4 above.

7. Make training emphasizing taxpayer rights a universal CPE mandatory topic for all IRS employees with taxpayer contact and evaluate the employees regarding their compliance with TBOR.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

OFFICE OF PROFESSIONAL RESPONSIBILITY
SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Office of Professional Responsibility (OPR) Subgroup (hereinafter "OPR Subgroup") consists of a diverse group of tax professionals, including lawyers, an appraiser, an enrolled agent, a certified public accountant, and a law professor. This year the OPR Subgroup addressed the need for (i) legislation authorizing IRS oversight of tax return preparers and reaffirming IRS oversight of tax "practice" broadly defined, and (ii) revisions and updates to Treasury Circular 230.

The OPR Subgroup has always enjoyed a good working relationship with the Office of Professional Responsibility, and this year was no exception. Director Stephen Whitlock was our principal liaison within the office. Director Whitlock and the entire OPR staff were extremely helpful and cooperative in the subgroup's working sessions, and they contributed data and insights that helped frame our report.

The OPR Subgroup's recommendations on the following two topics are set forth in this Report:

1. **Statutory Authority of the IRS to Establish and Enforce Professional Standards for Tax Practice**

In 2011, the IRS began administering a program requiring individuals who prepare tax returns for compensation (and who were not otherwise licensed) to meet certain minimum standards of competency, including undergoing testing and annual continuing education.[37] The new program grew out of a rigorous study of the return preparer industry conducted by the IRS that revealed widespread return preparer incompetency and fraud.[38] Three years later in *Loving v. IRS*,[39] the U.S. Court of Appeals

[37] *See* 76 Fed. Reg. 32286 (2011). *See also* 75 Fed. Reg. 60309 (2010) and 75 Fed. Reg. 60316 (2010).
[38] *See* IRS Publication 4832, "Return Preparer Review" (December 2009).

for the D.C. Circuit invalidated the IRS program on the ground that, while the IRS possessed statutory authority to "regulate the practice of representatives of persons before the Department of the Treasury," that authority "cannot be stretched so broadly as to encompass authority to regulate tax-return preparers."[40] In so ruling, the court raised fundamental questions about whether the IRS can regulate the "practice" of tax professionals who "represent" taxpayers before the IRS beyond the narrowest sense of the terms "practice" and "represent," that is, (i) as an agent possessing legal authority to act on the taxpayer's behalf (and, furthermore, to bind the taxpayer to those representative actions),[41] and (ii) only once the representation reaches the point where a taxpayer's "return is selected for audit or the taxpayer appeals the IRS' proposed liability adjustments."[42] Such a restrictive definition of "tax practice" and taxpayer "representation" ignores *all* forms of pre-filing tax advice and planning, and could effectively eviscerate the last 30 years of amendments and revisions to Treasury Circular 230, much of which Congress authorized or mandated through legislative action.[43]

Following the decision in *Loving v. IRS*, considerable discussion and debate ensued within the tax practitioner and tax policymaking communities concerning (i) the establishment of minimum requirements for unlicensed individuals who prepare tax returns for compensation, and (ii) the extent to which the IRS can **establish and enforce professional standards** for tax "practice" and the "representation" of taxpayers in the way that tax practitioners (and, to a great degree, Congress) had come to understand and

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[39] 742 F.3d 1013 (D.C. Cir. 2014), *affg*, 920 F. Supp. 2d 108 (D.D.C. 2013).
[40] *Id*. at 1015.
[41] *Id*. at 1017.
[42] *Id*. at 1019.
[43] *See* "Background" to Issue One of the OPR Subgroup Report.

take for granted.[44] The discussion of what constituted "tax practice" and taxpayer "representation" took place against the backdrop of widespread fraud perpetrated by tax return preparers, the disproportionate number of whom are unlicensed.[45] Over the last two years, the IRS and the Department of Justice's Tax Division have diligently publicized and prosecuted this fraud, warning both practitioners and taxpayers of the threats posed — to individual taxpayers as well as to the tax system — by unscrupulous tax return preparers.[46] The IRS Taxpayer Advocate has engaged in similar outreach and publicity.[47]

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[44] *See e.g.*, William Hoffman, "EAs May Hold Keys to Preparer Regulation Post-*Loving*," 142 Tax Notes 809 (2014); William R. Davis, and Jaime Arora, "Legislation Needed to Strengthen Circular 230, Hawkins Says," 145 Tax Notes 492 (2014); Michelle Lyon Drumbl, "When Helpers Hurt: Protecting Taxpayers from Preparers," 145 Tax Notes 1365 (2014); Steve R. Johnson, "How Far Does Circular 230 Exceed Treasury's Statutory Authority?" 146 Tax Notes 221 (2015); Amanda Athanasion, "OPR Suffering from Circular 230 Challenges, Hawkins Says," 146 Tax Notes 596 (2015); Lee Sheppard, "Does the IRS Have the Power to Regulate Preparers?" 147 Tax Notes 1225 (2015); Dennis Drapkin, "*Loving* and *Ridgely*: Implications for Practitioners," 148 Tax Notes 319 (2015); Bryan T. Camp, "How the IRS Can Regulate Return Preparers without New Law," 148 Tax Notes 1335 (2015); Nathan Richman, "IRS Officials See Annual Filing Season Program as Steppingstone," 151 Tax Notes 851 (2016); William Hoffman, "IRS Brings ID Theft War to Small Tax Return Preparers," 152 Tax Notes 472 (2016).

[45] *See* William Hoffman, "Koskinen Urges Senate Finance to Reconsider Preparer Regulation," 143 Tax Notes 171, 171 (2014) (quoting Commissioner Koskinen as reporting that lawyers, CPAs, and Enrolled Agents make up only 40 percent of the paid preparer community, leaving "60 percent [of paid preparers] preparing returns with little or no federal oversight").

[46] *See, e.g.*, IRS, "Examples of Abusive Return Preparer Investigations, Fiscal Year 2016," *available at* https://www.irs.gov/uac/examples-of-abusive-return-preparer-investigations-fiscal-year-2016 (describing hundreds of investigations and convictions of abusive return preparers, including links to fiscal years 2014 and 2015); IRS Press Release, "Identify Theft an Ongoing Concern on the IRS Annual 'Dirty Dozen' List of Tax Scams to Avoid," IR 2016-16 (February 4, 2016), *available at* https://www.irs.gov/uac/newsroom/identity-theft-an-ongoing-concern-on-the-irs-annual-dirty-dozen-list-of-tax-scams-to-avoid; IRS, "Choose Your Tax Preparer Wisely," IRS Tax Tip 2016-06 (January 26, 2016, updated February 2016), *available at* https://www.irs.gov/uac/choose-your-tax-preparer-wisely; IRS, "General IRS Guidance on Choosing a Tax Professional" (updated September 1, 2016), *available at* https://www.irs.gov/tax-professionals/e-file-providers-partners/choose-a-tax-professional; IRS, "Tax Time Guide: Online Tools Help Taxpayers Choose a Qualified Tax Professional," IR-2016-46 (March 22, 2016), *available at* https://www.irs.gov/uac/newsroom/tax-time-guide-online-tools-help-taxpayers-choose-a-qualified-tax-professional; IRS, "Understanding Tax Return Preparer Credentials and Qualifications" (updated March 2016), *available at* https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications; IRS, "Who Can Represent You Before the IRS?" IRS Special Edition Tax Tip 2016-02 (January 15, 2016, updated February 12, 2016), *available at* https://www.irs.gov/uac/who-can-represent-you-before-the-irs; IRS, "Directory of Federal Tax Return Preparers with Credentials and Select Qualifications" (updated almost daily), *available at* http://irs.treasury.gov/rpo/rpo.jsf; USDOJ, Office of Public Affairs, "Justice Department Warns Public to Beware of Fraudulent Tax Return Preparers and Tax Scheme Promoters, Urges Taxpayers to Pay Federal

Given the proliferation of preparer fraud and abuse, the IRSAC reaffirms its recommendation of the last two years that *all* tax return preparers be subject to the competency and ethical standards contained in Treasury Circular 230, and furthermore, that *all* tax return preparers not already subject to the standards of a bar, accounting, or enrolled agent license be required to demonstrate competency by successfully passing an appropriate test and completing annual continuing education requirements. More specifically, the IRSAC recommends that (i) the Commissioner request that the IRS be granted explicit statutory authority to **establish and enforce professional standards** for tax return preparers at *all* stages of tax practice (including both pre-filing and post-filing advice and assistance), and (ii) the Commissioner request that "representation" of taxpayers be defined to include not just acting on a taxpayer's behalf and in a legally binding manner nor only after the taxpayer's return has been selected for audit or the taxpayer challenges proposed adjustments to the return, but also encompassing tax advice, tax planning, tax return preparation, tax return filing, and pre-audit correspondence with the IRS.

2. **Revisions and Updates to Treasury Circular 230**

Following the D.C. Circuit's decision in *Loving v. IRS*,[48] the IRS halted its Registered Tax Return Preparer (RTRP) program. After losing on appeal, the RTRP

Income Taxes on Time and in Full" (March 31, 2016), available at https://www.justice.gov/opa/pr/justice-department-warns-public-beware-fraudulent-tax-return-preparers-and-tax-scheme; USDOJ, Tax Division, "Tax Division Press Releases," *available at* https://www.justice.gov/tax/tax-division-press-releases (listing over 3,000 press releases dating to 2009 with the vast majority pertaining to fraudulent tax return preparers); USDOJ, "Program to Shut Down Schemes and Scams," *available at* https://www.justice.gov/tax/program-shut-down-schemes-and-scams (listing hundreds of injunctions obtained between 2004-16 shutting down fraudulent tax return preparers, with more recent years reflecting a marked increase in the number of injunctions).

[47] *See e.g.*, National Taxpayer Advocate, Return Preparer Fraud, *available at* http://taxpayeradvocate.irs.gov/get-help/return-preparer-fraud.

[48] *Id.* at 3.

designation was abandoned by the IRS and no longer has any significance. The Regulations Governing Practice before the Internal Revenue Service, published as Treasury Circular 230, has not been revised to reflect these changes and thus contains numerous provisions that are now unenforceable. Additionally, other sections of Treasury Circular 230 are outdated or incorrect. The IRSAC recommends that these ministerial revisions be addressed through the issuance of proposed regulations. The IRSAC further recommends that the IRS seek specific authority to address these kind of updates in the future through revenue procedures or other administrative guidance.

ISSUE ONE: STATUTORY AUTHORITY OF THE IRS TO ESTABLISH AND ENFORCE PROFESSIONAL STANDARDS FOR TAX PRACTICE

Executive Summary

It is in the public interest to safeguard the integrity of tax return preparation, tax advice and planning, and tax representation at all stages. The ability of the IRS to accomplish this critical task of tax administration has been hampered by recent court decisions. Thus, the IRSAC recommends for the third year in a row that the Commissioner request that Congress affirm and clarify its support of the IRS' authority to **establish and enforce professional standards** for tax "practice," broadly defined, by strengthening 31 U.S.C. § 330.

Background

31 U.S.C. § 330 authorizes the Secretary of the Treasury to "regulate the practice of representatives of persons before the Department," including their character, reputation, qualifications, and competency. For decades, under regulations promulgated under Title 31 and published as Treasury Circular 230, the IRS has overseen the professional behavior of attorneys, certified public accountants, enrolled agents, and other credentialed professionals advising and representing taxpayers before the Internal Revenue Service. At times this oversight has been intense, as with respect to tax shelter opinions in the 1980s (see former section 10.33 of Treasury Circular 230) and the written advice standards in the mid-2000s (see former section 10.35 of Treasury Circular 230), while at other times it has been more watchful than assertive. At all times, however, IRS oversight of tax professionals has been guided by the principle that a sound tax system relies on the integrity and competency of tax practitioners.

The IRS Office of Professional Responsibility (OPR) administers all matters related to tax practitioner conduct, including the regulation of "practice" before the IRS and the oversight of all disciplinary proceedings pertaining to tax practitioners found to be in violation of Treasury Circular 230,[49] the regulations governing practice before the IRS.[50]

Until 1984, Treasury Circular 230 had provided that tax return preparation did not constitute practice before the IRS.[51] However, revisions to Treasury Circular 230 that year removed the provision that explicitly omitted tax return preparation from "practice before the Internal Revenue Service."[52] As important, the 1984 revisions to Treasury Circular 230 began a thirty-year effort, much of it endorsed and authorized by Congress, to expand the nature and scope of tax practitioner conduct covered by Treasury Circular 230, particularly conduct related to pre-filing planning and advice. The 1984 amendments, for example, significantly increased the diligence requirements under Treasury Circular 230, specifically for practitioners issuing tax shelter opinions.[53] Proposed amendments in 1986 recommended further extending enhanced diligence requirements to non-shelter advice pertaining to return positions.[54] The 1986 amendments also proposed adding section 10.34 to Treasury Circular 230, requiring practitioners to advise taxpayer-clients on the recently enacted "substantial

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[49] In January 2003, the Treasury Department established the Office of Professional Responsibility, before which time (and since 1954) the Director of Practice administered the regulations governing practice before the IRS. See 71 Fed. Reg. 6421, 6422 (2006).
[50] *See* 31 C.F.R. §§ 10.0-.93 (2014).
[51] *See e.g.*, 31 Fed. Reg. 10773, 10774 (1966) (stating in 31 U.S.C. § 10.2(a), "Neither the preparation of a tax return, nor the appearance of an individual as a witness for the taxpayer, nor the furnishing of information at the request of the IRS or any of its officers or employees is considered practice before the IRS").
[52] *See* 49 Fed. Reg. 6719, 6722 (1984) (removing the third sentence in 31 U.S.C. § 10.2(a), which previously stated that tax return preparation was not considered practice before the IRS).
[53] *Id.* at 6720, 6722-23.
[54] 51 Fed. Reg. 29113, 29113-14 (1986).

understatement penalty" (originally codified as section 6661, but re-codified as section 6662 in 1989),[55] while at the same time prohibiting practitioners from advising on return positions that subjected taxpayers to penalty under the new provision.[56] In 1992, the Treasury withdrew and reissued the proposed amendments,[57] finalizing them two years later in 1994.[58] New section 10.34(a)(1) prohibited practitioners from advising on return positions or signing returns reflecting return positions that did not meet the new "realistic possibility of success" standard in section 6662, unless the practitioner reasonably determined that the position was not frivolous and was adequately disclosed on the return.[59] In addition, new section 10.34(a)(2) required practitioners to advise taxpayers on all potential penalties that might apply to return positions and, furthermore, to any opportunity to avoid penalty through disclosure to the IRS.[60]

Two additional historical examples supporting the IRS authority to oversee tax practice, broadly defined, are worth mentioning. First, in 2004, Congress enacted the American Jobs Creation Act ("Jobs Act"), which, among other things, clarified that the Treasury Department and the IRS may impose disciplinary standards on practitioners for rendering pre-filing written advice relating to matters identified as having a potential for tax avoidance or evasion.[61] The Jobs Act contained sweeping anti-shelter legislation — including new penalties as well as substantial revision to existing penalties — nearly all of which took aim at the tax shelter industry by targeting tax practitioners who advised taxpayer-clients on what the IRS and Congress viewed as abusive positions and

[55] *Id*. at 29114, 29115.
[56] *Id*.
[57] *See* 57 Fed. Reg. 46356 (1992).
[58] *See* 59 Fed. Reg. 31523 (1994).
[59] *Id*. at 31523-24, 31527.
[60] *Id*.
[61] *See* Pub. L. 108-357, 118 Stat. 1418, 1587 (2004).

transactions.[62] The Treasury subsequently issued final regulations reflecting Congress's intent to aggressively respond to abusive tax practice, including both pre- and post-filing practice.[63] Second, in 2008, Congress enacted the Tax Extenders and Alternative Minimum Tax Relief Act, which, among other things, amended the standard of care that tax practitioners must achieve in order to avoid being subject to the tax preparer penalties contained in the Internal Revenue Code.[64] Three years later, the Treasury Department updated Treasury Circular 230 respecting the standard of care that tax practitioners must meet when advising on and preparing tax returns.[65]

In those same final regulations promulgated in 2011, the Treasury Department sought to include in its oversight the large group of tax return preparers who were unlicensed. Given the methodical and congressionally authorized advance over the previous three decades of IRS authority to require minimum standards for all forms of tax practice (described above), the Treasury reasonably believed that it already possessed that authority. Nonetheless, it felt compelled to enunciate its authority to address this group of tax return preparers after studies revealed that unlicensed preparers regularly committed simple and inexcusable errors on tax returns, which subjected taxpayers to unnecessary

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[62] *See e.g.,* I.R.C. § 6707A (penalty for failure to disclose reportable transactions); § 6662A (accuracy-related penalty on understatements with respect to reportable transactions); § 6700 (promoter penalty); § 6707 (penalty for failure to furnish information respecting reportable transactions); § 6708 (list maintenance penalty respecting taxpayer-clients invested in reportable transactions); § 6111 (requirement that "material advisors" disclose information respecting reportable transactions); § 6112 (list maintenance requirement for material advisors with respect to potentially abusive tax shelters).

[63] *See* 69 Fed. Reg. 75839, 75842-44 (2004); 70 Fed. Reg. 28824 (2005) (revising final regulations based on public comments received prior to effective date of final regulations issued in December 2004); 72 Fed. Reg. 54540, 54545 (2007) (finalizing regulations respecting the clarified authority and including such authority in section 10.2(a)(4), "Practice Before the Internal Revenue Service").

[64] *See* Pub. L. 110-343 (Division C), 122 Stat. 3765, 3880 (2008). *See also* 73 Fed. Reg. 78430 (2008) (issuance of final regulations to reflect the legislative changes to paid preparer penalties).

[65] 76 Fed. Reg. 32286, 32307-08 (2011).

expense and liability and otherwise abused the tax compliance system.[66] These studies showed, for example, that 55 percent of preparers were subject to no oversight (that figure has since jumped to 60 percent[67]), and that tax returns prepared by all preparers had a higher estimated percent of errors (60 percent) than self-prepared returns (50 percent). Significantly, the studies also emphasized that tax return preparers are not required to have *any* minimum education, knowledge, training, or skill before they are allowed to prepare a tax return for a fee. Or, in the words of IRS Commissioner John Koskinen, "You get your hair cut by someone who has to pass a licensing exam, but [anyone] can prepare your tax return with no requirements at all, no certifications at all."[68] While unlicensed preparers charge and receive fees from taxpayers with both simple and sophisticated returns, the taxpayers most at risk to being misled and harmed by unlicensed preparers are low-income households possessing little financial literacy. Indeed, according to studies, 60 percent of taxpayers claiming the Earned Income Tax Credit (EITC) use a paid preparer, the same percentage as the general taxpaying population, but, unlike the general taxpayer population, more than 75 percent of EITC preparers are unlicensed and unregulated.[69] All taxpayers should be able to rely upon competent and credible paid preparers who update their competency with respect to the

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[66] Government Accountability Office, "Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors," GAO-14-467T (April 8, 2014) (testimony before the Senate Finance Committee); IRS Tax Return Preparer Review in 2009 and 2010; IRS Publication 4832, "Return Preparer Review" (December 2009). *See also* IRS, "Return Preparer Review Leads to Recommendations for New Requirements of Paid Tax Return Preparers," FS-2010-1 (January 2010).

[67] *See* William Hoffman, "Koskinen Urges Senate Finance to Reconsider Preparer Regulation," 143 Tax Notes 171, 171 (2014) (quoting Commissioner Koskinen as saying that lawyers, CPAs, and Enrolled Agents make up only 40 percent of the paid preparer community, leaving "60 percent [of paid preparers] preparing returns with little or no federal oversight").

[68] Kat Lucero, "IRS Launches Online Directory of Tax Return Preparers," 146 Tax Notes 715, 716 (2016).

[69] *See* Alexandra Thornton and Rebecca Vallas, "Three Reasons Why We Should Certify All Paid Tax Preparers" (Apr. 20, 2016), *available at* https://www.americanprogress.org/issues/tax-reform/news/2016/04/20/136022/3-reasons-why-we-should-certify-all-paid-tax-preparers/.

nation's tax laws on an annual basis, and who behave in accordance with the highest ethical and professional standards, namely those reflected in Treasury Circular 230.

Cases of Return Preparer Fraud and Misbehavior Continue Unabated

Fraudulent tax return preparation has become an epidemic. According to the Treasury Inspector General for Tax Administration, the IRS identified more than two million returns from tax year 2014 reflecting fraudulently claimed refunds totaling more than $15.7 billion.[70] In addition, the U.S. Department of Justice (DOJ) reports that it is seeking and being granted more injunction orders than ever before in its efforts to shut down fraudulent tax return preparers. In 2015, the DOJ permanently shut down more than 35 fraudulent operations, with 2016 on pace to easily surpass that figure.[71] The defendants in these cases include large-scale return preparation franchises, independent return preparers, and everything in between.[72]

For its part, the IRS has expended considerable resources and effort educating taxpayers about the malicious practices of fraudulent return preparers. During last year's tax filing season, the IRS warned taxpayers "to be on the lookout for unscrupulous return preparers," and identified incompetent and fraudulent preparers as one of the most common "Dirty Dozen" tax scams.[73] Moreover, the IRS maintains (and regularly

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[70] USDOJ, Office of Public Affairs, "Justice Department Warns Public to Beware of Fraudulent Tax Return Preparers and Tax Scheme Promoters, Urges Taxpayers to Pay Federal Income Taxes on Time and in Full" (March 31, 2016), *available at* https://www.justice.gov/opa/pr/justice-department-warns-public-beware-fraudulent-tax-return-preparers-and-tax-scheme.

[71] *See* USDOJ, "Program to Shut Down Schemes and Scams," *available at* https://www.justice.gov/tax/program-shut-down-schemes-and-scams (listing hundreds of injunctions obtained between 2004-16 shutting down fraudulent tax return preparers, with more recent years reflecting an explosion in the number of injunctions). *See also* USDOJ, Tax Division, "Tax Division Press Releases," available at https://www.justice.gov/tax/tax-division-press-releases (listing over 3,000 press releases dating to 2009 with the vast majority pertaining to fraudulent tax return preparers).

[72] *See* note 35.

[73] IRS Press Release, "Identify Theft an Ongoing Concern on the IRS Annual 'Dirty Dozen' List of Tax Scams to Avoid," IR 2016-16 (February 4, 2016), *available at* https://www.irs.gov/uac/newsroom/identity-theft-an-ongoing-concern-on-the-irs-annual-dirty-dozen-list-of-tax-scams-to-avoid.

updates) websites that assist taxpayers in "choosing your tax preparer wisely"[74]; that educate taxpayers on the credentials and qualifications of different categories of tax professionals[75]; that provide searchable directories of credentialed federal tax return preparers located throughout the country[76]; that explain how to register a complaint about return preparers[77] or report suspected fraudulent conduct[78]; and that list and describe the government's investigations and convictions of abusive return preparers.[79]

Reports of unscrupulous return preparers are common in conversations among licensed tax practitioners and members of the public. One recent example of the significant harm caused by unscrupulous and incompetent return preparers involved a group of Baltimore firefighters whose unlicensed and unregistered paid preparer fraudulently claimed hundreds of thousands of dollars in bogus business expenses on the

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[74] See IRS, "Choose Your Tax Preparer Wisely," IRS Tax Tip 2016-06 (January 26, 2016, updated February 2016), *available at* https://www.irs.gov/uac/choose-your-tax-preparer-wisely; IRS, "General IRS Guidance on Choosing a Tax Professional" (updated September 1, 2016), *available at* https://www.irs.gov/tax-professionals/e-file-providers-partners/choose-a-tax-professional (includes a tutorial video on "How to Use the Tax Return Preparer Directory"); IRS, "Tax Time Guide: Online Tools Help Taxpayers Choose a Qualified Tax Professional," IR-2016-46 (March 22, 2016), *available at* https://www.irs.gov/uac/newsroom/tax-time-guide-online-tools-help-taxpayers-choose-a-qualified-tax-professional; IRS, "IRS Urges Taxpayers to Choose a Tax Preparer Wisely for the Filing Season Ahead," FS-2014-11 (December 2014, updated December 2, 2015), *available at* https://www.irs.gov/uac/newsroom/irs-urges-taxpayers-to-choose-a-tax-preparer-wisely-for-the-filing-season-ahead.

[75] *See* IRS, "Understanding Tax Return Preparer Credentials and Qualifications" (updated March 2016), *available at* https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications; IRS, "Who Can Represent You Before the IRS?" IRS Special Edition Tax Tip 2016-02 (January 15, 2016, updated February 12, 2016), *available at* https://www.irs.gov/uac/who-can-represent-you-before-the-irs.

[76] IRS, "Directory of Federal Tax Return Preparers with Credentials and Select Qualifications" (updated almost daily), *available at* http://irs.treasury.gov/rpo/rpo.jsf.

[77] *See* IRS, "Make a Complaint About a Tax Return Preparer" (March 8, 2016), *available at* https://www.irs.gov/tax-professionals/make-a-complaint-about-a-tax-return-preparer.

[78] *See* IRS, "How Do You Report Suspected Tax Fraud Activity" (January 11, 2016), *available at* https://www.irs.gov/individuals/how-do-you-report-suspected-tax-fraud-activity.

[79] IRS, "Examples of Abusive Return Preparer Investigations, Fiscal Year 2016," *available at* https://www.irs.gov/uac/examples-of-abusive-return-preparer-investigations-fiscal-year-2016 (includes links to fiscal years 2014 and 2015).

firefighters' tax returns.[80] According to an investigation conducted by WBAL-TV 11 in March 2015, the firefighters never saw or signed the returns. In addition, the unlicensed return preparer did not list himself as the preparer of record on the returns and instead indicated that the returns were "self-prepared." The firefighters only learned of the preparer's misconduct after being contacted by the Comptroller of Maryland questioning the accuracy of the returns.

Cases like these[81] illustrate the dire need for minimum and mandatory competency standards which *all* preparers must meet and maintain before they are permitted to render advice, prepare returns, or represent taxpayers at any stage of the pre-filing or post-filing process.

Recent Case Law Interpreting 31 U.S.C. § 330

As noted in the Introduction/Executive Summary of the OPR Subgroup Report, *Loving v. IRS* [82] struck down the IRS' expanded oversight of return preparers, holding that Title 31 did not explicitly grant such authority. In a subsequent case, *Ridgely v. Lew*,[83] the court invalidated Treasury Circular 230's contingent-fee restrictions as applied to "ordinary" refund claims; *i.e.*, amended tax returns filed prior to an examination of the original return. The courts held, respectively, that preparers of tax returns and "ordinary"

[80] *See* Barry Simms, "Firefighters: Tax Preparer Lied on Forms, Now We Owe," WBAL-TV11 (March 1, 2015), *available at* http://www.wbaltv.com/news/firefighters-tax-preparer-lied-on-forms-now-we-owe/31474772. *See also* Barry Simms, "More Taxpayers Claim Tax preparer Filed Bogus Claims," WBAL-TV11 (March 19, 2015), *available at* http://www.wbaltv.com/money/more-taxpayers-claim-tax-preparer-filed-bogus-claims/31868422 (reporting additional Maryland taxpayers having been defrauded by the same unregistered preparer).

[81] For a tip-of-the-iceberg view of the fraudulent tax preparation epidemic, see IRS, "Examples of Abusive Return Preparer Investigations, Fiscal Year 2016," *available at* https://www.irs.gov/uac/examples-of-abusive-return-preparer-investigations-fiscal-year-2016 (describing in detail hundreds of cases pertaining to abusive return preparer investigations and convictions from fiscal years 2014, 2015, and 2016).

[82] 742 F.3d 1013 (D.C. Cir. 2014), *affg*, 920 F. Supp. 2d 108 (D.D.C. 2013).

[83] 55 F. Supp. 3d 89 (D.D.C. 2014).

claims for refund are neither "representing" taxpayers nor "practicing" before the Internal Revenue Service as defined in 31 U.S.C. § 330.

In analyzing whether tax return preparers and refund claim preparers are "representatives" of taxpayers "practicing" before the IRS, the courts stated that tax professionals do not serve taxpayers in such a capacity until a live dispute arises between the IRS and a taxpayer. More specifically, the courts opined that in the normal course of return and claim submissions, before a return is being audited or there is otherwise a dispute between the taxpayer and the IRS, the tax professional is not "practicing" before the IRS in the sense of having a "case" before the IRS, another term of art contained in 31 U.S.C. § 330. According to the courts, a tax professional is not "representing" a taxpayer unless the representative has the power to bind the taxpayer as would an agent for a principal. Accordingly, even though 31 U.S.C. § 330(d) expressly states that nothing in section 330 nor in any other law prevents the IRS from regulating tax advice with respect to an activity that has the potential for tax avoidance or evasion, the court opinions suggest that most tax advice — including all pre-filing tax advice — is outside the scope of section 330 oversight. The courts restricted in this manner the forms of tax "practice" that the IRS could regulate even though Congress has affirmed on multiple occasions the Treasury Department's authority to **establish and enforce professional standards** for pre-filing tax advice under the ambit of Treasury Circular 230 (see "Background" to Issue One of the OPR Subgroup Report).

In addition, both the *Loving* and *Ridgely* courts felt that the existing return preparer penalty provisions of the Internal Revenue Code make IRS oversight of tax return preparers surplusage in any event. According to the *Loving* court, the Code already

contains a "carefully articulated existing system for regulating tax return preparers,"[84] a system that the *Ridgely* court considered a "comprehensive scheme of penalties to curb the potential abuse in the preparation and filing of *both* original returns and refund claims."[85] Whether or not the current penalty system reflects a "carefully articulated" and "comprehensive scheme" for regulating tax return preparers is certainly debatable and subject to specific factual contexts. Unscrupulous practitioners, for example, may simply consider the penalty regime's monetary sanctions a cost of doing business rather than, say, penalties that should be avoided or, if breached, a sign that a practitioner has violated an authoritative standard of care. There can be no debate, however, that the current penalty system has been ineffective in "curb[ing] the potential abuse in the preparation and filing of *both* original returns and refund claims." Furthermore, if Treasury Circular 230 applies only to practice in the narrow adversarial sense described by the courts in *Loving* and *Ridgely*, then the whole tax opinion arena is conceivably beyond the scope of OPR scrutiny. Such a result is flatly at odds with congressional intent reflected in multiple statutes enacted over the last three decades (see discussion above in "Background" to Issue One of the OPR Subgroup Report).

The IRSAC believes that decisions in *Loving* and *Ridgely* are inconsistent with the last 30 years of tax practice standards as understood by Congress, the Treasury Department, and tax practitioners who are licensed. As such, and to mitigate the damage caused by these cases with respect to tax administration, tax compliance, and taxpayer rights, the IRSAC recommends that the Commissioner request Congress to amend 31

[84] 742 F.3d at 1020.
[85] 55 F. Supp.3d at 96.

U.S.C. § 330 to grant the IRS express authority to oversee all phases of federal tax advice, return and document preparation, and dispute resolution.

Legislative Proposals to Clarify and Expand IRS Oversight of Tax Return Preparers

In the wake of *Loving* and *Ridgely*, and recognizing the need for IRS oversight of unlicensed tax return preparers, members of Congress have introduced a number of bills designed to clarify and expand the scope of 31 U.S.C. § 330. In particular, the legislative efforts have sought to include "tax return preparers" in 31 U.S.C. § 330 as defined in section 7701(a)(36) of the Internal Revenue Code, and to grant the IRS explicit authority to sanction tax return preparers who run afoul of Treasury Circular 230.[86] To date, none of the bills has become law. In fact, none of them even got out of Committee. But the proposal sponsored by Senators Ron Wyden (D-OR) and Ben Cardin (D-MD) nearly received enough votes in the Senate Finance Committee in April 2016 to proceed to the full Senate for consideration.[87] The "Wyden Amendment" (attached to a bill preventing identity theft and tax refund fraud) lost 12-13 with two members who voted against the amendment expressing qualified support for future legislative action on minimum standards for tax return preparers.[88]

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[86] *See e.g.*, S. 137, Taxpayer Protection and Preparer Proficiency Act of 2015 (introduced and co-sponsored by Sens. Wyden and Cardin); H.R. 1609, Tax Return Preparer Accountability Act of 2015 (co-sponsored by Cohen, Scott, Norton, Maloney); H.R. 1778, Tax Refund Protection Act of 2015 (introduced by Bonamici); S. 935 (companion bill to H.R. 1778), Tax Refund Protection Act of 2015 (introduced by Booker); H.R. 4141, Tax Return Preparer Competency Act of 2015 (introduced by Black).

[87] William Hoffman and Jonathan Curry, "Senate Finance Passes ID Theft, Tax Administration Bills," 151 Tax Notes 436 (2015). For the multi-year odyssey undertaken by Wyden and Cardin to enact legislation explicitly authorizing the IRS to regulate tax return preparers, see William Hoffman, "Wyden, Cardin Introduce Bill to Regulate Paid Return Preparers," 146 Tax Notes 345 (2015); Kat Lucero, "Finance Democrats Push Return Preparer Standards," 2016 TNT 767 (2015).

[88] *See* Hoffman and Curry, *supra* note 51, at 436 (Chair Orrin Hatch (R-UT) stated after the vote, "While I support minimum standards for paid tax return preparers, I will vote against this amendment today because I want to work with my Republican colleagues to assuage some of their well-founded concerns about the broad scope of authority provided to the Treasury Department in this proposal." Meanwhile, Dan Coats (R-IN) said, "The decision today doesn't take this issue off the table, at least from my perspective. But it's clear to me that adoption of this would undermine our ability to take this all the way through the Senate and

The IRSAC applauds the intent of this legislation particularly to the extent it clarifies and expands the scope of 31 U.S.C. § 330 to include unlicensed tax return preparers as professionals practicing before the Internal Revenue Service and thus subject to Treasury Circular 230's standard of conduct. The income tax is generally self-assessed, and paid return preparers are critical to assisting taxpayers in understanding and fulfilling their self-assessment obligations. Given the meager 0.8 percent audit rate for all returns,[89] more than 99 percent of tax return data go unexamined by the IRS, a fact that means the nation's income tax system is overwhelmingly dependent upon the accuracy of the information originally submitted by taxpayers and their tax professionals.

All paid tax return preparers have an important role in tax administration because they assist taxpayers in complying with their obligations under the tax laws. Incompetent and dishonest tax return preparers increase noncompliance and undermine confidence in the tax system. Equally important, unscrupulous return preparers who prey on unsuspecting clients subject those clients to significant penalties and interest on additional income taxes. Many of these taxpayers cannot afford to incur further costs resulting from a preparer's grossly negligent or fraudulent conduct.

Recommendation

The IRSAC continues to recommend strongly that the Commissioner request Congress to enact legislation expressly affirming the Treasury Department's authority under 31 U.S.C. § 330 to **establish and enforce professional standards** for both paid tax return preparers and tax "practice" broadly defined. Guidance on the appropriate

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move it to statutory approval."). For an explanation of the Wyden Amendment, see "Wyden Amendment to the Second Modification to a Bill to Prevent Identify Theft and Tax Refund Fraud" (co-sponsored by Cardin, Carper, Wyden) Tax Analysts Doc. 2016-8272.

[89] *See* IRS, IRS Data Book 21 (2015).

scope of the legislative grant may be found in section 10.2(a)(4) of current Treasury Circular 230:

> Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

ISSUE TWO: REVISIONS AND UPDATES TO TREASURY CIRCULAR 230

Executive Summary

Treasury Circular 230[90] governs all persons who practice before the Internal Revenue Service. It is relied upon by attorneys, certified public accountants, enrolled agents, and others who represent taxpayers before the Internal Revenue Service as well as by taxpayers who hire these tax professionals.

As discussed in the OPR Subgroup Issue 1, because of the decision in *Loving v. IRS*,[91] the IRS' mandatory program for regulating unlicensed tax return preparers was halted in 2014. Separate and apart from the potential for legislative action authorizing the IRS to impose minimum standards for individuals who provide tax preparation services — legislation that the IRSAC very much supports — parts of Treasury Circular 230 are currently outdated and unenforceable.

The IRSAC recommends updating these outdated parts of Treasury Circular 230. Appendix 3 to this report identifies the specific parts of Treasury Circular 230 that need updating. These updates are purely ministerial, and pertain to parts of the Circular that reflect programs no longer in existence, outmoded procedures, and antiquated dates and deadlines. As such, the IRSAC further recommends that the IRS seek specific authority to address these kind of updates in the future through revenue procedures or other administrative guidance.

Background

Before the 2014 appellate court decision in *Loving*, the IRS had instituted a mandatory program requiring all tax return preparers who were not otherwise licensed to

[90] *See* 31 C.F.R. §§ 10.0-.93 (2014).
[91] 742 F.3d 1013 (D.C. Cir. 2014), *affg*, 920 F. Supp. 2d 108 (D.D.C. 2013).

become "Registered Tax Return Preparers" (RTRPs). Following the *Loving* decision, the IRS shut down the program and abandoned the RTRP designation. Thus, the RTRP classification no longer has any significance, and the IRS has announced that the RTRP credential is no longer valid and serves no purpose when dealing with the IRS.[92]

Because Treasury Circular 230 has not been revised to reflect the IRS' termination of the RTRP program, the regulation still contains numerous references to RTRPs — 54 by our count. In other words, the current version of the Regulations Governing Practice before the Internal Revenue Service reflects provisions that are unenforceable and potentially misleading for practitioners (and others). Appendix 3 to this report contains the current version of Treasury Circular 230, with the sections that need updating marked with strikethrough text.

This recommendation is not driven simply by aesthetic concerns. Treasury Circular 230 addresses conduct subject to sanction. But it also contains useful guidance for tax practitioners regarding their prevailing standard of care, best practices, enrolled agent renewals, and continuing education, as well as other information relating to practice before the IRS. When this information is outdated or incorrect, it detracts from the credibility and usefulness of the overall regulations and could affect compliance adversely.

Apart from the now-moribund RTRP program, Treasury Circular 230 does not refer to a temporary and voluntary program that the IRS has instituted for return preparers. The "Annual Filing Season Program" (AFSP) offers a record of completion and other benefits not available to tax return preparers who do not participate in the

[92] *See* Registered Tax Return Preparer (RTRP) Test Fee Refunds – Frequently Asked Questions (updated May 11, 2016), *available at* https://www.irs.gov/tax-professionals/registered-tax-return-preparer-test-refunds.

program. In addition to the registration, education, and testing requirements to participate in the AFSP, tax preparers must consent to being subject to Subpart B and section 10.51 of Treasury Circular 230 (pertaining to sanctions for "incompetence and disreputable conduct"). Because these requirements are similar to and overlap with some aspects of the RTRP program, the advent of this new category of "AFSP Record of Completion Holders" might confuse tax preparers who still encounter Treasury Circular 230's multiple references to the defunct RTRP designation.

In addition, the IRSAC identified several other issues within Treasury Circular 230 that should be addressed:

- Appraisers should be added as a profession to the other listed practitioners authorized to practice before the IRS in section10.0, 10.2(a) and 10.3. Appraisers are specifically mentioned in 31 U.S.C. § 330[93] and are subject to the rules and "Sanctions for Violation of Regulations" in Subpart C.[94]
- The language in section 10.6(d)(2) regarding Renewal for Enrolled Agents should be updated. Thus, the rolling renewal schedule which dates to July 2002 should instead be a simple reference to where information on renewal cycles can be found on the IRS website or in other published guidance.
- Sections 10.6(f)(1) & (2) pertaining to Continuing Education (CE) are outdated, because enrolled agents no longer determine the validity of their

[93] *See* 31 U.S.C. § 330 (c):

> After notice and opportunity for a hearing to any appraiser, the Secretary may —
> (1) provide that appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service, and
> (2) bar such appraiser from presenting evidence or testimony in any such proceeding.

[94] Section 10.50(b) of Treasury Circular 230 provides that the Treasury Department "may disqualify any appraiser for a violation of these rules as applicable to appraisers."

own CE. Rather, a valid Course Approval Number issued by the IRS is the only criterion for valid CE for enrolled agents. Outdated language in this section should be removed (or moved to §10.9) with the exception of §10.6(f)(2)(ii)(D) pertaining to qualified continuing education programs.

Recommendations

The IRSAC recommends the IRS issue proposed revisions to Treasury Circular 230 that:

1. Delete all references to "Registered Tax Return Preparers" as well as to the now-defunct program pertaining to "Registered Tax Return Preparers."
2. Seek specific authority to address ministerial updates to Treasury Circular 230 through revenue procedures or other administrative guidance. By "ministerial updates," the IRSAC contemplates updates of the same order as those recommended in this report; that is, those that address outmoded programs or procedures rather than those that expand the Treasury Department's oversight of tax practitioners.
3. Add references to appraisers in section 10.0, the definitions in section 10.2(a), and the list of "Who may practice" in section 10.3.
4. Remove outdated language regarding renewal periods for enrolled agents from section 10.6(d)(2).
5. Remove outdated language from the requirements for continuing education programs from sections 10.6(f)(1) & (2).

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

LARGE BUSINESS AND INTERNATIONAL SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

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

The LB&I 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 on two topics — (1) how LB&I should identify potential compliance risks and how those compliance risks should be considered in determining potential "campaigns"; and (2) how the IRS can enhance taxpayer confidentiality and protect against misuse of data relating to information automatically exchanged with tax authorities in other countries as part of the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit-Shifting (BEPS) project.

Before turning to our recommendations, we express our appreciation to LB&I Commissioner Doug O'Donnell and the professionals on his staff (and from the Office of Chief Counsel) for the time and effort expended on these topics and for their valuable input and feedback. Special thanks are owing to Kathy Robbins, Director of LB&I's Enterprise Activities Practice Area (who served as our principal liaison) as well as to Anna Millikan, our liaison from the Office of National Public Liaison, and Kathryn Gregg, LB&I Stakeholder Liaison Program Manager.

1. **Risk Assessment**

   A. LB&I should consider making changes to relevant tax forms to solicit documentation and other information to identify potential compliance risks with a goal of focusing valuable resources on high-risk issues and away from low-risk taxpayers and issues.

   B. LB&I should centrally devise questions regarding specific subject matter areas that leverage the expertise developed in International Practice Networks (IPNs) and Issue Practice Groups (IPGs) — now called Practice Networks — and devise a process for appropriately trained personnel to centrally screen and analyze the responses.

   C. LB&I should consider changes to Form 1120X and related instructions to require additional information or documentation related to refund claims that LB&I has identified as high-priority examination issues and study how this additional information can be stored in an accessible, user-friendly format.

2. **Promoting Confidentiality of Treaty-Exchanged Information**

   A. The IRS should take additional steps to promote its commitment to maintaining taxpayer confidentiality, for example, by:

      - Expanding its website notice to include links to relevant materials, including its *International Data Safeguards & Infrastructure Workbook* and the OECD's *Keeping It Safe* guide.
      - Elaborating (on its website notice and elsewhere) on what is meant by the term "misuse" and explaining what the consequences will be to a receiving country that either discloses or inappropriately uses exchanged

information. Specifically, the IRS should confirm that where it is determined that information has been misused, the automatic exchange of information with that country will be suspended.

- Considering whether to include specific reference to its commitment to ensure taxpayer confidentiality, along with its Exchange of Information Disclosure mailbox, in the instructions to Form 8975 and other documents sent to taxpayers.

B. In addition, the IRSAC urges LB&I to explore options for keeping aggrieved taxpayers informed of the status of any inquiry into whether their confidentiality was compromised or data was misused.

ISSUE ONE: RISK ASSESSMENT

Executive Summary

The IRSAC recommends that LB&I consider making changes to Form 1120 (and other forms commonly filed by LB&I taxpayers) and related instructions to solicit information or documentation for purposes of identifying potential compliance risk with a goal of focusing valuable resources on high-risk issues and away from low-risk taxpayers and issues. We also recommend that LB&I centrally devise the questions leveraging the use of expertise developed in International Practice Networks (IPNs) and Issue Practice Groups (IPGs), now known as Practice Groups, regarding specific subject matter areas, and that responses be centrally screened and analyzed by appropriately trained personnel. Finally, the IRSAC recommends that LB&I consider changes to Form 1120X and related instructions to require additional information or documentation related to refund claims that LB&I has identified as high-priority examination issues and study how this additional information can be stored in an accessible, user-friendly format.

Background

LB&I management asked the LB&I Subgroup to consider how LB&I should identify potential compliance risks and how those compliance risks should be considered in determining potential campaigns. LB&I management requested that the LB&I Subgroup focus on traditional and non-traditional methods of identifying compliance risk.

Prefatorily, the LB&I Subgroup previously issued recommendations regarding risk assessment in both its 2013 and 2014 reports. The Subgroup's 2013 recommendations were based on the principle that "as both the IRS and large business

taxpayers have limited resources, each would benefit from IRS risk assessing taxpayers and their filed returns prior to examination. In this manner, only high risk taxpayers would require significant IRS examination."

The 2013 report discussed the methods employed by the Australian Taxation Office (ATO) and the United Kingdom HM Revenue & Customs (HMRC), both of which have adopted risk assessment processes and classification systems that guide the extent of their examinations of large businesses. The report noted that LB&I would face significant challenges in adopting a similar system, given the subjective nature of some of the risk assessment factors, and because IRS personnel are not trained in risk assessment methods. Nevertheless, the 2013 LB&I Subgroup recommended that, if IRS were to adopt an approach similar to the ATO and HMRC, IRS should co-develop and evaluate the proposed risk assessment methods with "a select group of large taxpayers currently participating in the CAP program" and "the initial request for data should be in the form of a 'yes or no' list of indicators that is part of the filed tax return." The 2013 LB&I Subgroup also recommended, as part of a more subjective analysis of the taxpayer's overall risk assessment, that LB&I consider 17 factors in assessing large businesses (*e.g.*, oversight by board of directors, presence in tax havens, and low effective tax rates).

Following up on its 2013 recommendations, LB&I asked the 2014 LB&I Subgroup to review the best practices of other countries (such as Australia, New Zealand, and Canada) and to develop recommendations to enhance LB&I's risk assessment protocols, such as refining the recommendations contained in the 2013 IRSAC report. The 2014 report summarized (i) the *Co-operative Compliance: A Framework* report published by the Organisation for Economic Co-operation and Development (OECD); (ii)

the risk assessment approaches of the ATO, Canada Revenue Agency (CRA), and New Zealand Inland Revenue (NZIR); and (iii) LB&I's Compliance Management Operations Program (CMO).

Building on its 2013 recommendations, the 2014 LB&I Subgroup:

- Endorsed the decision of ATO to recognize formally the fundamental differences — especially in respect of the effectiveness of a company's Tax Control Framework — between publicly held and other taxpayers. The report emphasized the importance of the tax authority's leveraging of the enhanced scrutiny paid to public companies by their independent authorities as well as other government bodies (such as the Securities and Exchange Commission).

- Recommended that the IRS revise Schedule UTP to collect additional information from large corporations on their tax governance practices, and that it consider expanding the class of taxpayers required to file that schedule. The 2014 LB&I Subgroup recommended that the questions be framed as requiring "yes or no" responses, and made several recommendations regarding the types of questions that the IRS might ask to identify those taxpayers that might bear less or more tax risk.

- Recommended that the information be collected and analyzed centrally by trained screeners as part of centralized risk assessment process, rather than be used by the field to determine audit risk on a case-by-case basis.

Discussion

Since the LB&I Subgroup last considered LB&I's risk-assessment procedures and protocols, LB&I has undertaken a major reorganization, a principal aspect of which is a transition from an essentially enterprise-based audit system to more of an issue-based system. At a high level, LB&I intends to transition from its historical focus on comprehensive audits of the largest businesses to a new approach focused primarily on centrally identified tax compliance risk issues. The comprehensive enterprise-wide audits will not go away entirely, but they will ultimately constitute a smaller percentage of LB&I's work. To implement its new focus, LB&I has restructured itself into nine

practice areas. The practice areas come in two types. Four are organized on a geographic basis and the other five are oriented to specific subject-matters. LB&I representatives have confirmed in speeches and other public statements that the subject matter organizations are to be deeply involved in identifying and addressing the "risk" issues. Generally speaking, in the former organizational structure, once a taxpayer was selected for examination, the selection of transactions and issues to be examined was determined largely by the examination team.

LB&I has candidly acknowledged that a key driver of the new design is LB&I's desire to exercise more control over how it spends its resources. Rather than automatically committing personnel and other resources to recurring cycles of the same large case audits, the new approach is intended to make LB&I more agile and strategic in addressing emerging compliance risks no matter where they exist. As envisioned, agents and specialists will be assigned to "campaigns" and "tailored treatments" that concentrate on an inventory of specific centrally identified risk issues.

LB&I is committed to change in order to create an organization that "continuously evolves to keep pace with LB&I taxpayers operating in a global environment." To this end, LB&I intends to use data analysis as well as feedback from examiners to identify areas of potential non-compliance and design campaigns to address key compliance risks. Campaigns are focused on specific issues using a combination of "treatment streams" to achieve the intended compliance outcome.[95] Nevertheless, the current LB&I Subgroup believes that the recommendations made in its 2013 and 2014 report are worthy of consideration, though several may need to be refined to take into

[95] LB&I officials have stated that "tailored treatments" could range from the revision of forms and instructions and the issuance of regulatory or other administrative guidance, to full-bore examinations, litigation, and legislation, if necessary.

account LB&I's overall new approach. In particular, the current LB&I Subgroup believes that "yes or no" questions are an appropriate means for LB&I to assess risk, for purposes of both selecting and deselecting issues for "campaigns."

LB&I selects the majority of the returns for examination using three methods:

- First, IRS relies on algorithms and models to identify tax returns that may be a compliance risk and selects those returns for examination. Specifically, LB&I uses the Discriminant Analysis System (DAS), which scores corporate returns with assets above $10 million. These returns are slotted into quartiles based on their scores. The returns are assigned to the field based on these quartiles. At the group level, the returns are risk assessed and a decision is made on whether to proceed with the exam or survey. LB&I uses proprietary models to identify Forms 1120S and 1065 with assets over $10 million.

- Second, compliance check initiatives select particular returns to examine based on a particular issue that may have been determined to be a widespread issue among the return population. Compliance check initiatives, as well as prior audit results, may lead to changes in algorithms which are updated periodically.

- Third, claims for refund that exceed $5 million, which statutorily must be reviewed by the Joint Committee on Taxation (JCT), are scrutinized by a special group of IRS professionals. These refund claims include the refund claims reported on Form 1120X, *Amended U.S. Corporation Income Tax Return*, and Form 1139, *Corporation Application for Tentative Refund Claim*.[96]

Section 6012 of the Code requires taxpayers, including corporations, to self-report certain information that IRS considers necessary for the computation of the income tax on a return. Taxpayers are the source of the information that is provided to IRS on a return. There is a general obligation of taxpayers under section 6011 to keep records and make returns as regulations could require. The IRS relies on information provided on a series of required forms based on the type of taxpayer reporting income. For example,

[96] Taxpayers (or issues) may also be selected for examination through other means, such as disclosures on Schedule UTP, Form 8275, or a whistleblower claim under section 7623. In addition, LB&I may select returns for examination based on third-party reporting or other filters.

U.S. corporate taxpayers must file Form 1120, *U.S. Corporation Income Tax Return*. In addition, U.S. corporate taxpayers must file various ancillary forms depending on the particular taxpayer's activities and IRS filing requirements. IRS publishes instructions with its forms to explain how to complete the form and the necessary information or documentation that must be attached to the form.

Recommendations

The IRSAC commends LB&I for its efforts to evolve to keep pace with LB&I taxpayers. One of LB&I's guiding principles in establishing its future foundation is "Selection of Better Work." The LB&I Subgroup's recommendations are centered on assisting LB&I with gathering better information from LB&I taxpayers so it can risk assess and select "better work" to examine. In making our recommendations, we believe it fitting to reprise the opening statement in our 2013 report:

> As both the IRS and large business taxpayers have limited resources, each would benefit from the IRS risk assessing taxpayers and their filed tax returns prior to examination. In this manner, only high risk taxpayers would require significant IRS examination.

The Subgroup believes that principle applies equally to issue-based risk assessment. As LB&I selects issues to pursue and develops campaigns and tailored treatments, it must consider the risks inherent in a particular issue, including the risk of non-compliance and the overall tax risk in deciding which issues it will pursue as well as those issues it will not pursue.

1. The IRSAC recommends that LB&I consider making changes to Form 1120 (and perhaps other forms commonly filed by LB&I taxpayers) and related instructions to solicit information or documentation to identify potential compliance risks with a goal of focusing valuable resources on high-risk issues and away from low-risk

taxpayers. We recommend that the additional or modified questions or instructions require the filer to respond to objective questions, similar to the questions currently posed on Form 1120, Schedule B and Schedule K. The questions might require, for example, "yes or no" answers, ratios or amounts.

We recommend that LB&I centrally devise the questions leveraging the use of expertise developed in LB&I's Practice Groups (which were previously called IPNs and IPGs) regarding specific subject matter areas and, further, that the responses be centrally screened and analyzed by appropriately trained personnel. To be clear, we are not recommending that LB&I devise questions in order to identify whether a particular return presents an issue that LB&I has already identified as high risk. We recognize, however, that the information provided in response to certain objective questions may have the correlative benefits of allowing LB&I to risk-assess specific taxpayers on specific issues without the need to open an audit, and permitting LB&I to "de-select" low-risk taxpayers (and issues) from the audit process. In other words, refining the risk assessment process will allow LB&I to advance one of its foundational principles — "Selection of Better Work." Nevertheless, the Subgroup recommends that the questions be framed to assess *global risk* — to determine, for example, the pervasiveness of an issue among LB&I taxpayers and the tax dollars involved — and to identify emerging issues.

We recognize that tax forms may not be particularly well suited to identifying emerging issues, given the time lag in revising tax forms, and that the IRS must carefully analyze the burden revisions would impose on taxpayers relative to the

benefits of obtaining the requested information. We therefore also recommend that LB&I conduct a study regarding ways that it might more nimbly change forms or instructions in the manner that is least burdensome to taxpayers while still obtaining the desired information.

2. The IRSAC recommends that LB&I consider changes to Form 1120X and related instructions to require additional information or documentation related to refund claims that LB&I has identified as high-priority examination issues (*e.g.*, R&D Tax Credit, Section 199, and Tangible Property Regulations (TPR)).

The instructions to Form 1120X currently describe "What To Attach" to Form 1120X:

> If the corrected amount involves an item of income, deduction, or credit that must be supported with a schedule, statement, or form, attach the appropriate schedule, statement, or form to Form 1120X. Include the corporation's name and employer identification number on any attachments.

LB&I should consider modifying or expanding the "What To Attach" section of the instructions to require more detailed and specific information to refund claims involving potentially high-risk refund areas. In addition, the LB&I Subgroup recommends that LB&I consider issuing regulations or some other form of guidance (such as a revenue procedure) elaborating on the type of information that should be attached to these potentially high-risk refund claims. Such an approach will allow LB&I to customize the information requested for refunds resulting from the application of particular areas of the tax law in which LB&I has determined to be related to key compliance initiatives. Known examples include the R&D Tax Credit and the Section 199 Domestic Production Deduction. This recommendation is not intended to create an additional requirement for the

taxpayer to have a “valid” refund claim. Rather, this change should provide specific information necessary for LB&I to risk assess the refund claim.

The LB&I Subgroup recommends that LB&I management review the process followed by the State of California. The California Franchise Tax Board (CA FTB) has proposed the regulation (California Prop. Reg. § 19322) intended to improve its risk assessment of refund claims. The following is the proposed regulation governing California refund claims:

> The claim must set forth in detail each ground upon which a refund or credit is claimed and facts sufficient to apprise the Franchise Tax Board of the exact basis thereof. The claim should be filed on Form 540X with all supporting documentation attached. A separate form should be used for each taxable year or period.

LB&I management commented during a Subgroup meeting that LB&I would be interested in understanding how the CA FTB organizes the information it receives with the refund claims so that information is stored in a user-friendly format. The LB&I Subgroup recommends that LB&I consult with the appropriate IRS personnel to discuss how information received with the refund claims can be stored in a format that can be more easily used to risk assess the refund claims.

ISSUE TWO: PROMOTING CONFIDENTIALITY OF TREATY-EXCHANGED INFORMATION

Executive Summary

Given the imminent implementation of a program of automatic exchanges of tax information between the Internal Revenue Service and tax authorities in other countries pursuant to the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit-Shifting (BEPS) project, LB&I management asked the LB&I Subgroup to develop recommendations to reinforce and advance taxpayer confidence that the data will not be misused and that it will remain confidential as guaranteed by section 6103 of the Internal Revenue Code. Specifically, the LB&I Subgroup considered how the IRS can promote taxpayer confidentiality relating to information automatically exchanged with tax authorities in other countries pursuant to the country-by-country (CbC) reporting initiative set forth in BEPS Action 13. We also addressed what steps might be taken to ensure that automatically exchanged CbC information is not used inappropriately by the receiving tax authority.

The IRSAC recommends that the IRS take additional steps to promote its commitment to maintaining taxpayer confidentiality, for example, by:

- Expanding its website notice to include links to relevant materials, including its *International Data Safeguards & Infrastructure Workbook* and the OECD's *Keeping It Safe* guide.
- Elaborating (on its website notice and elsewhere) on what is meant by the term "misuse" and explaining what the consequences will be to a receiving country that either discloses or inappropriately uses exchanged

information. Specifically, the IRS should confirm that where it is determined that information has been misused, the automatic exchange of information with that country will be suspended.

- Considering whether to include specific reference to its commitment to ensure taxpayer confidentiality, along with its Exchange of Information Disclosure mailbox, in the instructions to Form 8975 and other documents sent to taxpayers.

In addition, the IRSAC urges LB&I to explore options for keeping aggrieved taxpayers informed of the status of any inquiry into whether their confidentiality was compromised or data was misused.

Discussion

1. Implementation of Country-by-Country Reporting

Generally speaking, "base erosion and profit shifting (BEPS)" refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits "disappear" for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid.[97] The OECD's project, which has been embraced by the Finance Ministers of the G20, was intended to bring a coordinated approach to the challenge of BEPS, and involved 15

[97] OECD's BEPS FAQ 119, *available at* http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm#background. The OECD has observed that BEPS is not a problem created by one or more specific companies. "Largely they just take advantage of current rules that are still grounded in a bricks and mortar economic environment rather than today's environment of global players which is characterised by the increasing importance of intangibles and risk management." (FAQ 120.) "Business cannot be faulted for using the rules that governments have put in place. It is therefore governments' responsibility to revise the rules or introduce new rules." (FAQ 123.)

different action plans.[98] One of the more consequential actions recommended by the OECD relates to so-called County-by-Country (CbC) reporting.

Specifically, BEPS Action 13 provides a template for multinational enterprises to report annually, on a country-by-country basis, information on the global enterprise's overall activities. As explained in the OECD's BEPS FAQ 79 —

> Country-by-Country Reporting is a tool intended to allow tax administrations to perform high-level transfer pricing risk assessments, or to evaluate other BEPS-related risks. The country-by-country reporting template will require multinational enterprises (MNEs) to provide annually and for each jurisdiction in which they do business, aggregate information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group, as well as information about which entities do business in a particular jurisdiction and the business activities each entity engages in.[99]

The goal of BEPS Action 13 is to enhance transparency for tax administrations around the world by providing them with additional information to conduct transfer pricing risk assessments and examinations through increased transfer pricing documentation requirements, specifically including a new country-by-country report and a master file. In practical terms, CbC reporting is intended to ensure that adequate taxes are paid in the jurisdictions where profits are generated, value is added, and risk is taken.[100]

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[98] Not all of the BEPS Action Plans resulted in the adoption of formal recommendations by the OECD.
[99] *Available at* http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm#Action13.
[100] The OECD's Model Legislation relating to CbC reporting states (in Article 4) that the following must be included in the CbC report: "(i) Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; [and] (ii) An identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity." *Available at* https://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf.

As part of its efforts to implement BEPS in respect of U.S. taxpayers, in June 2016, the IRS issued final regulations requiring CbC reporting by U.S. persons that are the ultimate parent entity of a multinational enterprise (MNE) group with revenue of $850 million or more in the preceding accounting year.[101] The final regulations, set forth in Treas. Reg. § 1.6038-4, require these U.S. persons to file annual reports containing information on a CbC basis of a MNE group's income, taxes paid, and certain indicators of the location of economic activity. The new reporting requirements apply to all parent entities with taxable years beginning on or after June 30, 2016. The final regulations will require reporting on new Form 8975, the "Country-by-Country Report." The IRS has estimated that CbC reports will be filed by approximately 1,800 U.S.-parented MNEs.

Assuming the United States has an exchange-of-information treaty or similar agreement with a foreign jurisdiction in which the U.S. multinational group operates, the CbC reports filed with the IRS will be exchanged automatically with tax authorities in that country.[102] The goal of the exchange is to provide greater transparency into the operations and tax positions taken by the MNE. While CbC reports will not themselves constitute conclusive evidence of income tax or transfer pricing violations (indeed, the exchange-of-information agreements proscribe their use for that purpose), they are intended to advance the tax jurisdiction's risk assessment efforts, for example, by prompting inquiries into transfer pricing practices or other tax matters.

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[101] *Available at* https://www.irs.gov/irb/2016-29_IRB/ar05.html.

[102] More than 80 countries (including the dependent territories to which it has been extended) have signed the OECD Mutual Assistance Convention, and some 61 have proposed to participate in the mutual agreement on automatic exchange of information made pursuant to that convention. In addition, many countries have agreed to exchange tax information pursuant to bilateral treaties patterned on the OECD Model.

Every information exchange agreement to which the United States is a party requires both parties to treat the information as confidential, to implement data safeguards, and to use the information only for tax administration purposes. The United States will stop automatic exchanges with tax jurisdictions violating those requirements until the violations are cured.[103]

[103] The preamble to the proposed CbC regulations provides:

> If the United States determines that a tax jurisdiction is not in compliance with confidentiality requirements, data safeguards, and the appropriate use standards provided for under the information exchange agreement or the competent authority arrangement, the United States will pause automatic exchange of CbC reports with that tax jurisdiction until such time as the United States is satisfied that the tax jurisdiction is meeting its obligations under the applicable information exchange or competent authority agreement or arrangement.

REG–109822–15, 2016-14 (April 4, 2016), *available at* https://www.irs.gov/irb/2016-14_IRB/ar13.html (subpart 2, styled "Exchange of Information, Confidentiality, and Improper Use of Information"). More generally, section 7.3 of the OECD's *Multilateral Competent Authority Agreement on Automatic Exchange of Financial Exchange of Financial Account Information* provides:

> A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to another Competent Authority that it has determined that there is or has been significant non-compliance by the second-mentioned Competent Authority with this Agreement. Such suspension will have immediate effect. For the purposes of this paragraph, *significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the Convention*, a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.

2. Confidentiality of Taxpayer Information (including Treaty-Exchanged Information)

Confidentiality of tax returns and taxpayer information has been a foundational principle of tax systems around the world for decades. In the United States, the principle of keeping taxpayer information sacrosanct has been enshrined in the Internal Revenue Code since the 1976 enactment of section 6103. The provision mandates that tax returns and tax-related information be kept confidential and not subject to disclosure, except in certain limited circumstances.

Laws in other countries similarly protect taxpayer privacy. What undergirds section 6103 in the United States and taxpayer privacy protections in other countries is the principle that, in order to have confidence in their tax system and to comply with their obligations under the law, taxpayers need to know that the information on their tax returns and other tax records — often sensitive financial and other propriety information — will be safeguarded and protected from intentional or inadvertent disclosure. Violations of section 6103 are illegal: hence, section 7231 makes it a crime to make an unauthorized disclosure of information; section 7231A punishes the unauthorized inspection of returns or return information; and section 7431 empowers affected taxpayers to bring a civil suit against a federal employee or other person for unauthorized inspection or disclosure of returns and return information.[104]

The exceptions in section 6103 (and comparable legislation in other countries) are aimed at promoting the administration of tax laws and assisting various branches and levels of government in carrying out their respective purposes. Thus, section 6103(k)(4)

[104] Section 7431(c) provides that a taxpayer whose return information was the subject of unauthorized disclosure by IRS is entitled to the greater of statutory damages of $1,000 per unauthorized disclosure or actual and punitive damages, plus costs and, in certain cases, attorney fees.

provides: "A return or return information may be disclosed to a competent authority of a foreign government which has an income tax or gift and estate tax convention, or other convention or bilateral agreement relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention or bilateral agreement."

Key to disclosure of taxpayer information under section 6103(k)(4) are the provisions of the applicable tax convention or similar bilateral agreement relating to the exchange of information. Article 26(2) of the U.S. Model Income Tax Convention provides:

> Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1 of this Article ["taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to the Convention"], or the oversight of such functions. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the preceding sentences of this paragraph, the competent authority of the Contracting State that receives information under the provisions of this Article may, with the written consent of the Contracting State that provided the information, also make available that information for other purposes allowed under the provisions of a mutual legal assistance treaty in force between the Contracting States that allows for the exchange of tax information.

The confidentiality provisions of the OECD Model Agreement on Exchange of Information on Tax Matters (TIEA) are similar. Specifically, Article 8 of the TIEA provides that "[a]ny information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities

(including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party."

Article 22 of TIEA confirms the confidentiality of any exchanged information, stating that it shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards that may be specified by the supplying Party as required under its domestic law.

The absolute necessity of the receiving country's implementing safeguards being consonant with those of the supplying country has been explained by the OECD in a document entitled *Keeping it Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purpose*:[105]

> Citizens and their government will only have confidence in international exchange if the information exchanged is used and disclosed only in accordance with the agreement on the basis of which it is exchanged. As in the domestic context, this is a matter of both the legal framework as well as having systems and procedures in place to ensure that the legal framework is respected in practice and there is no unauthorized disclosure of information. What applies in the domestic context regarding protecting the confidentiality of tax information applies equally in the international context.

[105] *Available at* http://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm.

The OECD has compiled a set of best practices and practical advice, including recommendations and a checklist on how countries can meet an adequate level of protection while recognizing that "different tax administrations may have different approaches to ensuring that in practice they achieve the level required for the effective protection of confidentiality." *Keeping It Safe* continues:

> Of course, the first step is ensuring that appropriate legislation is in place, but confidentiality of taxpayer information within a tax administration is not simply the result of legislation. The ability to protect the confidentiality of tax information is also the result of a "culture of care" within a tax administration. This requires that confidentiality measures be incorporated into all the operations of tax administration. Confidentiality is a cornerstone for all functions carried out within the tax administration and as the sophistication of tax administration increases, the confidentiality processes and practices must keep pace.

Under OECD guidance, before the transmission of a taxpayer's information to a foreign tax authority, the following requirements must be satisfied:

- A treaty or other exchange of information mechanism is in place and provides for the confidentiality of tax information.
- Domestic legislation is in place to adequately protect the confidentiality of tax information.
- Domestic legislation includes sufficient sanctions for breaches of confidentiality.
- A comprehensive policy on confidentiality of tax information is in place and endorsed at the top level of the administration.
- A specified person is responsible for implementing the comprehensive policy.
- The comprehensive policy addresses: (a) background checks and security screening of employees, (b) employment contracts, (c) training, (d) access to premises, (e) access to electronic and physical records, (f) departure policies, (g) information disposal policies, and (h) managing unauthorized disclosures.

- All aspects of the policy have been implemented in practice.[106]

The IRS' policy and practices to ensure taxpayer confidentiality in respect of treaty-exchanged information accord fully with the OECD guidelines. Specifically, no information will be exchanged pursuant to a tax convention until the IRS has conducted a "safeguards review" and satisfied itself that the receiving tax authority can and will maintain the confidentiality of the exchanged information.[107]

LB&I management confirms that there have been precious few instances where concerns have been raised about the disclosure or inappropriate use of exchanged information. Where a concern is raised (either directly by the affected taxpayer or by the taxpayer's representative), the IRS' response is to put further exchanges with the affected jurisdiction on hold, consult with the taxpayer or representative, and — if the concern is deemed to have credence — engage in a dialogue with the other country. Under applicable tax treaties, there is no sanction for violating the confidentiality provisions; that is to say, an aggrieved taxpayer cannot sue for damages, force the return of the information, or prevent the other authority's use of the information. That said, the IRSAC understands that in such a situation, the IRS will suspend the exchange-of-information provisions of the treaty until the IRS validates that future breeches will not occur. Because section 6105 cloaks "tax convention information" with a confidentiality akin to

[106] The final item on the OECD checklist is a series of questions relating to confidentiality breaches: (a) have any breaches occurred; (b) if so, has the breach been investigated; (c) was a report with recommendations prepared; (d) did the recommendations in the report result in a high degree of confidence that the changes, once implemented, would ensure that a similar breach would not occur; (e) were the recommendations effectively implemented; and (f) were the sanctions provided for in domestic law applied to the person or persons responsible in a manner that will deter future breaches.

[107] The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has both adopted a Standard for Automatic Exchange of Financial Account Information and is creating a peer review process to both OECD members and relevant non-member jurisdictions to be evaluated for the effectiveness of the implementation, including the meeting of confidentiality and data safeguard requirements. *See* http://www.oecd.org/tax/transparency/automaticexchangeofinformation.htm.

that accorded taxpayers under section 6103, however, the IRS' ability to keep the aggrieved taxpayer apprised of its discussions with the other country may be constrained. That said, section 6105(b)(3) does permit the disclosure of such information if the foreign government consents in writing, and during our discussions with LB&I, the Subgroup was informed that such consent is frequently given.

Moreover, if the exchanged information is misused (*i.e.*, not used solely for risk assessment purposes), the receiving country will be obliged to concede the issue in any consequent mutual assistance proceeding. Thus, section 5 of the OECD's *Competent Authority Agreement on the Exchange of Country-by-Country Reports on the Basis of a Tax Information Exchange Agreement*[108] provides:

> Both Jurisdictions agree not to use the information as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. Both Jurisdictions acknowledge that information in the CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, agree that transfer pricing adjustments will not be based on the CbC Report. Inappropriate adjustments in contravention of this paragraph made by local tax administrations will be conceded in any competent authority proceedings. Notwithstanding the above, a Jurisdiction is not prevented from using the CbC Report data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, may make appropriate adjustments to the taxable income of a Constituent Entity.

Ensuring that the other country's systems, policies, and practices satisfy its obligations under the treaty is especially important in respect of automatic exchanges of information (such as those made pursuant to the CbC rules). The standards used in conducting safeguard reviews are set forth in the IRS' *International Data Safeguards & Infrastructure Workbook*, a 2014 publication prepared in connection with the

[108] *Available at* https://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf.

implementation of the Foreign Account Tax Compliance Act, which also facilitates (through intergovernmental agreements between the United States and other countries) the automatic exchange of taxpayer information.[109] The difference between automatic exchanges and *ad hoc*, request-driven exchanges is explained in the IRS workbook, as follows:

> Automatic, or bulk, exchange of tax data differs from exchange based on specific requests. Automatic exchange is performed routinely, and the types of information and timing are agreed to in advance by the parties participating in the exchange of information. Further, information may not necessarily be related to an ongoing investigation or proceeding at the time of the exchange. As a result, it is critical that the source jurisdiction, which is transmitting the information, receives assurance from the receiving jurisdiction that confidentiality of the exchanged information will be upheld, and that the information will be used solely for the purpose for which it is intended.

The framework for assessing whether another country's ability to engage in an effective exchange relationship and adequately safeguard the information exchanged is set forth in the workbook, which addresses with particularity the steps to be taken in respect of four strategic areas: legal framework, information security management, monitoring and enforcement, and infrastructure.

Recommendations

Because automatic exchanges of information contained in taxpayers' CbC reports have not yet commenced, concerns about the confidentiality or misuse of exchanged taxpayer information remain anticipatory. The LB&I Subgroup commends LB&I management for emphasizing the IRS' ongoing commitment to ensure taxpayer confidentiality and the proper use of their data. We applaud, for example, the posting of a notice on the IRS' website captioned "Reporting Unauthorized Disclosure or Misuse of

[109] *Available at* https://www.irs.gov/pub/fatca/IntlSafeguardsWorkbook.pdf.

Tax Information Exchanged Under an International Agreement."[110] After explaining that the IRS will exchange information with treaty partners, as specifically requested, automatically, or spontaneously, the notice states:

> The United States takes its obligation to respect the Taxpayer's Right to Confidentiality very seriously and has implemented safeguards to protect the confidentiality and prevent the unauthorized disclosure or misuse of taxpayer information. The United States encourages anyone who is aware of a suspected unauthorized disclosure or misuse of information exchanged under an international agreement to which the United States is a party to file a report with the Internal Revenue Service (IRS).
>
> Any person who discovers a possible unauthorized disclosure or misuse of taxpayer information should notify the office of Treaty Administration within the IRS Large Business and International Division. Send a description of the incident to the Exchange of Information Disclosure mailbox. Use the term "Report of Suspected Unauthorized Disclosure of Exchanged Information" in the subject line of the email.

Because of the critical importance of ensuring taxpayer confidence in the integrity of the tax system, the IRSAC recommends that the IRS take additional steps to promote its commitment to maintaining taxpayer confidentiality. For example, we recommend —

- The IRS expand its website notice to include links to relevant materials, including its *International Data Safeguards & Infrastructure Workbook* and the OECD's *Keeping It Safe* guide.
- The IRS elaborate (on its website notice and elsewhere) on what is meant by the term "misuse" and explain what the consequences will be to a receiving country that either discloses or inappropriately uses exchanged information. Specifically, the IRS should confirm that where it is

[110] *See* https://www.irs.gov/businesses/corporations/reporting-unauthorized-disclosure-or-misuse-of-tax-information-exchanged-under-an-international-agreement. The notice was posted shortly after the issuance of the final CbC regulations.

determined that information has been misused, the automatic exchange of information with that country will be suspended.

- The IRS consider whether to include specific reference to its commitment to ensure taxpayer confidentiality, along with its Exchange of Information Disclosure mailbox, in the instructions to Form 8975 and other documents sent to taxpayers.

In addition, mindful of the restrictions imposed by section 6105 on the IRS' sharing information about both automatic exchanges of information generally and potential or actual breaches of taxpayer confidentiality in respect of treaty-exchanged information, the IRSAC urges LB&I to explore options for keeping aggrieved taxpayers informed of the status of any inquiry into whether their confidentiality was compromised or data were misused. For example, we recommend that the IRS publish each year a list of countries with respect to which automatic exchanges of CbC reports will occur. As for the particular instances of alleged or actual disclosure or misuse, options could include securing the consent required by section 6105(b)(3) on a case-by-case basis or, perhaps even better, a process or procedure for keeping affected taxpayers apprised in the model competent authority or automatic exchange of information agreement.[111]

Steps such as these would not only underscore the IRS' commitment to ensuring taxpayer confidentiality and the appropriate use of their data, but would also communicate that transparency is not a one-way street, thereby buttressing taxpayers' faith in the integrity of the tax system.

[111] Addressing the taxpayer's right to be kept informed would be akin to "victim's rights" provision in section 7431(e), which provides that an aggrieved taxpayer shall be notified if any person is criminally charged with improperly inspecting or disclosing the taxpayer's return.

APPENDIX 1

Statement of the IRSAC Chair and Vice Chair to NTA Public Forum

On February 23, 2015, Jennifer MacMillan and Timothy McCormally, Chair and Vice Chair of the Internal Revenue Service Advisory Council, presented the following statement in connection with a Public Forum held by the National Taxpayer Advocate on Taxpayer and Stakeholder Needs and Preferences.

Jennifer MacMillan and Timothy McCormally serve, respectively, as chair and vice-chair of the Internal Revenue Service Advisory Council, or IRSAC, and are pleased to participate in today's Taxpayer Advocate Public Forum on "what taxpayers want and need from the IRS to comply with the tax laws" and, more specifically, the taxpayer and stakeholder needs and preferences that the IRS should consider as it develops and refines a plan to define the IRS' "Future State" initiative.

Because IRSAC has been invited to present its views outside of our annual report submitted to the Commissioner of Internal Revenue, we believe it fitting to provide some background on IRSAC, its charter, membership, and decision-making model. Because IRSAC's historical role has been to advise the Commissioner, this statement reflects our individual views.

Background

Chartered to provide an organized public forum for discussion of tax administration issues between IRS officials and representatives of the public, IRSAC currently has 18 members who were appointed to convey the public's perception of professional standards and best practices for tax professionals and IRS activities, offer constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggest improvements to IRS operations.

The successor to an advisory committee first established in 1953, IRSAC includes members from all facets of the tax professional community (drawn from firms of all sizes and types), small and large businesses. Our members come from diverse backgrounds and have substantial experience; our membership includes accountants, lawyers, appraisers, enrolled agents, and academics. Many provide tax advice to clients, others manage their large employer's tax affairs, and many are active in the volunteer income tax community.

In addition to coming from different-sized organizations, industries, and geographic regions of the United States, members work in occupations that interact with the IRS and the tax community in a variety of ways. Each member has a unique perspective on tax administration, but we all share a commitment to providing consequential input and objective, balanced feedback to the Commissioner and the IRS with the goal of improving tax administration and the quality of service provided to taxpayers, both directly and indirectly, by the IRS.

IRSAC members generally serve for three-year terms, and members are currently assigned to one of three subgroups — the Small Business/Self-Employed and Wage and Investment Subgroup, the Large Business and International Subgroup, and the Office of Professional Responsibility Subgroup. IRSAC, both as a whole and through its subgroups, works with the IRS Operating Divisions and personnel from across the IRS to identify and discuss issues of concern and to develop recommendations to improve federal tax administration. More specifically, our charter states that IRSAC "researches, analyzes, considers, recommends, and advises IRS on issues that include customer service, compliance, taxpayer segment-specific issues, and factors regarding noncompliance." IRSAC's recommendations are compiled in an annual report, which is submitted to the Commissioner at a public meeting in November and subsequently posted on the IRS' website.

IRSAC operates on a consensus basis, with its report (including the subgroups' recommendations) being reviewed and approved by the entire group. New members were appointed in January, and our subgroups are currently in the process of refining the issues we will address during 2016. Although this statement has been reviewed by all IRSAC members, it does not represent an official statement of IRSAC.

Comments

We begin by reiterating the principal general recommendation contained in IRSAC's 2015 report — namely, the need for the IRS to have sufficient funding to operate efficiently and effectively, to provide timely and useful guidance and assistance to taxpayers, and to enforce current law, so that the integrity of, and respect for, our voluntary tax system is maintained.

1. The Role of the IRS Budget in Shaping the Future State. The Taxpayer Advocate has articulated the compelling need for the Internal Revenue Service to be adequately funded by, among other things, documenting the detrimental effects of inadequate funding on taxpayer service, as well as its enforcement efforts, in recent years. As the chair and vice chair of IRSAC, we commend the Taxpayer Advocate for shining a bright light on the short- and long-term consequences of inadequate funding, and we attribute Congress's decision to increase the IRS' Fiscal Year 2016 budget in part to her efforts, as well as those of Commissioner Koskinen and others.

It would be a mistake in our view, however, to consider enactment of the first budget increase in six years as signaling the end of the IRS' budget woes. Even with the FY 2016 increases, the IRS workforce will drop by between 2,000 and 3,000 this year, and hence be at 17,000 full-time-equivalents *below* the FY 2010 level. In short, the changes necessitated by the long-term constriction of the IRS' budget have forced the IRS to curtail worthwhile programs. Moreover, they have significantly impaired the IRS' ability to recruit, train, and retain experienced employees, threatening a serious void in both skilled leadership and experienced line employees. The IRS has acknowledged that its Future State efforts have been informed by, among other things, the current funding environment.

While IRS welcomes the positive comments of numerous lawmakers about the need for high-quality taxpayer service (which have been cited by the Taxpayer Advocate), we hope that the rhetorical support voiced for taxpayer service will be matched by future budgetary support. To be sure, accountability and appropriate oversight are essential to the efficient operation of the IRS, and complex challenges cannot be overcome simply by throwing money at them. Without adequate (*i.e.*, increased) funding, however — to hire and train staff, to improve and develop digital tools, and to develop a balanced mix of face-to-face, voice-to-voice, and digital-to-digital solutions — the IRS will be unable to fulfill its traditional mission, much less administer new programs, such as the Affordable Care Act (ACA) and the Foreign Account Tax Compliance Act (FATCA), as required by law.

2. Overview of the Future State Initiative … and the Need for a New Vocabulary. Because of our historical involvement with myriad IRS initiatives, we do not generally subscribe to the view that the Future State initiative represents a "secret plan" that — once unveiled — cannot and will not be modified. Rather, we view the Future State plan not as secret but an unfinished work-in-progress, and in its efforts to date, we do not see willful disregard of taxpayer needs and preferences by the agency. Regrettably, we do believe the IRS' nomenclature — its resort to "consultant speak" ("ConOps" and "Future State" being just two examples) — may have contributed to the perception that something untoward, worthy of Tom Clancy, Philip K. Dick, or George Orwell, is afoot. Based on our experiences, not only in respect of the current initiative but previous ones (including the reorganization that occurred in connection with the IRS Restructuring and Reform Act of 1998), we believe the explanation is more benign: Many aspects of the IRS' Future State planning remain in an evolving, developmental stage.

As summarized by the Chief Counsel (and reproduced in the Taxpayer Advocate's 2015 Annual Report), the seven themes of the IRS' Future State initiative are, as follows:

- Facilitate voluntary compliance by empowering taxpayers with secure innovative tools and support.
- Understand non-compliant taxpayer behavior and develop approaches to deter and change it.
- Leverage and collaborate with external stakeholders.
- Cultivate a well-equipped, diverse, skilled, and flexible workforce.
- Select highest value work using data analytics and robust feedback loops.
- Drive more agility, efficiency, and effectiveness in IRS operations.
- Strengthen cyber defense and prevent identity theft and refund fraud.

None of these themes is new or surprising, and they are all laudable. Tax practitioners have long played an indispensable role in promoting voluntary compliance, and the IRS has developed and deployed numerous digital services and tools for many years. Accordingly, while ongoing budget constraints and the efforts of the Taxpayer Advocate, congressional committees, and various stakeholder groups have added urgency

and focus to the IRS' efforts, IRSAC views most of the components of the Future State initiative as a continuation — and rationalization — of the agency's ongoing efforts.

For example, IRSAC's LB&I Subgroup has worked with the Large Business & International Division for several years to refine its risk assessment efforts and to develop strategies for effectively migrating from "enterprise-wide" to more "issue-based" examinations. (Other stakeholders —including the American Institute of Certified Public Accountants, American Bar Association Tax Section, and Tax Executives Institute — have also collaborated with LB&I in these efforts.) Similarly, in recent years IRSAC's SBSE/W&I Subgroup has engaged with numerous personnel at the IRS on topics such as the agency's ID theft prevention and authentication efforts, improving customer satisfaction with the Automated Underreporter program, the Fresh Start Initiative, and development of smartphone apps and other digital tools. And, given the role of tax practitioners and other professionals in assisting taxpayers in meeting their tax obligations, IRSAC's OPR Subgroup has stressed the need for their effective oversight.

3. The Need for Greater Transparency and Engagement. Regardless of the words used to describe the Future State initiative, we fully agree with the Taxpayer Advocate that more engagement with taxpayers and stakeholders about the IRS' plans would be beneficial. Outreach to taxpayers and stakeholders clearly characterized the Internal Revenue Service's major reorganization following the enactment of the IRS Restructuring and Reform Act of 1998. At that time, the IRS held briefings, created task forces (whose membership included both IRS employees and representatives of affected stakeholders), held hearings, sponsored town-hall meetings, and otherwise involved taxpayers and the tax community in its plans. The goal of all the outreach efforts was — and, with respect to the Future State initiative, should be — not merely to *share* the IRS' decisions, but to *inform* them.

To the question, "When should stakeholders be involved?," our default answer is "the earlier, the better." To be sure, there may be legitimate issues of "sequencing" involved, and many instances in which the premature release of still fluid, "not ready for prime time" proposals could be counterproductive, bringing not light but heat to the discussion, energizing and galvanizing opposition to *possible* plans, cutting off discussion rather than facilitating it. That said, we strongly believe that greater transparency in the development of plans to reorganize Operating Divisions or create, refine, or end particular programs cannot help but be beneficial, even if a consequence of the IRS' greater engagement is delay.

When the process is opened up, and how it is opened up, will likely not be the same for all aspects of the Future State initiative. For example, a major reorganization of the Large Business & International Division was announced last September, and the new structure "stood up" earlier this month. The changes have prompted myriad questions about existing LB&I programs — such as its well-regarded Compliance Assurance Process (CAP). We commend LB&I for its outreach to date, which has included stakeholder and other briefings about the new structure as well as numerous speeches and interviews.

Because change and uncertainty can be unsettling, however, the lack of certainty and specificity has prompted many questions and much anxiety about how the new structure will affect taxpayers, tax practitioners, and IRS employees themselves. We believe that the process could benefit from greater transparency and continuing engagement. Not only might taxpayers and other stakeholders identify issues or offer perspectives that have not yet been considered, but they may have suggestions or even solutions to seemingly vexing problems. Since tax administration unavoidably involves tradeoffs — between service and enforcement, speed versus safety (for example, between expeditiously processing refunds and ensuring against identity theft), and transparency and privacy — we believe that opening up the decision-making process will contribute to the development of a better, more balanced system. Not insignificantly, we also believe greater outreach in respect of all aspects of the Future State initiative could lead to greater taxpayer confidence in the fairness and integrity of the tax system.

4. The Indispensable Role of Taxpayer Representatives. Surveys show that nearly 60 percent of taxpayers use a tax professional for their compliance needs, and one of the themes of the Future State initiative is for the IRS to leverage and collaborate with external stakeholders. As an organization whose members are tax professionals, we agree that theme should be advanced in the Future State initiative. We also believe the IRS should continue to refine its digital presence (and develop digital tools) to efficiently deliver information and assistance, just as private sector enterprises have.

More fundamentally, we regret that the term "pay to play" may improperly cause the issue to be framed as binary, as us-versus-them. Greater transparency will better inform the IRS' plans and allay legitimate concerns about those potentially "left behind" or ill-served if face-to-face or telephone assistance programs are supplanted by "virtual" ones. (Who among us hasn't been caught in a frustrating telephone queue, listening to endless automated options while seeking human contact from a business that created these tools "for our convenience"?)

We believe that the IRS can team effectively with tax professionals to develop digital tools and efficiently provide quality taxpayer service. We also believe that practitioners can and do play an important role in ensuring taxpayer compliance. Therefore, cutting services such as the Practitioner Priority Service (formerly known as the practitioner hotline) would cause outsized detriment to the tax system. Expansion of practitioner e-services to provide more tools, including automated Disclosure Authorization capabilities, serves the best interests of taxpayers and the IRS, as well as practitioners themselves. Stated simply, the more that practitioners can do without having to interact directly with IRS personnel, the more those IRS employees can devote to assisting taxpayers directly or other duties. Digital tools fully accessible to unrepresented taxpayers are critically important, as are the agency's continuing efforts to communicate effectively with taxpayers (through myriad means) when rules and requirements change.

Finally, we agree that the need for face-to-face, voice-to-voice communications and interactions will not disappear regardless of the depth, breadth, and quality of the

digital tools deployed by the IRS. The range of necessary explanations, guidance, and problem resolution on myriad issues will always require knowledgeable assistors who can advise taxpayers on the best solutions to their queries, especially in the post-filing environment.

The IRS' reductions in direct taxpayer service in recent years, spawned by severe budget cuts, have illuminated the need for human assistance to taxpayers. Indeed, the Taxpayer Advocate's Report powerfully documents it. Average taxpayers feel — and sometimes are — unfairly treated when they receive a communication from the IRS and cannot reach a knowledgeable, trained human who can explain the issue or assist them in the resolution of the matter. In short, the will to voluntarily comply with their tax obligations may be strained, if not compromised.

Conclusion

As the chair and vice chair of the Internal Revenue Service Advisory Council, we commend the Taxpayer Advocate for holding today's public forum and more generally for highlighting the challenges facing the tax system and the desirability of the IRS more fully engaging with taxpayers and other stakeholders as it develops and refines a plan to define its Future State initiative. We would be pleased to respond to any questions.

APPENDIX 2

IRS Policy Statement 20-1

1.2.20.1.1 **(06-29-2004)**

Policy Statement 20-1 (Formerly P–1–18)

1. **Penalties are used to enhance voluntary compliance**
2. The Internal Revenue Service has a responsibility to collect the proper amount of tax revenue in the most efficient manner. Penalties provide the Service with an important tool to achieve that goal because they enhance voluntary compliance by taxpayers. In order to make the most efficient use of penalties, the Service will design, administer, and evaluate penalty programs based on how those programs can most efficiently encourage voluntary compliance.
3. Penalties encourage voluntary compliance by:
    1. demonstrating the fairness of the tax system to compliant taxpayers; and
    2. increasing the cost of noncompliance.
4. In order to effectively use penalties to encourage compliant conduct, examiners and their managers must consider the applicability of penalties in each case, and fully develop the penalty issue when the initial consideration indicates that penalties should apply. That is, examiners and their managers must consider the elements of each potentially applicable penalty and then fully develop the facts to support the application of the penalty, or to establish that the penalty does not apply, when the initial consideration indicates that penalties should apply. Full development of the penalty issue is important for Appeals to sustain a penalty and for Counsel to successfully defend that penalty in litigation.

5. Abusive transactions, frivolous returns, and other abusive taxpayer conduct undermine the fairness and integrity of the federal tax system and undercut voluntary compliance. Thus, it is particularly important in those cases for examiners and their managers to consider the potential applicability of penalties, and to develop fully the facts to either support the application of the penalty or to demonstrate that penalties should not apply. Consistent development and proper application of the accuracy-related and fraud penalties in abusive transaction cases will help curb this activity by imposing tangible economic consequences on taxpayers who engage in those transactions. In addition, consistent development and proper application of the promoter and preparer penalties in abusive transaction cases will help curb this activity by providing an economic deterrent for promoting abusive transactions and preparing returns claiming tax benefits from abusive transactions. An abusive transaction is one where a significant purpose of the transaction is the avoidance or evasion of Federal tax.
6. Special Rule for Listed Transactions. The Service will fully develop accuracy-related or fraud penalties in all cases where an underpayment of tax is attributable to a listed transaction. For purposes of this Policy Statement, a listed transaction is a transaction the Service has identified as a listed transaction pursuant to the regulations under IRC § 6011.
7. In limited circumstances where doing so will promote sound and efficient tax administration, the Service may approve a reduction of otherwise applicable penalties or penalty waiver for a group or class of taxpayers as part of a Service-

wide resolution strategy to encourage efficient and prompt resolution of cases of noncompliant taxpayers.

8. In considering the application of penalties to a particular case, all Service functions must develop procedures that will promote:

    A. Consistency in the application of penalties compared to similar cases;

    B. Unbiased analysis of the facts in each case; and

    C. The proper application of the law to the facts of the case.

9. The Service will demonstrate the fairness of the tax system to all taxpayers by:

    A. Providing every taxpayer against whom the Service proposes to assess penalties with a reasonable opportunity to provide evidence that the penalty should not apply;

    B. Giving full and fair consideration to evidence in favor of not imposing the penalty, even after the Service's initial consideration supports imposition of a penalty; and

    C. Determining penalties when a full and fair consideration of the facts and the law support doing so.

Note:

This means that penalties are not a "bargaining point" in resolving the taxpayer's other tax adjustments. Rather, the imposition of penalties in appropriate cases serves as an incentive for taxpayers to avoid careless or overly aggressive tax reporting positions.

10. The Service will continue to develop, monitor, and revise programs to help taxpayers voluntarily comply with the law and avoid penalties.
11. To promote consistent development, consideration, and application of penalties, the Service prescribes guidelines in a Penalty Handbook that all operating divisions and functions will follow. The Office of Penalty and Interest Administration must review and approve changes to the Penalty Handbook for consistency with Service Policy before making recommended changes.
12. The Service collects statistical and demographic information to evaluate penalties and penalty administration, and to determine the effectiveness of penalties in promoting voluntary compliance. The Service continually evaluates the impact of the penalty program on compliance and recommends changes when the Internal Revenue Code or penalty administration does not effectively promote voluntary compliance.

Appendix 3

Text that has been identified as outdated or incorrect is indicated by strike through.

Treasury Department
Circular No. 230
(Rev. 6-2014)

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Regulations Governing Practice before the Internal Revenue Service

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Department
of the
Treasury

Internal
Revenue
Service

Title 31 Code of Federal Regulations,
Subtitle A, Part 10,
published (June 12, 2014)

31 U.S.C. §330. Practice before the Department

(a) Subject to section 500 of title 5, the Secretary of the Treasury may —
(1) regulate the practice of representatives of persons before the Department of the Treasury; and
(2) before admitting a representative to practice, require that the representative demonstrate —
(A) good character;
(B) good reputation;
(C) necessary qualifications to enable the representative to provide to persons valuable service; and
(D) competency to advise and assist persons in presenting their cases.

(b) After notice and opportunity for a proceeding, the Secretary may suspend or disbar from practice before the Department, or censure, a representative who —
(1) is incompetent;
(2) is disreputable;
(3) violates regulations prescribed under this section; or
(4) with intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented.

The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.

(c) After notice and opportunity for a hearing to any appraiser, the Secretary may —
(1) provide that appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service, and
(2) bar such appraiser from presenting evidence or testimony in any such proceeding.

(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 884; Pub. L. 98–369, div. A, title I, §156(a), July 18, 1984, 98 Stat. 695; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 108–357, title VIII, §822(a)(1), (b), Oct. 22, 2004, 118 Stat. 1586, 1587; Pub. L. 109–280, title XII, §1219(d), Aug. 17, 2006, 120 Stat. 1085.)

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Paragraph 1. The authority citation for 31 CFR, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2-12, 60 Stat. 237 et. seq.; 5 U.S.C. 301, 500, 551-559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949-1953 Comp., p. 1017.

§ 10.0 Scope of part.

(a) This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, ~~registered tax return preparers~~, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part prescribes the sanctions for violating the regulations; subpart D of this part contains the rules applicable to disciplinary proceedings; and subpart E of this part contains general provisions relating to the availability of official records.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

Subpart A — Rules Governing Authority to Practice

§ 10.1 Offices.

(a) *Establishment of office(s).* The Commissioner shall establish the Office of Professional Responsibility and any other office(s) within the Internal Revenue Service necessary to administer and enforce this part. The Commissioner shall appoint the Director of the Office of Professional Responsibility and any other Internal Revenue official(s) to manage and direct any office(s) established to administer or enforce this part. Offices established under this part include, but are not limited to:

(1) The Office of Professional Responsibility, which shall generally have responsibility for matters related to practitioner conduct and shall have exclusive responsibility for discipline, including disciplinary proceedings and sanctions; and

(2) An office with responsibility for matters related to authority to practice before the Internal Revenue Service, including acting on applications for enrollment to practice before the Internal Revenue Service and administering competency testing and continuing education.

(b) Officers and employees within any office established under this part may perform acts necessary or appropriate to carry out the responsibilities of their office(s) under this part or as otherwise prescribed by the Commissioner.

(c) *Acting.* The Commissioner will designate an officer or employee of the Internal Revenue Service to perform the duties of an individual appointed under paragraph (a) of this section in the absence of that officer or employee or during a vacancy in that office.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011, except that paragraph (a)(1) is applicable beginning June 12, 2014.

§ 10.2 Definitions.

(a) As used in this part, except where the text provides otherwise —

(1) *Attorney* means any person who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(2) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) *Commissioner* refers to the Commissioner of Internal Revenue.

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of §10.3.

(6) A *tax return* includes an amended tax return and a claim for refund.

(7) *Service* means the Internal Revenue Service.

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701-15.

(b) *Effective/applicability date.* This section is applicable on August 2, 2011.

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the attorney is currently qualified as an attorney and is authorized to represent the party or parties. Notwithstanding the preceding sentence, attorneys who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties. Notwithstanding the preceding sentence, certified public accountants who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(d) *Enrolled actuaries.*

(1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration stating that he or she is currently qualified as an enrolled actuary and is authorized to represent the party or parties on whose behalf he or she acts.

(2) Practice as an enrolled actuary is limited

to representation with respect to issues involving the following statutory provisions in title 26 of the United States Code: sections 401 (relating to qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a) (2)), 404 (relating to deductibility of employer contributions), 405 (relating to qualification of bond purchase plans), 412 (relating to funding requirements for certain employee plans), 413 (relating to application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (relating to definitions and special rules with respect to the employee plan area), 419 (relating to treatment of funded welfare benefits), 419A (relating to qualified asset accounts), 420 (relating to transfers of excess pension assets to retiree health accounts), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 4972 (relating to tax on nondeductible contributions to qualified employer plans), 4976 (relating to taxes with respect to funded welfare benefit plans), 4980 (relating to tax on reversion of qualified plan assets to employer), 6057 (relating to annual registration of plans), 6058 (relating to information required in connection with certain plans of deferred compensation), 6059 (relating to periodic report of actuary), 6652(e) (relating to the failure to file annual registration and other notifications by pension plan), 6652(f) (relating to the failure to file information required in connection with certain plans of deferred compensation), 6692 (relating to the failure to file actuarial report), 7805(b) (relating to the extent to which an Internal Revenue Service ruling or determination letter coming under the statutory provisions listed here will be applied without retroactive effect); and 29 U.S.C. § 1083 (relating to the waiver of funding for nonqualified plans).

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and ~~registered tax return preparers.~~

(e) *Enrolled retirement plan agents* —

(1) Any individual enrolled as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as an enrolled retirement plan agent is limited to representation with respect to issues involving the following programs: Employee Plans Determination Letter program; Employee Plans Compliance Resolution System; and Employee Plans Master and Prototype and Volume Submitter program. In addition, enrolled retirement plan agents are generally permitted to represent taxpayers with respect to IRS forms under the 5300 and 5500 series which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules.

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and ~~registered tax return preparers.~~

~~(f) *Registered tax return preparers.*~~

~~(1) Any individual who is designated as a registered tax return preparer pursuant to §10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.~~

~~(2) Practice as a registered tax return preparer is limited to preparing and signing tax returns and claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund of tax. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.~~

~~(3) A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return~~

~~or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.~~

~~(4) An individual who practices before the Internal Revenue Service pursuant to paragraph (f)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.~~

(g) *Others.* Any individual qualifying under paragraph §10.5(e) or §10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(h) *Government officers and employees, and others.* An individual, who is an officer or employee of the executive, legislative, or judicial branch of the United States Government; an officer or employee of the District of Columbia; a Member of Congress; or a Resident Commissioner may not practice before the Internal Revenue Service if such practice violates 18 U.S.C. §§ 203 or 205.

(i) *State officers and employees.* No officer or employee of any State, or subdivision of any State, whose duties require him or her to pass upon, investigate, or deal with tax matters for such State or subdivision, may practice before the Internal Revenue Service, if such employment may disclose facts or information applicable to Federal tax matters.

(j) *Effective/applicability date.* Paragraphs (a), (b), and (g) of this section are applicable beginning June 12, 2014. Paragraphs (c) through (f), (h), and (i) of this section are applicable beginning August 2, 2011.

§ 10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer.~~

(a) *Enrollment as an enrolled agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled agent to an applicant eighteen years of age or older who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment as a retirement plan agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled retirement plan agent to an applicant eighteen years of age or older who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

~~(c) *Designation as a registered tax return preparer.* The Commissioner, or delegate, may designate an individual eighteen years of age or older as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, or otherwise meets the requisite standards prescribed by the Internal Revenue Service, possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.~~

(d) *Enrollment of former Internal Revenue Service employees.* The Commissioner, or delegate, may

grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances:

(1) The former employee applies for enrollment on an Internal Revenue Service form and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) The appropriate office of the Internal Revenue Service provides a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular specialty or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within three years from the date of separation from such employment.

(5) An applicant for enrollment as an enrolled agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes.

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (d)(5) and (6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least three of which occurred within the five years preceding the date of application, is the equivalent of five years continuous employment.

(e) *Natural persons*. Enrollment to practice may be granted only to natural persons.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.5 Application to become an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer.~~

(a) *Form; address.* An applicant to become an enrolled agent, enrolled retirement plan agent, or ~~registered tax return preparer~~ must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled ~~or registered~~ and is the address to which all correspondence concerning enrollment or registration will be sent.

(b) *Fee.* A reasonable nonrefundable fee may be charged for each application to become an enrolled agent, enrolled retirement plan agent, or ~~registered tax return preparer~~. See 26 CFR part 300.

(c) *Additional information; examination.* The Internal Revenue Service may require the applicant, as a condition to consideration of an application, to file

additional information and to submit to any written or oral examination under oath or otherwise. Upon the applicant's written request, the Internal Revenue Service will afford the applicant the opportunity to be heard with respect to the application.

(d) *Compliance and suitability checks.*

(1) As a condition to consideration of an application, the Internal Revenue Service may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangements with the Internal Revenue Service for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in §10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under §§10.51 and 10.52.

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate pursuant to §10.6(b) of this part. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition.* On receipt of a properly executed application, the Commissioner, or delegate, may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer~~ should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or the Commissioner, or delegate, has information indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent, enrolled retirement plan agent, or ~~registered tax return preparer.~~ Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer~~, and the temporary recognition may be withdrawn at any time.

(f) *Protest of application denial.* The applicant will be informed in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(f) *Effective/applicability date.* This section is applicable to applications received on or after August 2, 2011.

§ 10.6 Term and renewal of status as an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer.~~

(a) *Term.* Each individual authorized to practice before the Internal Revenue Service as an enrolled agent, enrolled retirement plan agent, or ~~registered tax return preparer~~ will be accorded active enrollment or registration status subject to renewal of enrollment or registration as provided in this part.

(b) *Enrollment or registration card or certificate.* The Internal Revenue Service will issue an enrollment or registration card or certificate to each individual whose application to practice before the Internal Revenue Service is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer~~ may not practice before the Internal Revenue Service if the card or certificate is not current or otherwise

valid. The card or certificate is in addition to any notification that may be provided to each individual who obtains a preparer tax identification number.

(c) *Change of address.* An enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer~~ must send notification of any change of address to the address specified by the Internal Revenue Service within 60 days of the change of address. This notification must include the enrolled agent's, enrolled retirement plan agent's, ~~or registered tax return preparer's~~ name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address is effective. Unless this notification is sent, the address for purposes of any correspondence from the appropriate Internal Revenue Service office responsible for administering this part shall be the address reflected on the practitioner's most recent application for enrollment or registration, or application for renewal of enrollment or registration. A practitioner's change of address notification under this part will not constitute a change of the practitioner's last known address for purposes of section 6212 of the Internal Revenue Code and regulations thereunder.

(d) *Renewal.*

(1) *In general*. Enrolled agents, enrolled retirement plan agents, and ~~registered tax return preparers~~ must renew their status with the Internal Revenue Service to maintain eligibility to practice before the Internal Revenue Service. Failure to receive notification from the Internal Revenue Service of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

(2) *Renewal period for enrolled agents.*

(i) All enrolled agents must renew their preparer tax identification number as prescribed by forms, instructions, or other appropriate guidance.

(ii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(iii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(iv) Enrolled agents who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(v) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(2)(i), (d)(2)(ii), or (d)(2)(iii) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(3) *Renewal period for enrolled retirement plan agents.*

(i) All enrolled retirement plan agents must renew their preparer tax identification number as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) Enrolled retirement plan agents will be required to renew their status as enrolled retirement plan agents between April 1 and June 30 of every third year subsequent to their initial enrollment.

~~(4) *Renewal period for registered tax return preparers.* Registered tax return preparers must renew their preparer tax identification number and their status as a registered tax return preparer as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.~~

(5) *Notification of renewal.* After review and approval, the Internal Revenue Service will notify

the individual of the renewal and will issue the individual a card or certificate evidencing current status as an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer.~~

(6) *Fee*. A reasonable nonrefundable fee may be charged for each application for renewal filed. See 26 CFR part 300.

(7) *Forms*. Forms required for renewal may be obtained by sending a written request to the address specified by the Internal Revenue Service or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(b)) and on the Internal Revenue Service webpage (www.irs.gov).

(e) *Condition for renewal*: continuing education. In order to qualify for renewal as an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer,~~ an individual must certify, in the manner prescribed by the Internal Revenue Service, that the individual has satisfied the requisite number of continuing education hours.

(1) *Definitions*. For purposes of this section —

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding the effective date of renewal.

~~(iii) *Registration year* means each 12-month period the registered tax return preparer is authorized to practice before the Internal Revenue Service.~~

(iv) *The effective date of renewal* is the first day of the fourth month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment as an enrolled agent or enrolled retirement plan agent* —

(i) *Requirements for enrollment cycle*. A minimum of 72 hours of continuing education credit, including six hours of ethics or professional conduct, must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year*. A minimum of 16 hours of continuing education credit, including two hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) *Enrollment during enrollment cycle* —

(A) *In general*. Subject to paragraph (e)(2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete two hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(B) *Ethics*. An individual who receives initial enrollment during an enrollment cycle must complete two hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

~~(3) *Requirements for renewal as a registered tax return preparer*. A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year.~~

(f) *Qualifying continuing education* —

(1) *General* —

(i) *Enrolled agents*. To qualify for continuing education credit for an enrolled agent, a course of learning must —

~~(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and~~

~~(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.~~

~~(ii) *Enrolled retirement plan agents*. To qualify for continuing education credit for an enrolled retirement plan agent, a course of learning must —~~

~~(A) Be a qualifying continuing education program designed to enhance professional knowledge in qualified retirement plan matters; and~~

~~(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.~~

~~(iii) *Registered tax return preparers*. To~~

~~qualify for continuing education credit for a registered tax return preparer, a course of learning must —~~

~~(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and~~

~~(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.~~

~~(2) *Qualifying programs* —~~

~~(i) *Formal programs*. A formal program qualifies as a continuing education program if it —~~

~~(A) Requires attendance and provides each attendee with a certificate of attendance;~~

~~(B) Is conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program);~~

~~(C) Provides or requires a written outline, textbook, or suitable electronic educational materials; and~~

~~(D) Satisfies the requirements established for a qualified continuing education program pursuant to §10.9.~~

~~(ii) *Correspondence or individual study programs (including taped programs)*. Qualifying continuing education programs include correspondence or individual study programs that are conducted by continuing education providers and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs only if they —~~

~~(A) Require registration of the participants by the continuing education provider;~~

~~(B) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider;~~

~~(C) Provide a written outline, textbook,~~ or ~~suitable electronic educational materials; and~~

(D) Satisfy the requirements established for a qualified continuing education program pursuant to §10.9.

(iii) *Serving as an instructor, discussion leader or speaker*.

(A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum continuing education credit for instruction and preparation may not exceed ~~four hours annually for registered tax return preparers and~~ six hours annually for enrolled agents and enrolled retirement plan agents.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle or registration year will receive continuing education credit for only one such presentation for the enrollment cycle or registration year.

(3) *Periodic examination*. Enrolled Agents and Enrolled Retirement Plan Agents may establish eligibility for renewal of enrollment for any enrollment cycle by —

(i) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(ii) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(g) *Measurement of continuing education coursework*.

(1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(h) *Recordkeeping requirements*.

(1) Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing education credit hours. Such information includes —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program, qualified program number, and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing education provider.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of four years following the date of renewal —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and copy of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(i) *Waivers*.

(1) Waiver from the continuing education requirements for a given period may be granted for the following reasons —

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status. The individual will be notified that the waiver was not approved and that the individual has been placed on a roster of inactive enrolled agents, enrolled retirement plan agents, ~~or registered tax return preparers.~~

(5) If the request for waiver is not approved, the individual may file a protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest filed under this section is not governed by subpart D of this part.

(6) If a request for waiver is approved, the individual will be notified and issued a card or certificate evidencing renewal.

(7) Those who are granted waivers are required to file timely applications for renewal of enrollment or registration.

(j) *Failure to comply*.

(1) Compliance by an individual with the requirements of this part is determined by the Internal Revenue Service. The Internal Revenue Service will provide notice to any individual who fails to meet the continuing education and fee requirements of eligibility for renewal. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered in making a final determination as to eligibility for renewal. The individual must be informed of the reason(s) for any denial of a renewal. The individual may, within 30 days after receipt of the notice of denial of renewal, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(2) The continuing education records of an enrolled agent, enrolled retirement plan agent, or ~~registered tax return preparer~~ may be reviewed to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section. As part of this review, the enrolled agent, enrolled retirement plan agent ~~or registered tax return preparer~~ may be required to provide the Internal Revenue Service with copies of any continuing education records required to be maintained under this part. If the enrolled agent, enrolled retirement plan agent ~~or registered tax return preparer~~ fails to comply with this requirement, any continuing education hours claimed may be disallowed.

(3) An individual who has not filed a timely application for renewal, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals ~~or inactive registered individuals~~. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer,~~ the designations "EA" or "ERPA" or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle or registration year. Continuing education credit under this paragraph (j)(5) may not be used to satisfy the requirements of the enrollment cycle or registration year in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, ~~or registered tax return preparer will terminate~~. Future eligibility for active status must then be reestablished by the individual as provided in this section.

(7) Inactive status is not available to an individual who is the subject of a pending disciplinary matter before the Internal Revenue Service.

(k) *Inactive retirement status*. An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or an individual who is the subject of a pending disciplinary matter under this part.

(l) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action under this part is required to conform to the requirements for renewal of enrollment or registration before the individual's eligibility is restored.

(m) *Enrolled actuaries.* The enrollment and renewal of enrollment of actuaries authorized to practice under paragraph (d) of §10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.72.

(n) *Effective/applicability date.* This section is applicable to enrollment or registration effective beginning August 2, 2011.

§ 10.7 Representing oneself; participating in rulemaking; limited practice; and special appearances.

(a) *Representing oneself.* Individuals may appear on their own behalf before the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. See 5 U.S.C. § 553.

(c) *Limited practice* —

(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), ~~even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer.~~ The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

(2) *Limitations*.

(i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Commissioner, or delegate, may, after notice and opportunity for a conference, deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under §10.50.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as prescribed by the Internal Revenue Service.

(d) *Special appearances*. The Commissioner, or delegate, may, subject to conditions deemed appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Fiduciaries*. For purposes of this part, a fiduciary (for example, a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.8 Return preparation and application of rules to other individuals.

(a) *Preparing all or substantially all of a tax return*. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, ~~or registered tax return preparer~~ to obtain a preparer tax identification number. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C.

(b) *Preparing a tax return and furnishing information*. Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(c) *Application of rules to other individuals*. Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless otherwise a practitioner, however, an individual may not for compensation prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701-15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.9 Continuing education providers and continuing education programs.

(a) *Continuing education providers* —

(1) *In general*. Continuing education providers are those responsible for presenting continuing education programs. A continuing education provider must —

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia;

(iii) Be recognized and approved by a qualifying organization as a provider of continuing education on subject matters within §10.6(f) of this part. The Internal Revenue Service may, at its discretion, identify a professional organization, society or business entity that maintains minimum education standards comparable to those set forth in this part as a qualifying organization for purposes of this part in appropriate forms, instructions, and other appropriate guidance; or

(iv) Be recognized by the Internal Revenue Service as a professional organization, society, or business whose programs include offering continuing professional education opportunities in subject matters within §10.6(f) of this part. The Internal Revenue Service, at its discretion, may require such professional organizations, societies, or businesses to file an agreement and/or obtain Internal Revenue Service approval of each program as a qualified continuing education program in appropriate forms, instructions or other appropriate guidance.

(2) *Continuing education provider numbers* —

(i) *In general*. A continuing education provider is required to obtain a continuing education provider number and pay any applicable user fee.

(ii) *Renewal*. A continuing education provider maintains its status as a continuing education provider during the continuing education provider cycle by renewing its continuing education provider number as prescribed by forms, instructions or other appropriate guidance and paying any applicable user fee.

(3) *Requirements for qualified continuing education programs*. A continuing education provider must ensure the qualified continuing education program complies with all the following requirements —

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of the technical content and presentation to be evaluated;

(v) Certificates of completion bearing a current qualified continuing education program number issued by the Internal Revenue Service must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the continuing education provider to verify the participants who attended and completed the program for a period of four years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) *Program numbers* —

(i) *In general*. Every continuing education provider is required to obtain a continuing education provider program number and pay any applicable user fee for each program offered. Program numbers shall be obtained as prescribed by forms, instructions or other appropriate guidance. Although, at the discretion of the Internal Revenue Service, a continuing education provider may be required to demonstrate that the program is designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics) and complies with the requirements in paragraph (a)(2)of this section before a program number is issued.

(ii) *Update programs*. Update programs may use the same number as the program subject to update. An update program is a program that instructs on a change of existing law occurring within one year of the update program offering. The qualifying education program subject to update must have been offered within the two year time period prior to the change in existing law.

(iii) *Change in existing law*. A change in existing law means the effective date of the statute or regulation, or date of entry of judicial decision, that is the subject of the update.

(b) *Failure to comply*. Compliance by a continuing education provider with the requirements of this part is determined by the Internal Revenue Service. A continuing education provider who fails to meet the requirements of this part will be notified by the Internal Revenue Service. The notice will state the basis for the determination of noncompliance and will provide the continuing education provider an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. The continuing education provider may, within 30 days after receipt of the notice of denial, file a written protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Subpart B — Duties and Restrictions Relating to Practice Before the Internal Revenue Service

§ 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.*

(1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(b) *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.21 Knowledge of client's omission.

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

§ 10.22 Diligence as to accuracy.

(a) *In general.* A practitioner must exercise due diligence —

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

(b) *Reliance on others.* Except as modified by §§10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

(c) *Effective/applicability date.* Paragraph (a) of this section is applicable on September 26, 2007. Paragraph (b) of this section is applicable beginning June 12, 2014.

§ 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

§ 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

§ 10.25 Practice by former government employees, their partners and their associates.

(a) *Definitions.* For purposes of this section —

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly, or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a special Government employee as defined in *18 U.S.C. 202(a)*, or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Particular matter involving specific parties* is defined at 5 CFR 2637.201(c), or superseding post-employment regulations issued by the U.S. Office of Government Ethics.

(5) *Rule* includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rulemaking or as Treasury decisions, revenue rulings, and revenue procedures published in the Internal Revenue Bulletin (see *26 CFR 601.601(d)(2)(ii)(b)*).

(b) *General rules* —

(1) No former Government employee may, subsequent to Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate *18 U.S.C. 207* or any other laws of the United States.

(2) No former Government employee who personally and substantially participated in a particular matter involving specific parties may, subsequent to Government employment, represent or knowingly assist, in that particular matter, any person who is or was a specific party to that particular matter.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a particular matter involving specific parties may not, within two years after Government employment is ended, represent in that particular matter any person who is or was a specific party to that particular matter.

(4) No former Government employee may, within one year after Government employment is ended, communicate with or appear before, with the intent to influence, any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule the development of which the former Government employee participated in, or for which, within a period of one year prior to the termination of Government employment, the former government employee had official responsibility. This paragraph (b)(4) does not, however, preclude any former employee from appearing on one's own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a particular matter involving specific

parties involving the application or interpretation of a rule with respect to that particular matter, provided that the representation is otherwise consistent with the other provisions of this section and the former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation* —

(1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any particular matter with respect to which the restrictions of paragraph (b)(2) of this section apply to the former Government employee, in that particular matter, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the office(s) of the Internal Revenue Service administering or enforcing this part.

(d) *Pending representation.* The provisions of this regulation will govern practice by former Government employees, their partners and associates with respect to representation in particular matters involving specific parties where actual representation commenced before the effective date of this regulation.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.26 Notaries.

A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the Internal Revenue Service and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

§ 10.27 Fees.

(a) *In general.* A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.

(b) *Contingent fees* —

(1) Except as provided in paragraphs (b)(2), (3), and (4) of this section, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.

(2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to —

(i) An original tax return; or

(ii) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.

(3) A practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

(4) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

(c) *Definitions.* For purposes of this section —

(1) *Contingent fee* is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event

that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) *Matter before the Internal Revenue Service* includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

(d) *Effective/applicability date.* This section is applicable for fee arrangements entered into after March 26, 2008.

§ 10.28 Return of client's records.

(a) In general, a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

(b) For purposes of this section — Records of the client include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current Federal tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if —

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if —

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of

interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

(d) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.*

(1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, enrolled retirement plan agents, ~~or registered tax return preparers,~~ in describing their professional designation, may not utilize the term "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." ~~An example of an acceptable description for registered tax return preparers is "designated as a registered tax return preparer by the Internal Revenue Service."~~

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) *Fee information.*

(1)(i) A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information —

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

(ii) Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.

(2) A practitioner may charge no more than the rate(s) published under paragraph (b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published.

(c) *Communication of fee information.* Fee information may be communicated in professional lists, telephone directories, print media, mailings, and electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the

communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) *Improper associations.* A practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

(Approved by the Office of Management and Budget under Control No. 1545-1726)

§ 10.31 Negotiation of taxpayer checks.

(a) A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

(b) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.32 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

§ 10.33 Best practices for tax advisors.

(a) *Best practices.* Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

(1) Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

(2) Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.

(3) Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.

(4) Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) *Procedures to ensure best practices for tax advisors.* Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

(c) *Applicability date.* This section is effective after June 20, 2005.

§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns*.

(1) A practitioner may not willfully, recklessly, or through gross incompetence —

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that —

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that —

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

(b) *Documents, affidavits and other papers* —

(1) A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

(2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service —

(i) The purpose of which is to delay or impede the administration of the Federal tax laws;

(ii) That is frivolous; or

(iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

(c) *Advising clients on potential penalties* —

(1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to —

(i) A position taken on a tax return if —

(A) The practitioner advised the client with respect to the position; or

(B) The practitioner prepared or signed the tax return; and

(ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.

(2) The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

(d) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) *Effective/applicability date.* Paragraph (a) of this section is applicable for returns or claims for refund filed, or advice provided, beginning August 2, 2011. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

§ 10.35 Competence.

(a) A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such

as consulting with experts in the relevant area or studying the relevant law.

(b) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.36 Procedures to ensure compliance.

(a) Any individual subject to the provisions of this part who has (or individuals who have or share) principal authority and responsibility for overseeing a firm's practice governed by this part, including the provision of advice concerning Federal tax matters and preparation of tax returns, claims for refund, or other documents for submission to the Internal Revenue Service, must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with subparts A, B, and C of this part, as applicable. In the absence of a person or persons identified by the firm as having the principal authority and responsibility described in this paragraph, the Internal Revenue Service may identify one or more individuals subject to the provisions of this part responsible for compliance with the requirements of this section.

(b) Any such individual who has (or such individuals who have or share) principal authority as described in paragraph (a) of this section will be subject to discipline for failing to comply with the requirements of this section if—

(1) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with this part, as applicable, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable;

(2) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that firm procedures in effect are properly followed, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable; or

(3) The individual knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with this part, as applicable, and the individual, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.37 Requirements for written advice.

(a) *Requirements.*

(1) A practitioner may give written advice (including by means of electronic communication) concerning one or more Federal tax matters subject to the requirements in paragraph (a)(2) of this section. Government submissions on matters of general policy are not considered written advice on a Federal tax matter for purposes of this section. Continuing education presentations provided to an audience solely for the purpose of enhancing practitioners' professional knowledge on Federal tax matters are not considered written advice on a Federal tax matter for purposes of this section. The preceding sentence does not apply to presentations marketing or promoting transactions.

(2) The practitioner must—

(i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);

(ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;

(iii) Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;

(iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable;

(v) Relate applicable law and authorities to facts; and

(vi) Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

(3) Reliance on representations, statements, findings, or agreements is unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based are incorrect, incomplete, or inconsistent.

(b) *Reliance on advice of others.* A practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances. Reliance is not reasonable when—

(1) The practitioner knows or reasonably should know that the opinion of the other person should not be relied on;

(2) The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or

(3) The practitioner knows or reasonably should know that the other person has a conflict of interest in violation of the rules described in this part.

(c) *Standard of review.*

(1) In evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client.

(2) In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, with emphasis given to the additional risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances, when determining whether a practitioner has failed to comply with this section.

(d) *Federal tax matter.* A Federal tax matter, as used in this section, is any matter concerning the application or interpretation of---

(1) A revenue provision as defined in section 6110(i)(1)(B) of the Internal Revenue Code;

(2) Any provision of law impacting a person's obligations under the internal revenue laws and regulations, including but not limited to the person's liability to pay tax or obligation to file returns; or

(3) Any other law or regulation administered by the Internal Revenue Service.

(e) *Effective/applicability date.* This section is applicable to written advice rendered after June 12, 2014.

§ 10.38 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least six individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, ~~and registered tax return preparers~~. Under procedures prescribed by the Internal Revenue Service, an advisory committee may review and make general recommendations regarding the practices, procedures, and policies of the offices described in §10.1.

(b) *Effective date.* This section is applicable beginning August 2, 2011.

Subpart C — Sanctions for Violation of the Regulations

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of §10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of §10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify.* The Secretary of the Treasury, or delegate, after due notice and opportunity for hearing, may disqualify any appraiser for a violation of these rules as applicable to appraisers.

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

(c) *Authority to impose monetary penalty —*

(1) *In general.*

(i) The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

(ii) If the practitioner described in paragraph (c)(1)(i) of this section was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Secretary of the Treasury, or delegate, may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known of such conduct.

(2) *Amount of penalty.* The amount of the penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty.

(3) *Coordination with other sanctions.* Subject to paragraph (c)(2) of this section —

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may be in addition to or in lieu of any suspension, disbarment or censure and may be in addition to a penalty imposed on an employer, firm or other entity under paragraph (c)(1)(ii) of this section.

(ii) Any monetary penalty imposed on an employer, firm or other entity may be in addition to or in lieu of penalties imposed under paragraph (c)(1)(i) of this section.

(d) *Authority to accept a practitioner's consent to sanction.* The Internal Revenue Service may accept a practitioner's offer of consent to be sanctioned under §10.50 in lieu of instituting or continuing a proceeding under §10.60(a).

(e) *Sanctions to be imposed.* The sanctions imposed by this section shall take into account all relevant facts and circumstances.

(f) *Effective/applicability date.* This section is applicable to conduct occurring on or after August 2, 2011, except that paragraphs (a), (b)(2), and (e) apply to conduct occurring on or after September 26, 2007, and paragraph (c) applies to prohibited conduct that occurs after October 22, 2004.

§ 10.51 Incompetence and disreputable conduct.

(a) *Incompetence and disreputable conduct.* Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to —

(1) Conviction of any criminal offense under the Federal tax laws.

(2) Conviction of any criminal offense involving dishonesty or breach of trust.

(3) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

(5) Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or any officer or employee thereof.

(6) Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

(7) Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(8) Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(9) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

(10) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(11) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(13) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (a)(l3) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph (a)(13), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence

includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(14) Willfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(15) Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under §10.60.

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.52 Violations subject to sanction.

(a) A practitioner may be sanctioned under §10.50 if the practitioner —

(1) Willfully violates any of the regulations (other than §10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of §10.51(a)(13)) violates §§ 10.34, 10.35, 10.36 or 10.37.

(b) *Effective/applicability date.* This section is applicable to conduct occurring on or after September 26, 2007.

§ 10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service*. If an officer or employee of the Internal Revenue Service has reason to believe a practitioner has violated any provision of this part, the officer or employee will promptly make a written report of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(b) *Other persons*. Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(c) *Destruction of report*. No report made under paragraph (a) or (b) of this section shall be maintained unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D*. The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Subpart D — Rules Applicable to Disciplinary Proceedings

§ 10.60 Institution of proceeding.

(a) Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the practitioner may be reprimanded or, in accordance with §10.62, subject to a proceeding for sanctions described in §10.50.

(b) Whenever a penalty has been assessed against an appraiser under the Internal Revenue Code and an appropriate officer or employee in an office established to enforce this part determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, the appraiser may be reprimanded or, in accordance with §10.62, subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

(c) Except as provided in §10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.61 Conferences.

(a) *In general.* The Commissioner, or delegate, may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Voluntary sanction —*

(1) *In general.* In lieu of a proceeding being instituted or continued under §10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under §10.50.

(2) *Discretion; acceptance or declination.* The Commissioner, or delegate, may accept or decline the offer described in paragraph (b)(1) of this section. When the decision is to decline the offer, the written notice of declination may state that the offer described in paragraph (b)(1) of this section would be accepted if it contained different terms. The Commissioner, or delegate, has the discretion to accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.62 Contents of complaint.

(a) *Charges*. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

(b) *Specification of sanction*. The complaint must specify the sanction sought against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer*. The respondent must be notified in the complaint or in a separate paper attached to the complaint of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Internal Revenue Service to whom a copy of the answer must be served, and

that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

(a) *Service of complaint.*

(1) *In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a) (2) or (3) of this section.

(2) *Service by certified or first class mail.*

(i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.*

(i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations there under) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this section, *respondent* means the practitioner, employer, firm or other entity, or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner, employer, firm or other entity or appraiser.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served on the respondent, or his or her authorized representative under §10.69(a)(2) by:

(1) mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) as provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) *Service of papers on the Internal Revenue Service.* Whenever a paper is required or permitted to be served on the Internal Revenue Service in

connection with a proceeding under this part, the paper will be served on the Internal Revenue Service's authorized representative under §10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the office(s) established to enforce this part under the authority of §10.1, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

(d) *Service of evidence in support of complaint.* Within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner described in paragraphs (a)(2) and (3) of this section.

(e) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, the original paper, plus one additional copy, must be filed with the Administrative Law Judge at the address specified in the complaint or at an address otherwise specified by the Administrative Law Judge. All papers filed in connection with a proceeding under this part must be served on the other party, unless the Administrative Law Judge directs otherwise. A certificate evidencing such must be attached to the original paper filed with the Administrative Law Judge.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.64 Answer; default.

(a) *Filing.* The respondent's answer must be filed with the Administrative Law Judge, and served on the Internal Revenue Service, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

(b) *Contents.* The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Default.* Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

(e) *Signature.* The answer must be signed by the respondent or the respondent's authorized representative under §10.69(a)(2) and must include a statement directly above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. §1001.

(f) Effective/applicability date. This section is applicable beginning August 2, 2011.

§ 10.65 Supplemental charges.

(a) *In general.* Supplemental charges may be filed against the respondent by amending the complaint with the permission of the Administrative Law Judge if, for example —

(1) It appears that the respondent, in the answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent possesses such information; or

(2) It appears that the respondent has knowingly

introduced false testimony during the proceedings against the respondent.

(b) *Hearing.* The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded a reasonable opportunity to prepare a defense to the supplemental charges.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.66 Reply to answer.

(a) The Internal Revenue Service may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.67 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in pleadings and the evidence adduced in support of the pleadings, the Administrative Law Judge, at any time before decision, may order or authorize amendment of the pleadings to conform to the evidence. The party who would otherwise be prejudiced by the amendment must be given a reasonable opportunity to address the allegations of the pleadings as amended and the Administrative Law Judge must make findings on any issue presented by the pleadings as amended.

§ 10.68 Motions and requests.

(a) *Motions* —

(1) *In general.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in §10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support.

(2) *Summary adjudication.* Either party may move for a summary adjudication upon all or any part of the legal issues in controversy. If the non-moving party opposes summary adjudication in the moving party's favor, the non-moving party must file a written response within 30 days unless ordered otherwise by the Administrative Law Judge.

(3) *Good Faith.* A party filing a motion for extension of time, a motion for postponement of a hearing, or any other non-dispositive or procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, and the nonmoving party files no response, the nonmoving party is deemed to oppose the motion. If a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.

(c) *Oral motions; oral argument* —

(1) The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions.

(2) The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

(d) *Orders.* The Administrative Law Judge should issue written orders disposing of any motion or request and any response thereto.

(e) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.69 Representation; ex parte communication.

(a) *Representation*.

(1) The Internal Revenue Service may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal

Revenue Service representing the Internal Revenue Service in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Internal Revenue Service.

(2) A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration with the Internal Revenue Service pursuant to §10.3. A practitioner or an attorney representing a respondent or proposed respondent may sign the answer or any document required to be filed in the proceeding on behalf of the respondent.

(b) *Ex parte communication*. The Internal Revenue Service, the respondent, and any representatives of either party, may not attempt to initiate or participate in ex parte discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the othe party.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the sanction (as described in §10.50) of a practitioner, employer, firm or other entity, or appraiser will be conducted by an Administrative Law Judge appointed as provided by *5 U.S.C. 3105*.

(b) *Powers of the Administrative Law Judge.* The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under §10.60 assigned or referred to him or her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings;

(5) Rule on offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions or answers to requests for admission;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make decisions.

(c) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.71 Discovery.

(a) *In general.* Discovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery and subject to the requirements of §10.72(d)(2) and (3). Within 10 days of receipt of the answer, the Administrative Law Judge will notify the parties of the right to request discovery and the timeframe for filing a request. A request for discovery, and objections, must be filed in accordance with §10.68. In response to a request for discovery, the Administrative Law Judge may order —

(1) Depositions upon oral examination; or

(2) Answers to requests for admission.

(b) *Depositions upon oral examination* —

(1) A deposition must be taken before an officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in Federal tax law matters.

(2) In ordering a deposition, the Administrative Law Judge will require reasonable notice to the opposing party as to the time and place of the deposition. The opposing party, if attending, will be provided the opportunity for full examination and cross-examination of any witness.

(3) Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken. Travel expenses of the deponent shall be borne by the party requesting the deposition, unless otherwise authorized by Federal law or regulation.

(c) *Requests for admission.* Any party may serve on any other party a written request for admission of the truth of any matters which are not privileged and are relevant to the subject matter of this proceeding. Requests for admission shall not exceed a total of 30 (including any subparts within a specific request) without the approval from the Administrative Law Judge.

(d) *Limitations.* Discovery shall not be authorized if —

(1) The request fails to meet any requirement set forth in paragraph (a) of this section;

(2) It will unduly delay the proceeding;

(3) It will place an undue burden on the party required to produce the discovery sought;

(4) It is frivolous or abusive;

(5) It is cumulative or duplicative;

(6) The material sought is privileged or otherwise protected from disclosure by law;

(7) The material sought relates to mental impressions, conclusions, of legal theories of any party, attorney, or other representative, or a party prepared in the anticipation of a proceeding; or

(8) The material sought is available generally to the public, equally to the parties, or to the party seeking the discovery through another source.

(e) *Failure to comply.* Where a party fails to comply with an order of the Administrative Law Judge under this section, the Administrative Law Judge may, among other things, infer that the information would be adverse to the party failing to provide it, exclude the information from evidence or issue a decision by default.

(f) *Other discovery.* No discovery other than that specifically provided for in this section is permitted.

(g) *Effective/applicability date.* This section is applicable to proceedings initiated on or after September 26, 2007.

§ 10.72 Hearings.

(a) *In general* —

(1) *Presiding officer.* An Administrative Law Judge will preside at the hearing on a complaint filed under §10.60 for the sanction of a practitioner, employer, firm or other entity, or appraiser.

(2) *Time for hearing.* Absent a determination by the Administrative Law Judge that, in the interest of justice, a hearing must be held at a later time, the Administrative Law Judge should, on notice sufficient to allow proper preparation, schedule the hearing to occur no later than 180 days after the time for filing the answer.

(3) *Procedural requirements.*

(i) Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation.

(ii) Hearings will be conducted pursuant to *5 U.S.C. 556*.

(iii) A hearing in a proceeding requested under §10.82(g) will be conducted de novo.

(iv) An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless —

(A) The Internal Revenue Service withdraws the complaint;

(B) A decision is issued by default pursuant to §10.64(d);

(C) A decision is issued under §10.82 (e);

(D) The respondent requests a decision on the written record without a hearing; or

(E) The Administrative Law Judge issues a decision under §10.68(d) or rules on another motion that disposes of the case prior to the hearing.

(b) *Cross-examination.* A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination, in the presence of the Administrative Law Judge, as may be required for a full and true disclosure of the facts. This

paragraph (b) does not limit a party from presenting evidence contained within a deposition when the Administrative Law Judge determines that the deposition has been obtained in compliance with the rules of this subpart D.

(c) *Prehearing memorandum.* Unless otherwise ordered by the Administrative Law Judge, each party shall file, and serve on the opposing party or the opposing party's representative, prior to any hearing, a prehearing memorandum containing —

(1) A list (together with a copy) of all proposed exhibits to be used in the party's case in chief;

(2) A list of proposed witnesses, including a synopsis of their expected testimony, or a statement that no witnesses will be called;

(3) Identification of any proposed expert witnesses, including a synopsis of their expected testimony and a copy of any report prepared by the expert or at his or her direction; and

(4) A list of undisputed facts.

(d) *Publicity* —

(1) *In general.* All reports and decisions of the Secretary of the Treasury, or delegate, including any reports and decisions of the Administrative Law Judge, under this subpart D are, subject to the protective measures in paragraph (d)(4) of this section, public and open to inspection within 30 days after the agency's decision becomes final.

(2) *Request for additional publicity.* The Administrative Law Judge may grant a request by a practitioner or appraiser that all the pleadings and evidence of the disciplinary proceeding be made available for inspection where the parties stipulate in advance to adopt the protective measures in paragraph (d)(4) of this section.

(3) *Returns and return information* —

(i) *Disclosure to practitioner or appraiser.* Pursuant to *section 6103(l)(4) of the Internal Revenue Code,* the Secretary of the Treasury, or delegate, may disclose returns and return information to any practitioner or appraiser, or to the authorized representative of the practitioner or appraiser, whose rights are or may be affected by an administrative action or proceeding under this subpart D, but solely for use in the action or proceeding and only to the extent that the Secretary of the Treasury, or delegate, determines that the returns or return information are or may be relevant and material to the action or proceeding.

(ii) *Disclosure to officers and employees of the Department of the Treasury.* Pursuant to *section 6103(l)(4)(B) of the Internal Revenue Code* the Secretary of the Treasury, or delegate, may disclose returns and return information to officers and employees of the Department of the Treasury for use in any action or proceeding under this subpart D, to the extent necessary to advance or protect the interests of the United States.

(iii) *Use of returns and return information.* Recipients of returns and return information under this paragraph (d)(3) may use the returns or return information solely in the action or proceeding, or in preparation for the action or proceeding, with respect to which the disclosure was made.

(iv) *Procedures for disclosure of returns and return information.* When providing returns or return information to the practitioner or appraiser, or authorized representative, the Secretary of the Treasury, or delegate, will —

(A) Redact identifying information of any third party taxpayers and replace it with a code;

(B) Provide a key to the coded information; and

(C) Notify the practitioner or appraiser, or authorized representative, of the restrictions on the use and disclosure of the returns and return information, the applicable damages remedy under *section 7431 of the Internal Revenue Code*, and that unauthorized disclosure of information provided by the Internal Revenue Service under this paragraph (d)(3) is also a violation of this part.

(4) *Protective measures* —

(i) *Mandatory protection order.* If redaction of names, addresses, and other identifying information of third party taxpayers may still permit indirect identification of any third party taxpayer, the Administrative Law Judge will issue a protective order to ensure that the identifying information is available to the parties and the Administrative Law Judge for purposes of the proceeding, but is not

disclosed to, or open to inspection by, the public.

(ii) *Authorized orders.*

(A) Upon motion by a party or any other affected person, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect any person in the event disclosure of information is prohibited by law, privileged, confidential, or sensitive in some other way, including, but not limited to, one or more of the following —

(1) That disclosure of information be made only on specified terms and conditions, including a designation of the time or place;

(2) That a trade secret or other information not be disclosed, or be disclosed only in a designated way.

(iii) *Denials.* If a motion for a protective order is denied in whole or in part, the Administrative Law Judge may, on such terms or conditions as the Administrative Law Judge deems just, order any party or person to comply with, or respond in accordance with, the procedure involved.

(iv) *Public inspection of documents.* The Secretary of the Treasury, or delegate, shall ensure that all names, addresses or other identifying details of third party taxpayers are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to public inspection of such documents.

(e) *Location.* The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and approval, the hearing will be held in Washington, D.C.

(f) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default.

(g) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.73 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to §10.71 may be admitted into evidence in any proceeding instituted under §10.60.

(c) *Requests for admission.* Any matter admitted in response to a request for admission under §10.71 is conclusively established unless the Administrative Law Judge on motion permits withdrawal or modification of the admission. Any admission made by a party is for the purposes of the pending action only and is not an admission by a party for any other purpose, nor may it be used against a party in any other proceeding.

(d) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Professional Responsibility are admissible in evidence without the production of an officer or employee to authenticate them. Any documents, records, and papers may be evidenced by a copy attested to or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(e) *Withdrawal of exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(f) *Objections.* Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

(g) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82-137) (65 Stat. 290) (31 U.S.C. § 483a).

§ 10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§ 10.76 Decision of Administrative Law Judge.

(a) *In general* —

(1) *Hearings.* Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(2) *Summary adjudication.* In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(3) *Returns and return information.* In the decision, the Administrative Law Judge should use the code assigned to third party taxpayers (described in §10.72(d)).

(b) *Standard of proof.* If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proved by clear and convincing evidence in the record.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Internal Revenue Service's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* In the absence of an appeal to the Secretary of the Treasury or delegate, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal*. Any party to the proceeding under this subpart D may appeal the decision of the Administrative Law Judge by filing a notice of appeal with the Secretary of the Treasury, or delegate deciding appeals. The notice of appeal must include a brief that states exceptions to the decision of Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal*. The notice of appeal and brief must be filed, in duplicate, with the Secretary of the Treasury, or delegate deciding appeals, at an address for appeals that is identified to the parties with the decision of the Administrative Law Judge. The notice of appeal and brief must be filed within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The appealing party must serve a copy of the notice of appeal and the brief to any non appealing party or, if the party is represented, the non-appealing party's representative.

(c) *Response*. Within 30 days of receiving the copy of the appellant's brief, the other party may file a response brief with the Secretary of the Treasury, or delegate deciding appeals, using the address identified for appeals. A copy of the response brief must be served at the same time on the opposing party or, if the party is represented, the opposing party's representative.

(d) *No other briefs, responses or motions as of right*. Other than the appeal brief and response brief, the parties are not permitted to file any other briefs, responses or motions, except on a grant of leave to do so after a motion demonstrating sufficient cause, or unless otherwise ordered by the Secretary of the Treasury, or delegate deciding appeals.

(e) *Additional time for briefs and responses*. Notwithstanding the time for filing briefs and responses provided in paragraphs (b) and (c) of this section, the Secretary of the Treasury, or delegate deciding appeals, may, for good cause, authorize additional time for filing briefs and responses upon a motion of a party or upon the initiative of the Secretary of the Treasury, or delegate deciding appeals.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.78 Decision on review.

(a) *Decision on review.* On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal

(b) *Standard of review.* The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence.

(c) *Copy of decision on review.* The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the authorized representative of the Internal Revenue Service and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81.

(b) *Suspension*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service)

and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure*. When the final decision in the case is against the respondent (or the Internal Revenue Service has accepted the respondent's offer to consent, if such offer was made) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions*. After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to specified conditions designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because the practitioner failed to advise the practitioner's clients about a potential conflict of interest or failed to obtain the clients' written consents, the practitioner may be required to provide the Internal Revenue Service with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.80 Notice of disbarment, suspension, censure, or disqualification.

(a) *In general*. On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, notification of the censure, suspension, disbarment or disqualification will be given to appropriate officers and employees of the Internal Revenue Service and interested departments and agencies of the Federal government. The Internal Revenue Service may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.81 Petition for reinstatement.

(a) *In general*. A practitioner disbarred or suspended under §10.60, or suspended under §10.82, or a disqualified appraiser may petition for reinstatement before the Internal Revenue Service after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period, if shorter than 5 years). Reinstatement will not be granted unless the Internal Revenue Service is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

(b) *Effective/applicability date*. This section is applicable beginning June 12, 2014.

§ 10.82 Expedited suspension.

(a) *When applicable.* Whenever the Commissioner, or delegate, determines that a practitioner is described in paragraph (b) of this section, the expedited procedures described in this section may be used to suspend the practitioner from practice before the Internal Revenue Service.

(b) *To whom applicable.* This section applies to any practitioner who, within 5 years prior to the date that a show cause order under this section's expedited suspension procedures is served:

(1) Has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in §10.51(a)(10).

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title

26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions imposed on the practitioner pursuant to §10.79(d).

(4) Has been sanctioned by a court of competent jurisdiction, whether in a civil or criminal proceeding (including suits for injunctive relief), relating to any taxpayer's tax liability or relating to the practitioner's own tax liability, for —

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

(5) Has demonstrated a pattern of willful disreputable conduct by—

(i) Failing to make an annual Federal tax return, in violation of the Federal tax laws, during 4 of the 5 tax years immediately preceding the institution of a proceeding under paragraph (c) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (f) of this section; or

(ii) Failing to make a return required more frequently than annually, in violation of the Federal tax laws, during 5 of the 7 tax periods immediately preceding the institution of a proceeding under paragraph (c) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (f) of this section.

(c) *Expedited suspension procedures.* A suspension under this section will be proposed by a show cause order that names the respondent, is signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1), and served according to the rules set forth in §10.63(a). The show cause order must give a plain and concise description of the allegations that constitute the basis for the proposed suspension. The show cause order must notify the respondent —

(1) Of the place and due date for filing a response;

(2) That an expedited suspension decision by default may be rendered if the respondent fails to file a response as required;

(3) That the respondent may request a conference to address the merits of the show cause order and that any such request must be made in the response; and

(4) That the respondent may be suspended either immediately following the expiration of the period within which a response must be filed or, if a conference is requested, immediately following the conference.

(d) *Response*. The response to the show cause order described in this section must be filed no later than 30 calendar days following the date the show cause order is served, unless the time for filing is extended. The response must be filed in accordance with the rules set forth for answers to a complaint in §10.64, except as otherwise provided in this section. The response must include a request for a conference, if a conference is desired. The respondent is entitled to the conference only if the request is made in a timely filed response.

(e) *Conference*. An authorized representative of the Internal Revenue Service will preside at a conference described in this section. The conference will be held at a place and time selected by the Internal Revenue Service, but no sooner than 14 calendar days after the date by which the response must be filed with the Internal Revenue Service, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference.

(f) *Suspension*—

(1) *In general.* The Commissioner, or delegate, may suspend the respondent from practice before the Internal Revenue Service by a written notice of expedited suspension immediately following:

(i) The expiration of the period within which a response to a show cause order must be filed if the respondent does not file a response as required by paragraph (d) of this section;

(ii) The conference described in paragraph (e) of this section if the Internal Revenue Service finds that the respondent is described in paragraph (b) of this section; or

(iii) The respondent's failure to appear, either personally or through an authorized representative, at a conference scheduled by the Internal Revenue Service under paragraph (e) of this section.

(2) *Duration of suspension.* A suspension under this section will commence on the date that the written notice of expedited suspension is served on the practitioner, either personally or through an authorized representative. The suspension will remain effective until the earlier of:

(i) The date the Internal Revenue Service lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(ii) The date the suspension is lifted or otherwise modified by an Administrative Law Judge or the Secretary of the Treasury, or delegate deciding appeals, in a proceeding referred to in paragraph (g) of this section and instituted under §10.60.

(g) *Practitioner demand for §10.60 proceeding.* If the Internal Revenue Service suspends a practitioner under the expedited suspension procedures described in this section, the practitioner may demand that the Internal Revenue Service institute a proceeding under §10.60 and issue the complaint described in §10.62. The demand must be in writing, specifically reference the suspension action under §10.82, and be made within 2 years from the date on which the practitioner's suspension commenced. The Internal Revenue Service must issue a complaint demanded under this paragraph (g) within 60 calendar days of receiving the demand. If the Internal Revenue Service does not issue such complaint within 60 days of receiving the demand, the suspension is lifted automatically. The preceding sentence does not, however, preclude the Commissioner, or delegate, from instituting a regular proceeding under §10.60 of this part.

(h) *Effective/applicability date*. This section is generally applicable beginning June 12, 2014, except that paragraphs (b)(1) through (4) of this section are applicable beginning August 2, 2011.

Subpart E — General Provisions

§ 10.90 Records.

(a) *Roster*. The Internal Revenue Service will maintain and make available for public inspection in the time and manner prescribed by the Secretary, or delegate, the following rosters —

(1) Individuals (and employers, firms, or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed.

(2) Enrolled agents, including individuals —

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Internal Revenue Service under §10.61.

(3) Enrolled retirement plan agents, including individuals —

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted under §10.61.

~~(4) Registered tax return preparers, including individuals —~~

~~(i) Authorized to prepare all or substantially all of a tax return or claim for refund;~~

~~(ii) Who have been placed in inactive status for failure to meet the requirements for renewal;~~

~~(iii) Who have been placed in inactive retirement status; and~~

~~(iv) Whose offer of consent to resign from their status as a registered tax return preparer has been accepted by the Internal Revenue Service under §10.61.~~

(5) Disqualified appraisers.

(6) Qualified continuing education providers, including providers —

(i) Who have obtained a qualifying continuing education provider number; and

(ii) Whose qualifying continuing education number has been revoked for failure to comply with the requirements of this part.

(b) *Other records.* Other records of the Director of the Office of Professional Responsibility may be disclosed upon specific request, in accordance with the applicable law.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.91 Saving provision.

Any proceeding instituted under this part prior to June 12, 2014, for which a final decision has not been reached or for which judicial review is still available is not affected by these revisions. Any proceeding under this part based on conduct engaged in prior to June 12, 2014, which is instituted after that date, will apply subpart D and E of this part as revised, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred.

§ 10.92 Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he or she deems proper in any cases within the purview of this part.

§ 10.93 Effective date.

Except as otherwise provided in each section and Subject to §10.91, Part 10 is applicable on July 26, 2002.

John Dalrymple,
Deputy Commissioner for Services and Enforcement

Approved: June 3, 2014
Christopher J. Meade,
General Counsel

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Internal Revenue Service Advisory Council
2016 Member Biographies

Patricia H. Atwood

Ms. Atwood, ASA, an accredited appraiser specializing in antiques, decorative arts and clocks, is the owner of Timely Antique Appraisals, LLC, in Rockford, IL. Her firm provides valuations for insurance coverage, damage/loss claims, equitable property division, estate tax and planning and charitable contributions. A current member of the Appraisal Standards Board of The Appraisal Foundation, she also teaches Principles of Valuation courses for the American Society of Appraisers (ASA) where she is an Accredited Senior Appraiser. Ms. Atwood served previously on the ASA International Personal Property Committee and was 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 41 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 Chair)**

Brenda M. Bianculli

Ms. Bianculli has worked in the tax field for more than 25 years and is the owner of Brenda M. Bianculli, CPA, LLC, in Charlton, MA. Her firm handles complex tax and business issues for a variety of clients and specializes in the real estate and service industries. Several of her clients are owners of small to mid-size businesses and she works closely with them on various tax preparation and planning issues. She has experience with issues relating to multi-state tax reporting, business sales and acquisitions, stock redemptions, incentive stock options, and estate, gift and trust taxes. Her firm also prepares financial statements and represents clients to resolve income and sales tax matters with the IRS and various state agencies. Ms. Bianculli is currently on the Board of Advisors for Nichols College, a Corporator for Southbridge Savings Bank, and the Treasurer of Woman in Business, Inc. She is a member of the American Institute of Certified Public Accountants and the Massachusetts Society of Certified Public Accountants. Ms. Bianculli holds a B.S. in Business Administration (major accounting) from Nichols College in Dudley, MA, and a Master of Science Degree in Taxation (M.S.T.) from Bentley College in Waltham, MA. **(SBSE/W&I Subgroup)**

Eunkyong Choi

Ms. Choi, J.D., LL.M, is the New York City Taxpayer Advocate in New York, NY. She is a business-oriented attorney with diverse experience in developing and delivering complex tax planning strategies. Prior to joining city government, she served as a Lecturer in Law and Supervising Attorney for the Washington University School of Law Low Income Taxpayer Clinic where she represented low income taxpayers in state and federal administrative and proceeding including the IRS and the U.S. Tax Court. Prior to that, she served as the Program Director and Supervising Attorney for the Nevada Legal Services Low

Income Taxpayer Program. In addition to her advocacy on behalf of low income taxpayers, Ms. Choi has served in numerous tax leadership and mentorship roles. Ms. Choi is also a co-founder and member of the Asian American Advocacy Clinic ("AAAC") in Las Vegas, Nevada, the first and only Asian and Pacific Islander legal aid organization. Asian American Advocacy Clinic was founded in 2012 with goal of providing access to justice to members of the Nevada Asian and Pacific Islander community. Ms. Choi holds an LL.M in Taxation and J.D. from Washington University School of Law School in St. Louis Missouri. **(SBSE/W&I Subgroup)**

Thomas A. Cullinan

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 to lack economic substance, among many others. In addition, he has extensive experience in TEFRA (i.e., partnership) audits and litigation and in defending against the imposition of accuracy-related penalties. He has practiced in front of several U.S. district courts, the U.S. Tax Court, the Court of Federal Claims, and several appellate courts, and he is a frequent speaker on tax-related topics. Mr. Cullinan is an active participant on three different committees of the Section of Taxation of the American Bar Association. He is also a fellow of the American College of Tax Counsel (ACTC) and a member of the American Association of Attorney-CPAs (AAA-CPA). Mr. Cullinan holds a B.S. from State University of New York at Geneseo, an M.S. from State University of New York at Albany, and a J.D. from Vanderbilt University Law School. **(LB&I Subgroup Chair)**

Estarre (Star) Fischer

Ms. Fischer, CPA, is a Partner with Moss Adams LLP, in Seattle, WA. Ms. Fischer has over 15 years' experience in taxation as a CPA. Her primary responsibility is to provide clients with tax consulting services regarding the tax treatment of R&D expenditures. Ms. 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 client base

is predominately comprised 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 IRS 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 B.S. (Accounting) from Central Washington University. **(LB&I Subgroup)**

Neil H. Fishman

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 returns. Mr. Fishman's firm also prepares business and personal financial statements, in addition to representing clients before taxing authorities. Mr. Fishman has been a presenter at various tax seminars and has written several articles on occupational fraud having appeared in various CPA Journals. He is a licensed CPA in both New York and Florida, and is also a Certified Fraud Examiner, Forensic Certified Public Accountant and Certified Anti-Money Laundering Specialist. Mr. Fishman is a member of the National Conference of CPA Practitioners (NCCPAP), and have served in many capacities on the National Board since 2004, including Chairman of the Tax Policy Committee from 2008-2011. Currently, he serves as Executive Vice President of NCCPAP. Mr. Fishman holds a B.A. from the State University of New York College at Oneonta. **(SBSE/W&I Subgroup)**

Cheri H. Freeh

Ms. Freeh, CPA, CGMA, is a principal with Hutchinson, Gillahan & Freeh, P.C., in Quakertown, PA. Ms. Freeh has over 30 years' experience in the field of accounting for privately-held businesses, non-profit organizations, local governments, estates, trusts and individuals. Her firm specializes in small businesses (most gross receipts under $1 million), mostly middle class individuals, small estates and trusts, governments, non-profits and overall the CPA practitioner community. She is a Past President of the Pennsylvania Institute of CPAs (PICPA) and the governing council of the AICPA. She currently serves on the AICPA Internal Revenue Service Advocacy and Relations Committee and the PICPA State Taxation and Legislation

Committees. She also serves as a member of the Pennsylvania State Department of Community and Economic Development's Act 32 advisory committee and the advisory committee on the local earned income tax register for the Governor's Center for local Government. Ms. Freeh serves as a director on several boards, including a bank board and several non-profit organization boards. Ms. Freeh is one of the few individuals invited by the Pennsylvania House of Representatives to provide private training sessions to both the Republican and Democratic caucuses and is regularly consulted by legislators and Department of Revenue officials regarding tax law and policy issues for Pennsylvania. Ms. Freeh was named one of the 25 most powerful women in accounting in the United States for both 2012 and 2014 by the CPA Practice Advisor magazine in conjunction with the American Society of Women Accountants. Ms. Freeh holds a B.S. in Business Administration with an accounting specialization from Thomas A. Edison State College. **(SBSE/W&I Subgroup)**

Stuart M. Hurwitz

Mr. Hurwitz, J.D., LL.M, operates his own tax law practice, Stuart M. Hurwitz, APC dba CPA & Law Offices, in San Diego, CA. He has over 45 years of experience in business and taxation. His legal and tax practice serves a wide-breadth of U.S. citizens and persons and entities of various nationalities from those with a high net worth to many of more modest means who are involved in or want to enter the United States business environment, who may have foreign bank accounts, foreign business investments, real estate, estate and gift, employment, and income related issues. He has authored numerous articles and papers which have appeared in national law journals and which he has presented to officials at the IRS, U.S. Treasury, Judges of the U.S. Tax Court, and to the staffs of the Senate and House tax writing committees. Mr. Hurwitz's diverse and disparate work experience (in addition to that of a tax attorney) include that of a U.S. Army prosecutor and contracting officer, land developer and home builder, and president of a non-profit. His tax practice prepares tax returns of every type at both the Federal and State levels including individual, partnership, corporate, estate, gift, trust, pension, non-profit, sales and use, and payroll. In addition, he and his staff are continually involved in tax audits, tax appeals, and tax litigation for his clients. He has served on numerous occasions as an expert witness for tax and accounting issues in both Federal and State Courts. As a result of his education and work experience, he is familiar with a very wide range of business and tax related issues. Mr. Hurwitz is certified by the State Bar of California as a Tax Specialist and is a Chair Emeritus of the 3,200+ member Taxation Section of the

State Bar of California. He has been repeatedly honored as a *Super Lawyer*, one of *San Diego's Best Attorneys* (by the Union Tribune), and a *5 Star Wealth Manager*. His education includes a B.S. in Business Administration with a major in accounting from the Ohio State University, a J.D. from the University of Nebraska, School of Law, and an LL.M. in Taxation from the University of San Diego, School of Law. **(LB&I Subgroup)**

Jennifer MacMillan

Ms. MacMillan, EA, is the owner of Jennifer MacMillan EA in Santa Barbara, CA. Ms. MacMillan has over 25 years' experience in taxation. As an Enrolled Agent, she is licensed to represent taxpayers before the Internal Revenue Service and specializes in representing individual and small business taxpayers in tax examinations, collection matters, and appeals, and also provides individual income tax preparation and planning services. Ms. MacMillan became a Fellow of the National Association of Enrolled Agents' National Tax Practice Institute (NTPI) in 2001 and subsequently was a discussion leader and instructor for NTPI, teaching advanced representation skills to Treasury Circular 230 practitioners. In addition, she teaches two-hour ethics courses for many practitioner groups, giving hundreds of Enrolled Agents and tax preparers in-depth interpretations of Treasury Circular 230 and real-world applications that relate to the daily challenges that arise in their practices. Ms. MacMillan has written numerous articles for NAEA's EA Journal, California Enrolled Agent magazine, and has been a contributing author for Spidell Publishing and CCH's Journal of Tax Practice and Procedure. Ms. MacMillan has appeared on NBC's Today Show, offering last-minute tax tips to viewers, and has been a panelist on Tax Talk Today (IRS' monthly webcast) on two occasions. She is a member of the NAEA Government Relations Committee and a Past President of the California Society of Enrolled Agents**. (IRSAC Chair and OPR Subgroup)**

Timothy J. McCormally

Mr. McCormally, J.D., is the Director in the Washington National Tax practice of KPMG, LLP, in Washington, DC. He has 40 years' experience as a tax attorney. Before joining KPMG, he spent 30 years on the staff of Tax Executive Institute, first as General Counsel and then as Executive Director. At TEI, his responsibilities included the overall administration of the professional association of 7,000 in-house tax professionals from around the world. He also participated in the Institute's extensive advocacy program, contributing to comments submitted to the IRS, Treasury Department, Canada Revenue Agency, the Canadian Department of Finance, and the Organisation for Economic Co-operation and Development. Mr. McCormally is a

contributor to numerous publications and has recently written or co-written articles on Treasury Circular 230 and tax ethics generally, tax whistleblowing, FBAR reporting, and IRS efforts to risk-assess taxpayers. He is a member of ABA, Section of Taxation (Administrative Practice and Employment Tax Committees) and the American College of Tax Counsel. Mr. McCormally holds a J.D. from Georgetown University Law Center, and a B.A. from the University of Iowa. **(IRSAC Vice Chair and LB&I Subgroup)**

John F. McDermott

Mr. McDermott, J.D., LL.M., is an Attorney/Partner with Taylor, Porter, Brooks & Philips, LLP, in Baton Rouge, LA. He has 35 years' experience in taxation. His primary area of practice is tax planning and advice, including business and individual income tax, payroll tax, franchise tax, excise tax, ad valorem tax, sales and use tax, and gift and estate tax. He has assisted tax-exempt organizations make application for and obtain status under IRC section 501(c). He has represented individuals, business entities, trusts and estates with controversies before the IRS at the examination and appeals levels, in Tax Court and U.S. District Court. He has made applications to the Taxpayer Advocate, assisted clients in collections, and with preparation and presentation of offers in compromise, installment payment arrangements, and with tax liens and levies. He has also represented clients in BLIPS transactions and has applied for and obtained PLR's. In addition to his primary practice of taxation, Mr. McDermott handles succession, probate, and estate administration matters. Mr. McDermott has been a CPA since 1985. He is a member of the Baton Rouge and Louisiana State Bar Associations, National Lawyers Association, Baton Rouge Estate and Business Planning Council, and The Society of Louisiana Certified Public Accountants. Mr. McDermott holds a B.S. in Business Administration and a J.D. from Louisiana State University and an LL.M. from Georgetown University. **(SBSE/W&I Subgroup)**

Shawn R. O'Brien

Mr. O'Brien has over 18 years' experience in practicing tax law. Mr. O'Brien is a tax partner with Mayer Brown, LLP, in Houston, Texas. His tax practice includes representing clients in all types of tax disputes with taxing authorities on international, federal and state levels. Mr. O'Brien routinely advises clients on various tax issues during tax examinations, in administrative appeals and as an advocate in trial and appellate litigation before the U.S. Tax Court, U.S. District Courts and U.S. Court of Federal Claims. Mr. O'Brien's tax controversy and litigation experience spans a broad range of areas, including transfer pricing controversies, debt v. equity issues, international

withholdings, advance pricing agreements, “tax shelter” disallowances, research and development tax credits, excise taxes, and changes in accounting methods. Mr. O’Brien advises foreign and domestic corporations, partnerships, MLPs, and LLCs seeking corporate and tax advice in connection with various types of foreign and domestic transactions, including 1031 exchanges, mergers and acquisitions, restructurings, divestitures, leveraged buyouts, structured financings, and oil and gas transactions. He is a CPA licensed in Louisiana. In addition, he is particularly focused on a variety of tax issues facing the energy industry including tax controversy, joint ventures, restructuring acquisitions and disposition of energy assets. Mr. O’Brien served as Chair of the Energy and Natural Resources Committee of the State Bar of Texas Tax Section from 2011 to 2013, and currently serves the State Bar of Texas Tax Section as Chair of the General Tax Committee. He has written numerous tax articles and regularly presents to tax groups. Mr. O’Brien is a member of the Tax Section of American Bar Association, Houston Bar Association Tax Section, International Tax Roundtable, and Federal Tax Procedure Group. Mr. O’Brien holds a B.B. A. in Accounting from Millsaps College in Jackson, Mississippi, a J.D. from Loyola University School of Law in New Orleans, LA, and an LL.M, Taxation, from New York University School of Law in New York, New York. **(LB&I Subgroup)**

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, 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 controversy, white collar defense, corruption, professional conduct and tax standards, accounting errors and irregularities, post-closing adjustments, management and employee fraud, and third party asset misappropriation. Mr. Pagano has successfully negotiated agreed upon civil closings in federal and state civil and criminal tax controversies, assisted attorneys in a wide variety of white-collar financial and accounting investigations, commercial litigation, public corruption, IRS practice and procedure, corrupt practices, GAAP and accounting representations and warranties cases. He has been associated for a number of years with the Forensic & Valuation Services section of the AICPA as well as the Tax Section of the ABA’s annual Criminal Tax and Tax Controversy Institute, Georgia Southern University’s Fraud and Forensic

Accounting Conference and EisnerAmper University's Tax College as a speaker of tax ethics and professional standards governing CPAs. A common denominator shared by these diverse organizations with respect to tax ethics and professional standards is their concern and commitment for each tax professional's obligation to follow the authoritative guidance for practitioners found in Treasury Circular 230, Internal Revenue Code sections 6694, 6713, 7216, and the AICPA's Statements on Standards for Tax Services. Mr. Pagano holds a B.S. (Accounting) from St. Joseph's University in Philadelphia, PA, and a Master of Public Administration (MPA) from New York University in New York, NY. **(OPR Subgroup)**

Donald H. Read

Mr. Read, J.D., LL.M., 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)**

Kevin A. Richards

Mr. Richards, of Springfield, IL, is the manager of the Account Processing Program Area at the Illinois Department of Revenue. Mr. Richards, who is in his 28th year at the department, had previously managed the Electronic Commerce Division for the

last 18 years. In April 2016 he was promoted to the Program Administrator position and is now over the Account Processing Program Area for the agency. The Account Processing Administration (APA) consists of two bureaus, the Returns and Deposit Operations Bureau and the Central Processing Bureau. APA is responsible for processing 76 different state and local taxes. APA employs 420 of IDOR's 1,670 total employees with an annual budget of approximately $31.4 million (Fiscal Year 2015). In fiscal year 2016, Account Processing oversaw the processing of more than 20 million returns and payments totaling over $38 billion in deposits. Mr. Richards earned a B.S. in Finance from Eastern Illinois University and an MBA from the University of Illinois-Springfield. Mr. Richards is also the president of the local chapter of the Association of Government Accountants. **(SBSE/W&I Subgroup)**

Stephanie Salavejus

Ms. Salavejus is vice president with Peninsula Software (PenSoft) in Newport News, VA. She is responsible for software solutions and product requirements for clients. She has 28 years of experience in electronic filing of tax reports and software development. Ms. Salavejus regularly speaks on tax administration topics related to payroll. She is also a member of the American Payroll Association and the National Association of Computerized Tax Processors. **(SBSE/W&I Subgroup)**

Dr. Dave Thompson, Jr

Dr. Thompson has over 38 years' experience in taxation. He currently serves as the Director/Master of Accounting and Interim Chair of the Accounting and Finance Department for Alabama State University in Montgomery, Alabama. Dr. Thompson has been in the education profession for over 15 years. He teaches the Masters of Accountancy Program where he prepares students for professional careers in public accounting and management and government. This program helps students to achieve professional certifications in accounting, such as Certified Public Accountant (CPA), Certified Internal Auditor (CIA), and Certified Management Accountant (CMA); and to pursue terminal or Ph.D. degrees. He is also serving as an AICPA Academic Champion. Dr. Thompson has had the opportunity to work with such CPA firms as KPMG, Ernst and Young and Arthur Andersen to solve many tax issues facing these corporations, which included mergers and consolidated issues, pensions and compensation, and deferred tax problems. In addition, he worked as a private lawyer in the law firm of Thompson & Searight, P.C., where he worked with small business clients on corporate tax issues. He was also authorized to practice before the tax courts. Prior to owning his own business, he was a corporate vice president, where he helped to

develop many strategic management plans which resulted in savings of millions of dollars for the company. Dr. Thompson has helped to coordinate partnership efforts for many colleges as one of the leaders who formed the "Path To Financial Independence" group. This group provided partnerships between over 20 different "Historical Black Colleges" and corporations to bring financial literacy education to thousands all over the United States. In addition, he helped put together partnerships with banks, financial institutions and philanthropic organizations to provide tax services and financial education. For example, one partnership resulted in a $300,000 grant from the Kellogg Foundation to provide financial literacy and tax service to the community. Dr. Thompson holds a B.S. (Accounting) from Birmingham-Southern College, an MBA (MA concentration in Management/Accounting) from Samford University in Birmingham, AL, a J.D. from Birmingham School of Law and a Ph.D., from Jackson State University in Jackson, MS. **(LB&I Subgroup)**

Dr. Dennis J. Ventry, Jr

Dr. Ventry has worked in the tax field for over 20 years and is a Professor of Law at UC Davis School of Law in Davis, CA. Dr. Ventry's areas of specialization include Standards of Tax Practice, Tax Administration and Compliance, Tax Expenditure Analysis, Tax Policy, Legal & Professional Ethics, Whistleblower Law, Family Taxation, and U.S. Economic, Legal, and Tax History. He has published dozens of articles, contributed chapters to books, authored edited volumes, and is co-author of a federal income tax casebook whose original author was legendary Harvard law professor Stanley Surrey. Dr. Ventry participates in federal and state tax debates over tax reform, administration, and policy through public testimony and amici curiae briefs, face-to-face meetings with tax officials, legislators, and legislative staff, and as a member of tax commissions, workgroups, and committees. In addition, Dr. Ventry serves as an expert consulting/testifying witness in matters involving the standard of care for tax practitioners, and he also teaches CLE/CPE classes on standards of tax practice. Dr. Ventry is a member of the American Bar Association, the Association of American Law Schools, the Law and Society Association, and the National Tax Association. Dr. Ventry holds a J.D. from New York University School of Law, a Ph.D. in History (U.S. Economic & Legal) from the University of California, Santa Barbara, an M.A. in History from the University of California, Santa Barbara, and a B.A. in History with a specialization in Business Administration from the University of California, Los Angeles. (**OPR Subgroup**)