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

May 27, 2014

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

Dear Commissioner Koskinen:

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

IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities and state taxing agencies.

IRPAC recognizes the challenges the IRS faces in developing and implementing new reporting and withholding policies and procedures as a result of the increased focus on using information reporting to help reduce the tax gap. Recent legislative changes continue to expand information reporting requirements, and payers are being requested to enhance their due diligence efforts when obtaining tax certification documentation from their customers. Examples of such legislation include the addition of the Foreign Account Tax Compliance Act (FATCA) under sections 1471 through 1474 of the Internal Revenue Code (IRC), as amended, as well as the payment card transaction reporting under section 6050W, the Patient Protection and Affordable Care Act reporting under sections 6051, 6055 and 6056, and the cost basis reporting under section 6045.

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

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

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

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

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

Payers should be allowed to truncate employer identification numbers (EINs) because of the fact many (if not most) tax reporting systems do not distinguish between the types of taxpayer identification numbers. The truncation of EINs would also have a direct benefit in reducing the volume of fraudulent returns being created that show withholding amounts being applied by a payer, such as the Form 1099-OID showing a withholding amount just slightly less or equal to the income amount.

Legitimate payers who filed a Form 941, 945 or 1042 are becoming concerned the IRS will start issuing withholding underpayment notices because of fraudulent information returns being created using the payer's name and EIN and showing withholding amounts for which the payer has no liability or deposit requirement.

The TIN truncation program should be extended to all existing or newly introduced information returns unless doing so is explicitly excluded as stated in the preamble to the proposed regulations or in the new form's instructions. Since fraudulent returns are most likely the result of theft from the postal mail of Form W-2 information, IRPAC recommends that Counsel support the adoption of H.R.1560 ("SAFE ID Act of 2013") which will amend IRC §6051 and permit the truncation of social security numbers on wage reporting statements.

Finally, the ability to provide all information returns electronically rather than through the U.S. mail -- where an envelope is marked "Important Tax Document Enclosed" and the due date to mail tax forms is well known -- would also reduce the possibility of thieves taking those statements and using them to create fraudulent information returns and tax returns. Please see Priority Item #8 below for additional reasons as to why this program should be expanded.

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

4. *De minimis* threshold for Form 1099 corrections.
As IRPAC has noted over the past several years, there are substantial costs to processing corrections to information returns, regardless of whether any amount corrected is material. The volume of corrections has increased significantly in recent years because of the expanded information reporting requirements, resulting in significantly increased costs to the IRS, financial institutions and taxpayers. For example, reclassification of mutual fund distributions and updated cost basis information are common causes of corrected information returns.

Filers would like to be allowed to apply a de minimis threshold so that corrections are not required for net changes of, for example, $50 or less (up or down). When considering the cost to financial institutions (printing, mailing, reputation, etc.), taxpayers (filing a corrected tax return), and the IRS (processing and data matching), a de minimis threshold would promote sound tax administration by eliminating costly corrections that result in no material change in tax revenue. This recommendation could be achieved through minor changes to the definitions of an "inconsequential error or omission" in the regulations issued pursuant to IRC §§6721 and 6722.

5. Clarification of terms for Form 1098-T
Additional guidance is needed to clarify terms in IRC §6050S(b)(2)(B)(ii) that are used by colleges and universities to determine whether or not to report certain amounts in box 5 of Form 1098-T, Tuition Statement. Specifically, colleges and universities need clarification regarding the meaning of "costs of attendance" and "administered and processed." These terms are not defined the Internal Revenue Code, or any of the Treasury Regulations, causing confusion within the College and University community, and resulting in possible inconsistent reporting from institution to institution. This inconsistency may result in additional burden to the millions of taxpayers who receive Form 1098-T, in particular, those taxpayers who receive the form from different institutions who may report differing costs due to the ambiguity of the terms. This guidance would promote sound tax administration by providing consistent definitions of terms used by colleges and universities in the preparation of Form 1098-T.

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

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

6. TIN solicitation under IRC §6055

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

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

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

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

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

Guidance is needed to address open questions related to IRC §6050W, regarding the meaning and scope of certain terms in the statute and Treasury Regulations, particularly regarding third party networks. Key terms integral to the meaning of "third party payment network" must be defined in official guidance in order for reporting organizations to reasonably apply the rules. These terms include "central organization," "guarantee," and "substantial number of providers of goods or services." IRPAC's detailed recommendations related to the definition of these terms can be found in its March 28, 2011, comment letter in Appendix D of its 2011 Annual Report.

Further, guidance is needed to clarify uncertainty between the scope and application of the rules related to "aggregated payees" and "third party payment networks." This is needed, in part, due to an apparent overlap of the rules in these areas and because a "third party settlement organization" is not required to report transactions for a payee

whose aggregate transactions do not exceed $20,000 and 200 transactions, whereas the aggregated payee rules do not include a *de minimis* rule. Now that the IRS has received Forms 1099-K from payment settlement entities ("PSEs"), it should be in a better position to understand the challenges facing PSEs and putative PSEs and should issue such additional guidance.

8. Electronic furnishing of tax information forms to payees.
Guidance would be welcome that expands the authority of parties responsible for issuing information returns *(e.g.,* payers, withholding agents, business entities, etc.) to electronically furnish to recipients payee statements and like documents not permitted to be issued electronically under current guidance. This would include Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding; Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests; Schedule K-1 prepared and issued in connection with Form 1120S for S corporation shareholders; and Schedule K-1 prepared and issued in connection with Form 1041 for beneficiaries of certain trusts.

The ability to furnish electronically these additional forms to recipients would create greater procedural uniformity and consistency because the documents listed could be issued in a similar manner to Forms 1099 and W-2, and Schedules K-1 prepared and issued in connection with Form 1065 for partners in partnerships. In addition, foreign customers with bank accounts or who receive bank deposit interest through other types of accounts have expressed concern that not being able to receive a Form 1042-S electronically will expose them to kidnapping for ransom or other bodily injury.

Section 401 of the Job Creation and Worker Assistance Act of 2002 provides that "[a]ny person required to furnish a statement under any section of subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 for any taxable year ending after the date of the enactment of this Act, may electronically furnish such statement (without regard to any first class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under section 6051 of such Code or in such other manner as provided by the Secretary."

The IRS has exercised such authority to provide for electronic transmission of payee statements in Notice 2004-10 (regarding, in general, Forms 1099-R and 5498) and in Section 4.6 of IRS Publication 1179 (Rev. Proc. 2011-60) (regarding, in general, most Form 1098 and 1099 series). Similar to the regulations issued under IRC §6051 (Treas. Reg. §31.6051-1(j)(2)), affirmative consent of the payee is currently required before Form W-2 payee statements can be delivered electronically.

A change away from an affirmative consent and towards a negative consent, in order to expand the usage of electronic payee statements, would promote more efficient tax reporting administration and likely reduce incidents of identity theft. The response rate to any mail or electronic solicitation is, regrettably, generally ranging only from a few percentage points to the teens. Given the expense incurred to launch such solicitation efforts and the anticipated low response rates, many firms providing payee statements are hesitant to change from mailing paper statements to electronic delivery. As a result, year after year, there are complaints from customers about missing statements

and identify thefts resulting from the mailing of paper statements. Firms providing the payee statements spend significant resources to sort and mail the paper statements, and then have to allocate resources to help customers with missing statements and concerning identity thefts. This poses significant burdens both to the businesses providing such statements and the taxpayers receiving such statements.

The above cited legislation clearly grants the IRS broad flexibility in permitting electronic delivery of payee statements. The IRS should consider new regulations or administrative guidance to allow electronic delivery of payee statements to any person who has established online account access to receive account statements and other communications unless such person affirmatively elects to opt-out of electronic delivery of any or all payee statements (or opt-in to continue to receive paper statements). The IRS may provide for a transition period, such as a period of two years, during which the paper statements must still be provided with a notice informing the recipients of the transition to electronic delivery. This will give the recipients sufficient time and opportunity to opt-out from receiving statements electronically (or opt-in to continue receiving paper statements) should they choose to do so.

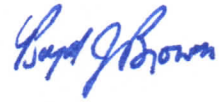
9. Revision of Form 8949 and Schedule D to include unique reporting requirements for contingent payment debt and other instruments.
Taxpayers are generally unaware of the fact that a contingent payment debt instrument is not eligible for capital gain/loss treatment, as explained in Treas. Reg. §1.1275-4(b)(8). The primary reason is that the Form 8949 and Form 1040 Schedule D do not have any provisions for reporting these securities separately, and in a different manner, from the disposition of other types of securities that are eligible for capital gain/loss treatment. Instruments known as currency shares are similarly treated and are also not addressed in the current versions of the applicable returns and schedules. Therefore, the IRS should revise these documents and their instructions to ensure accurate reporting by taxpayers of contingent payment debt instruments, currency shares or other instruments that are reported on Form 1099-B, but whose gains and losses are not considered capital.

10. Electronic filing currently not available for Form 2439.
Firms that produce Forms 1099-DIV are frequently required to also produce Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains. Unlike all the forms in the 1099 series, the Form 2439 cannot be filed electronically. Financial services firms must deliver boxes of paper Forms 2439 to the IRS annually and, therefore, the creation of electronic filing provisions for the Form 2439 would help the IRS, payers, and taxpayers.

11. Reporting of OID accruals for stripped tax credit bonds.
Brokers and other payers have found IRS Notice 2010-28 to be unworkable for reporting the correct amount for stripped tax credit bonds. At the time of the Notice, there were no stripped tax credits trading in the marketplace. That situation has now changed and IRPAC is pleased to see the IRS is seeking comments from the public regarding the effectiveness of the Notice. As part of that process, the IRS may wish to review IRPAC's analysis and recommendations found in its 2013 annual report. In particular, a model is required for handling situations in which the acquisition cost is not known by the broker and the documented approach of aggregating multiple credits stripped from a single instrument must be eliminated in favor of an approach that considers each stripped credit as a stand alone instrument.

IRPAC thanks the IRS for requesting our recommendations of items to include in the 2014-2015 Guidance Priority List. We look forward to continuing our work with you in creating a more efficient and sound tax administration system.

Respectfully Submitted,



2014 IRPAC Chair