

# INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

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Chairperson

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Kathy Ploch  
Ron Whitney

May 15, 2009

Clarissa C. Potter  
Acting Chief Counsel  
Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2009-43)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

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Re: 2009-2010 Guidance Priority List

Dear Ms. Potter:

The Information Reporting Program Advisory Committee (IRPAC)<sup>1</sup> appreciates the opportunity to recommend items that should be included on the 2009-2010 Guidance Priority List. We request that the Internal Revenue Service (IRS) update its guidance on B-Notices. The matter described herein is relevant to many taxpayers, and updated guidance from the IRS is necessary to promote fair tax administration.

IRS Publication 1281 provides that an individual receiving a second B-Notice must go to their local Social Security Administration (SSA) office to have his or her Social Security Number (SSN) validated on Form SSA-7028, Notice to Third Party of Social Security Number Assignment, in order to stop or prevent backup withholding. However, the SSA has obsoleted Form SSA-7028 without coordinating with IRS to identify a viable substitute. **As a result, individual taxpayers who receive a second B Notice have no remedy available to them to stop backup withholding. This results in excessive backup withholding and financial hardship for payees that are attempting in good faith to comply with the B Notice rules promulgated by the IRS, and causes unnecessary friction between the payers, which must continue withholding, and the payees.**

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<sup>1</sup> 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.

**Background:**

A “B Notice” is a notification from the IRS (pursuant to Internal Revenue Code Section 3406(a)(1)(B)) to a payer (e.g. financial institution, broker, accounts payable department) that the name / TIN combination submitted on an information return does not match the records of the Social Security Administration or the IRS. Upon receipt of a B Notice from the IRS, a payer is required to (1) notify the payee that the name / TIN combination for the payee on the payer’s records is incorrect, (2) provide instructions to the payee to resolve the error, and (3) commence backup withholding if the error is not resolved within a prescribed time period.

When a payer receives two B Notices within a three year period (2<sup>nd</sup> B Notice) with respect to the same payee, the payer is required to perform the following functions:

- Send the 2<sup>nd</sup> B Notice to the payee within 15 business days after receiving notification from IRS;
- Inform the payee to have his or her social security number validated on Form SSA-7028, and have the SSA send the completed Form SSA-7028 to the payer; and
- Commence backup withholding within 30 business days after the date of the 2<sup>nd</sup> B Notice if the payer does not receive Form SSA-7028 from the SSA.

When SSA is unable to validate a payee’s social security number on Form SSA-7028, the payee remains subjected to backup withholding; the payer is unable to discontinue backup withholding without receipt of SSA-7028.

This issue was raised in the 2008 IRPAC Report. IRPAC recommended that IRS commence dialogue with SSA as soon as possible to make certain that SSA is prepared to process requests to issue Form SSA-7028, and to study whether alternative documentation issued by SSA would be suitable for resolving 2<sup>nd</sup> B Notices.

2009 IRPAC has followed up with IRS and SSA and learned:

- Form SSA-7028 was discontinued because SSA Legal determined that it was not proper third party notification.
- SSA is evaluating creation of a usable version of Form SSA-7028 or a viable substitute.
- The current alternate form being developed by SSA focuses on verification of a SSN to employers when a new TIN is assigned to someone who previously held a J visa. An appropriate SSN verification form that will meet payers’ needs under IRC Section 3406 has not been developed.

- To meet immediate payer needs, SSA is working on restoring the availability of Form SSA-7028 through the end of 2009 while a suitable alternative is developed. However, if SSA is unable to develop an alternative in 2009, this will result in the form being pulled from service in the middle of the next round of B Notices to be sent out by the IRS.

**Recommendation:**

- 1) SSA should restore issuance of Form SSA-7028 as soon as possible and should continue to issue Form SSA-7028 until a viable alternative is developed.
- 2) IRS should identify other official SSA documents that could be used in lieu of the SSA-7028 and permit payors to stop backup withholding upon receipt of one of these alternatives.
- 3) SSA should train their staff on the IRS B Notice requirements so that taxpayers are appropriately assisted by the agency to resolve their backup withholding problem. In the past, payees have encountered SSA branch personnel who were unaware of the use of Form SSA-7028 and thus refused to assist taxpayers in resolving their withholding concerns.
- 4) IRPAC is available to work with SSA and IRS on the development of a new SSN verification form and procedures to assure they meet payers' needs under IRC Section 3406.

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Thank you for your attention to this matter. We look forward to working with the IRS in the coming months to resolve this issue. If you have any questions, please contact the undersigned.

Very truly yours,



Jon Lakritz  
2009 IRPAC Chair