Internal Revenue Service Advisory Council 2009 Public Report
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ADVISORY COUNCIL

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GENERAL REPORT

OF THE

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

The Internal Revenue Service Advisory Council (IRSAC) is authorized under the Federal Advisory Committee Act (FACA). The fundamental purpose of IRSAC is to provide an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. IRSAC offers suggestions regarding improvements to IRS operations, policies, programs and procedures. Conversely, IRSAC offers an opportunity for IRS executives to bring issues to a diverse group of tax professionals and to solicit input in seeking to resolve critical issues in tax administration.

IRSAC is currently organized into four subgroups. Three of these subgroups correspond to three of the IRS operating divisions. They are the Wage and Investment Subgroup (W&I); the Small Business/Self-Employed Subgroup (SBSE); and the Large and Mid-Size Subgroup (LMSB). The fourth subgroup, the Office of Professional Responsibility Subgroup (OPR), is new to IRSAC this year. OPR was organized under the Information Reporting Program Advisory Committee (IRPAC) but given the mission of the OPR Subgroup, it was more appropriately placed with IRSAC. In 2007 and 2008, IRSAC had a fourth subgroup, the Tax Gap Analysis Subgroup (Tax Gap), but that subgroup is no longer organized under IRSAC.

The current membership of IRSAC offers a broad spectrum of backgrounds and expertise. The 31 members bring many different perspectives and viewpoints but all are committed to bringing meaningful input and feedback to the Service. The members recognize the work and dedication of IRS support staff from the operating divisions, the

Office of Professional Responsibility and the Office of National Public Liaison (NPL) whose personnel participated in the IRSAC Subgroup meetings this year. Their assistance has been of the highest order.

During this past year, the IRSAC Subgroups discussed many issues. The economic downturn in the United States and in the global community continues to be a significant factor in some of the issues addressed by IRSAC, and this downturn is explicitly noted in some of the Subgroup reports. The Recovery Rebate Credit claimed on 2008 individual tax returns appeared to be the most significant challenge for the Service during this past filing season. This credit was of course coordinated with the stimulus check payments issued during 2008. IRSAC commends the Service for its on-line tool, "*How Much Was My 2008 Stimulus Payment?*" This tool worked well and was of great help to both taxpayers and tax practitioners in preparing accurate 2008 individual 1040 returns.

IRSAC applauds the Tax Return Preparer Review initiated by Commissioner Douglas H. Shulman. There was great opportunity for significant input through three public forums, numerous meetings with various constituent groups and the Notice 2009-60 request for written comments. The general public has long had the mistaken perception that the preparation of tax returns is a licensed and/or regulated profession. Too many taxpayers with deleterious outcomes have learned, after-the-fact, that this is generally not true. The members of IRSAC eagerly await the Commissioner's recommendations to the Secretary of the Treasury at the end of 2009 regarding this Tax Preparer Review.

One of the recommendations in the 2008 IRSAC public report was " The IRS should develop a system to identify all paid preparers through the use of a unique identification number." IRSAC continues to support this recommendation with the understanding that this recommendation is to be considered as only one component in any comprehensive set of recommendations that includes the regulation of tax return preparers. The full Council did not discuss the regulation of tax return preparers as an issue during its sessions this year. However, the Council did have a dialogue with the Commissioner regarding the Tax Return Preparer Review at our July meeting, and the OPR subgroup has included a report that offers comments relevant to this topic.

The following issue relating to the contribution of historic preservation easements was first raised by the W&I Subgroup. Because such a contribution is normally taken as a Schedule A deduction, the issue was developed by the same Subgroup. However, it became apparent that the resolution of the concerns that arose from this issue cuts across operating division lines in the IRS. It would not be feasible for the W&I operating division to be solely responsible to address and give consideration to all the comments and recommendations contained in the report written on this issue. Thus, it is being presented as a full IRSAC issue.

Conclusion

The members of IRSAC appreciate the opportunity afforded us to help serve the Internal Revenue Service and ultimately, and most importantly, the taxpayer. It has been an honor to serve in our capacity as Council members. We hope that our input and feedback which come from outside the confines of 1111 Constitution Avenue have contributed significantly to helping with tax administration issues and problems. We have enjoyed the candid conversations with IRS personnel, and we anticipate that this ongoing partnership between IRS and the Council members will continue to be beneficial to the IRS, the tax professional community and the taxpayer.

ISSUE: IRS CHALLENGES TO DEDUCTIONS FOR HISTORIC PRESERVATION EASEMENT DONATIONS

Executive Summary

After the release of Notice 2004-41, the IRS implemented a wide-ranging initiative to audit charitable deductions claimed by taxpayers who made donations of historic preservation easements on real property they own. There is a belief that the current program, in which the IRS takes a very strict view regarding the value of these donations, is having the effect of diluting the intent of Section 170(h) of the Internal Revenue Code, which provides for a tax incentive by means of a charitable deduction for the donation of an historic easement. The current IRS audit effort strains the agency's resources and may fail to distinguish between a legitimate deduction authorized by statute and an abusive tax shelter. Among the changes IRSAC recommends are a safe-harbor audit policy and subject to the requirements of FACA, creation of an expert easement advisory board.

Background

An historic preservation easement[1] is a voluntary legal agreement made between a real property owner (donor) and a qualified easement holding organization (donee) to

[1] The term "preservation easement" is used here to refer to a conservation easement that protects an historic building or structure, sometimes known as a "facade easement," since the easement is made with respect to a certified historic structure. This Issue does not discuss another type of conservation easement, commonly known as an "open-space" easement.

protect an historic property by restricting future changes to or development of the property in perpetuity.

In 1976, Congress provided a financial incentive to easement donation in the form of a charitable deduction.[2] Code Section 170(h) contains the authority for treating an historic preservation easement donation as a "qualified conservation contribution." A qualified conservation contribution gives rise to a charitable deduction equal to the fair market value of the contribution, as determined by a "qualified appraisal" (a term defined by regulation). The Pension Protection Act of 2006 contained language that adjusted several features of the incentive contained in Section 170(h) including tightening the standards for the "qualified appraisal" that supports the deduction, but otherwise left the deduction intact.

Determining the fair market value of a preservation easement has challenged appraisers and the IRS alike, since preservation easements are generally not bought and sold in a market that values them directly. The tax regulations therefore endorse the indirect, "before and after" valuation method, which calls for determining the fair market value of the underlying property before and after an easement encumbrance, and attributing the difference to the easement.

The difficulty of easement valuation resulted in a series of examinations and subsequent litigation. Following a series of Tax Court cases which sustained taxpayers' contentions that easements diminished the value of their properties, the IRS published a Topical Tax Brief which contained the statement that IRS engineers had concluded "the proper valuation" of a preservation easement was approximately 10-15 percent of the

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[2] Some states have affirmed this characterization. For example, Virginia's website states: "By donating historic preservation easements on their properties owners are eligible for several financial incentives,"...[including a federal tax deduction.] www.dhr.virginia.gov/homepage_general/finance.htm.

property. This document and the court cases had the collective effect of establishing an informal safe harbor for easement valuation of 10-15 percent, upon which the easement donating public apparently relied. (In 2007, an IRS memorandum stated that no safe harbor had been intended. See footnote 4 below.)

In 2004, the IRS released Notice 2004-41 and announced its awareness that taxpayers "may be improperly claiming" Section 170(h) deductions. Preservation easements were subsequently placed on the IRS's "Dirty Dozen" list of tax scams in 2005 and 2006 and on the 2005 list of tax shelters.[3] The Commissioner of the Tax-Exempt/Government Entities Division followed by announcing a large scale initiative: over 1/3 of all easement donors—700 out of his estimated total of 2000—would be subject to pre-audit review.

Practitioners observed that the audit outcome almost always resulted in a zero deduction. The grounds asserted to support this position were several: an easement has zero value where local preservation laws are already in place; use of the 10-15 percent informal safe harbor for easement valuation is not appropriate;[4] the appraisal failed the technical substantiation requirements and therefore the appraisal was not a "qualified appraisal" under the regulations.

At the same time, IRS also announced its intention to target some of the donee organizations and some of their officers in New York City, Washington, DC, and possibly other cities. IRSAC is aware that the IRS investigations seek to determine

[3] The 2005 "dirty dozen" notice states: "In many cases, local historic preservation laws already prohibit alteration of the home's facade, making the contributed easement superfluous. Even if the facade could be altered, the deduction claimed for the easement contribution may far exceed the easement's impact on the value of the property." IR-2005-19.
[4] Chief Counsel Memorandum 200738013 (Sept. 21, 2007) denied there was ever a "safe harbor," informal or otherwise.

whether the donee is a shelter "promoter," and have included some individuals as well. Extensive document demands are used in such investigations. The result is that some donee organizations have discontinued accepting donations, for fear of promoter penalties; at the same time, donors are understandably reluctant to donate to an organization that is under active IRS investigation.

In 2007, some donee organizations apparently met with the IRS to express concern about the chilling effect of the "zero value" audits on the program. The TE/GE Division Commissioner responded in part:

> The Internal Revenue Service does not believe that all conservation easements, including facade easements, are intrinsically of little or no value. …, Congress, in enacting and amending section 170(h), has clearly endorsed a program to encourage the preservation of certified historic structures. As we administer section 170(h), our goal is to carry out Congressional intent faithfully; we wish to do nothing to discourage or deter the donation of legitimate facade easements.[5]

This response, together with the removal of easement donations from the "Dirty Dozen" list in 2007, was temporary, as audit examinations, now including the 2006 tax year, thereafter accelerated and continued to usually disallow easement deductions in full. In the majority of preservation easement audits, the IRS has used a professional appraiser who is an IRS employee rather than relying on an independent outside contractor.

The "Dirty Dozen" listing, the revised IRS donation forms for non-cash contributions and Form 990 changes (which newly flag easement donations), the increased examinations of donee organizations and some officers, the high level of audit coverage without settlements, and Appeals Officers sustaining the audit results, have added to the perception that the IRS is overreaching on this issue.

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[5] Correspondence from Steven T. Miller to the National Trust for Historic Preservation (March 13, 2008), reproduced in amicus brief in *Bruzewicz v. United States,* (USDC E.D. Ill., Case No. 07 C 4074)

IRSAC believes the current situation requires both sides to expend scarce resources and often fails to distinguish between a true abusive tax shelter and a deduction that is authorized as part of a statutory tax incentive reflecting the stated policy of Congress to incentivize easement donations.

The litigation from the pending challenges is beginning to result in court decisions. In the 2008 *Whitehouse*[6] case, the Tax Court ruled that the donation of an easement in the historic district of New Orleans did in fact diminish the value of the underlying realty despite strong local preservation laws, in that case by about 15 percent.[7] In September, 2009, the Tax Court ruling in *Simmons*[8] upheld the validity of an easement donation on two Washington, DC properties. The IRS argued the donation lacked a "qualified appraisal," and that regardless, the value of the donation was zero. The Court rejected the "qualified appraisal" argument and as to valuation, stated in part, "We agree with petitioner that the easements granted do affect the fair market value of the subject properties," in this case a decrease of 5 percent of the value of the property. Several other cases are pending decision.

There is concern that any donor will hesitate to make a donation, regardless of the quality of the appraisal or the legitimacy of the donation, if the donor knows that he or she is thereby "buying an audit." This struggle of audit/examination/litigation likewise takes place regarding an issue – valuation – that taxpayers, the IRS and the courts have historically recognized as inherently subjective and therefore amenable to a more

[6] *Whitehouse Hotel LP v. Commissioner*, 131 T.C. No. 10 (October 30, 2008).
[7] *Whitehouse* determined that the "before" value of the property, a New Orleans Ritz Carlton hotel, was $12.1 million and the "after" value $10.3 million, representing an easement value equal to 14.8% of the property. The IRS appraiser testified that the easement was valueless.
[8] *Dorothy Jean Simmons v. Commissioner*, TC Memo 2009-208 (2009).

predictable settlement modality such as a safe harbor. The IRS is no stranger to the use of safe harbors in circumstances that would otherwise consume resources to the exhaustion of both sides. In view of these conflicts, IRSAC makes the following recommendations.

Recommendations

1. Permit a taxpayer to revise the taxpayer's appraisal if an IRS audit determines there is a technical deficiency in the "qualified appraisal" requirements of IRS regulations. For this purpose, adopt the "substantial compliance" standard of *Bond v. Commissioner,* 100 T.C. 32 (1993).
2. Publish an announcement reaffirming IRS's recognition that historic preservation easements may have a non-zero market value in areas which have local preservation laws, with such value to be determined by a "qualified appraisal" per IRS regulation.
3. Adopt a safe-harbor audit policy that "qualified appraisals" (original or revised) will be accepted (absent clear and convincing evidence to the contrary) when the appraised value of the donated easement is equal to or less than 10 percent of the value of the underlying property.
4. Contract with outside appraisers (rather than using appraisers who are IRS employees) as the general rule, rather than the exception, in preservation easement audits where IRS believes an easement valuation is incorrect and therefore conducts its own appraisal.

5. Process taxpayer requests for audit reconsideration (on audits already concluded) using established IRS audit reconsideration procedures, where such requests are based on recommendations 1-3 above.
6. Consistent with the requirements of FACA, initiate an appropriate process for creating an expert easement advisory board to review appraisals and make non-binding findings where the taxpayer and revenue agent do not agree on the value of a donated easement.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

WAGE AND INVESTMENT SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Wage & Investment Subgroup (hereafter "Subgroup") is comprised of a diverse group of tax professionals, including three certified public accountants, two enrolled agents, an attorney, and a national tax director of a large retired-person organization. This group brings a broad range of experience and perspective from both tax preparers' and taxpayers' views, and includes unique experience in the issues faced by many W&I taxpayers. We have been honored to serve on the IRS Advisory Council and appreciate the opportunity to submit this report.

The Subgroup would like to thank W&I Commissioner Richard Byrd for his recognition of the value of the Subgroup as an integral part of his leadership team. Commissioner Byrd and the W&I senior leadership team met extensively with the Subgroup in August 2009. The Subgroup has had the privilege of working with the professionals within the W&I Division of the IRS and found them to be extremely helpful in providing the information, resources, and IRS personnel necessary to develop our report. The Subgroup has researched and is reporting on the following four issues.

1. **Tax Professionals Visiting Taxpayer Assistance Centers for Assistance** -Tax Professionals routinely visit IRS Taxpayer Assistance Centers (TAC) for services that can be provided more efficiently via Internet, telephone, or mail (e.g. tax return transcripts, tax forms & publications, delivery of payments & returns). This diverts TAC resources from serving individual taxpayers seeking face-to-face assistance who may not have access to other options. Overall capacity to service taxpayers is dependent on available resources (on-site staffing). As a result, wait times for service fluctuate and are often difficult to control.

2. **<u>Publication 590, Individual Retirement Arrangements (IRAs)</u>** - Publication 590 discusses personal savings plans that provide tax advantages for setting aside money for retirement. The publication is over 100 pages and covers a wide range of information regarding IRAs (traditional, Roth, and SIMPLE) and outlines penalties and additional taxes that may apply when the rules are not followed. The IRS has made every effort to include all necessary information in an easy-to-use format. However, in-depth research into the Publication's audience, including what IRA information taxpayers want and when they want it, has not been captured.
3. **<u>Use of the Interactive Tax Law Tool on IRS.gov by Taxpayers</u>** - In FY 2008, IRS received 4.6M telephone calls from taxpayers who were seeking tax law information for completing their federal tax return. Studies show that one of the most cost-effective channels to deliver information is over the Internet. Customer Online Decision Support Release 2—which has been renamed Interactive Tax Assistant (ITA)—will allow taxpayers to use an interactive on-line question and answer tool to resolve their individual tax law inquiry. We want to ensure that the ITA interface on IRS.gov is user friendly so taxpayers are willing to use the tool.
4. **<u>Automated Collection Systems (ACS) Telephone Navigation</u>** - The primary method customers use to contact ACS is through their toll-free telephone number. W&I ACS handles over two million calls annually. ACS conducts customer satisfaction surveys on a random sampling of these contacts at their conclusion. The results of these surveys are used to measure the overall ACS customer satisfaction. While the overall ACS customer satisfaction is high, two questions

regarding telephone navigation consistently receive high dissatisfaction scores. These questions are related to the ease of understanding the automated self-service menus and instructions, as well as the time it takes to get through to the IRS.

ISSUE ONE: TAX PROFESSIONALS VISITNG TAXPAYER ASSISTANCE CENTERS FOR ASSISTANCE

Executive Summary

IRSAC was asked to assist the IRS in dealing with tax professionals who routinely visit IRS Taxpayer Assistance Centers (TACs) for services that can be provided more efficiently via the Internet, telephone, or mail (e.g. tax return transcripts, tax forms & publications, delivery of payments & filing of returns).

Background

The IRS believes that professionals routinely visit IRS Taxpayer Assistance Centers (TAC) for services that can be provided more efficiently via the Internet, telephone, or mail (e.g. tax return transcripts, tax forms & publications, delivery of payments & filing of returns). The use of the TACs by professionals diverts TAC resources from serving individual taxpayers seeking face-to-face assistance who may not have access to other options. Overall capacity to service taxpayers is dependent on available resources (on-site staffing). As a result, wait times for service fluctuate and are often difficult to control.

TACs see an increase in customer traffic from taxpayers during the filing season, with a corresponding increase in practitioner visits during the April 15th and October 15th filing due dates. Tax professionals use the TACs during this time to submit multiple returns, extensions and payments. This diverts employee resources from being able to assist individuals needing return preparation or other services.

The IRS does not track practitioner visits; however, they locally make arrangements for filing bulk returns on or around the dates mentioned in TACs that traditionally experience increased volumes.

A Customer Satisfaction Survey is distributed at the TACs through use of a survey card; however, the card does not identify the customer as a tax professional and does not ask why they are using the TACs instead of other available services.

Our informal contacts with one TAC and with several practitioner groups indicate that the use of TACs by tax professionals might no longer be a major concern due to increased use of the e-services and the Practitioner Priority Service (sometimes referred to as the Practitioner Hotline). The Subgroup recently visited a TAC to observe its processes. Our discussion with the manager confirmed that tax professionals using TACs might not be an issue for all TACs. The downtown TAC that the Subgroup visited does not see as many professionals as does a nearby suburban location with better parking.

The usage of the Practitioner Priority Service by professionals is increasing. The best measure of usage is summarized by the number of calls answered. From fiscal year 2006 to 2008 calls answered increased by 28%, from 992,724 to 1,267,191. Through May 16, 2009, calls totaled 799,736. Satisfaction with the Practitioner Priority Service has been very high based on surveys completed by users.

The IRS Web site, www.irs.gov, lists “Contact My Local Office” as an IRS resource for both individuals and tax professionals. The information provided is the same for both types of users.

The IRS’ Nationwide Tax Forums are attended by thousands of practitioners annually. Past presentations have covered tools available to resolve issues, but have not strongly discouraged using the TACs. A 2008 presentation entitled "IRS Services: File, Pay, and More" highlighted services available at TACs such as transcripts, payments, account/adjustments, and W-7/ITIN. The presentation suggested using e-services first, but did not discourage use of the TACs. We reviewed the types of issues handled at the Case Resolution Rooms at the Nationwide Tax Forums. The majority of the cases involved complicated issues more likely to require in-person contact. A very small percentage consisted of routine requests such as transcript requests and account inquiries. This indicates that the requests for in-person assistance by tax professionals were appropriate.

Recommendations

1. Determine if practitioner use of the TACs is still an ongoing problem based on actual visits by inserting two questions into the survey card: A) Is the customer a tax professional? B) If a professional, what is the purpose of the visit to the TAC?
2. Distinguish the "Contact My Local Office" page in the Tax Professionals Section from the similar page in the Individual Section by emphasizing the advantages of using services available through the Web site and through the Practitioner Priority Line and outline the services available.
3. Conduct a presentation at the IRS Nationwide Tax Forums on a topic such as "We'll miss you, but we really don't need to see you." The presentation should cover specific examples of the issues that practitioners bring to the TACs and provide better ways to resolve them.
4. Continue to promote e-services and the Practitioner Priority Line in e-News for Tax Professionals and in meetings with practitioner groups.

5. Provide Publication 4389, “e-Services Brochure,” to tax professionals visiting TACs and develop a tax professional brochure with all of the available services that can be obtained through IRS.gov.
6. Display notices at TACs that specifically provide tax professionals with alternative resources available on IRS.gov.
7. Schedule problem-solving days (Solution Saturday is currently in place. One is scheduled for November 7, 2009, at five different locations). Consider expanding Solution Saturday to every TAC and on additional days throughout the year.

ISSUE TWO: PUBLICATION 590, "INDIVIDUAL RETIREMENT ARRANGEMENTS (IRAs)"

Executive Summary

IRSAC was asked to assist the IRS in reviewing Publication 590, "Individual Retirement Arrangements (IRAs)" for clarity and ease of use. An August 2008 GAO report found the publication complex with respect to the requirements for distribution rules and explanations for the calculations used. Additionally, the W&I division wants to determine who requests the publication. W&I is concerned the publication is too long and should be shortened.

Background

Publication 590 discusses personal savings plans that provide tax advantages for setting aside money for retirement. The publication is over 100 pages and covers a wide range of information regarding IRAs (Traditional, Roth, and SIMPLE), Disaster-Related Relief and Retirement Savings Contributions Credits (Saver's Credit). The publication explains the rules for setting up an IRA, Roth or SIMPLE plan, contributing to it, transferring money or property to and from it, handling an inherited IRA, receiving distributions and taking a credit for contributions to such plans. It also outlines penalties and additional taxes that may apply when the rules are not followed.

The IRS has made every effort to include all necessary information in an easy to-read format. However, there is too much ambiguity in the current text. Some minor information, such as "When can a traditional IRA be set up?" does not need to be a separate section, and could be incorporated into the discussion of "Where you can open an account?" or "When you can contribute?" Other information is unnecessary or confusing. For example, page 4 of the 2008 Publication 590 tells the taxpayer not to report IRA interest as tax-exempt interest. This begs the question – where do you report it? The text does not say that the taxpayer does not report it at all, of course. This could be incorporated into a discussion of deferral.

The tax rules on this topic are complex, which makes the publication difficult to read, even as you try to simplify this publication. Many third parties have developed helpful tools that are referenced by many professionals including financial planners, pension companies, tax professionals and accountants. We have provided multiple well-done examples to the IRS team working on Publication 590. The 2008 Publication 590 says property cannot be contributed, but continually references property as a contribution throughout the 2008 publication (pages 12, 25, 26, 27, 49, 53, etc.). In-depth research into the publication's audience, including what IRA information taxpayers want and when they want it, has not yet been captured.

Recommendations

1. Incorporate more tables, text charts and flow charts that show comparisons between Traditional, Roth and other IRA plans.
2. Create a flow chart which could be particularly helpful in the area, "When you Must Withdraw Assets" for owners, spouses, designation beneficiary and beneficiaries who are not individuals.
3. Develop a web-based "Required Minimum Distribution" calculator to eliminate the complication of multiple reference charts each with important requirements, as well as the potential of significant confusion of 70½-year-old taxpayers with multiple IRAs.

4. Solicit feedback from professional groups who work with the publication. We believe the publication is more widely used by professionals seeking IRS information, especially those in the pension, benefits and investment fields. A list of some of these professional organizations was provided to the appropriate IRS personnel. Additionally, many of these organizations train and test new professionals in these fields, and Publication 590 is used in this learning environment. Feedback from members in these groups and, especially, students who use the publication to study IRA areas could help identify especially tough or unclear topics for the IRS to review for clarity in Publication 590.
5. Develop a feedback mechanism via the Internet and IRS.gov from Publication 590 users, especially those with lingering questions. This could help the IRS identify ambiguous areas of Publication 590 needing review and clarification.
6. Delete the “What’s New” sections in each subsection (Traditional, Roth, SIMPLE, etc.). Eliminate duplication of text, especially since it is noted in the appropriate text within the subsections. Consider including “What’s New” before the text identifying new content to highlight that the item is new within each section.
7. Develop a repeated grouping of “who, what, when and how” within the subsections.
8. Create a frequent errors section, to address common errors often reported on tax returns and/or provide an IRA checklist for taxpayers to review before submitting returns.

9. Introduce more plain language, e.g. instead of “set up” an IRA, which sounds hard and vague, use “open an IRA account” instead. Clarify the definition of “Active Participant.”
10. Include the very special interest sections (veterans, disaster areas, volunteer firefighters, etc.) in an appendix in the back of Publication 590, to keep the text focused on the majority of situations.
11. Provide better clarification on whether property can or cannot be contributed.
12. Clarify the text on recharacterizations on page 30 of the 2008 Publication 590, which is especially confusing.

ISSUE THREE: USE OF THE INTERACTIVE TAX LAW TOOL ON IRS.GOV BY TAXPAYERS

Executive Summary

IRSAC was asked to make recommendations on how the IRS can design the Interactive Tax Law Assistant/Customer Online Decision Support Release 2, now called Interactive Tax Assistant (hereafter "ITA"), interface to be more user-friendly. Additionally, IRS asked IRSAC to assist the IRS by studying and researching other interactive online tools and identifying ways IRS can ensure the tools it is creating will be easy for taxpayers to use.

Background

Interactive Tax Law Assistant is an interactive tool used by IRS assistors on the toll-free Customer Assistance Service telephone lines and the assistors at the Tax Assistance Centers to provide taxpayers with answers to some tax questions. This tool is currently available only to IRS employees. The IRS is working with outside contractors to develop ITA for use by taxpayers and representatives. The goal is a publicly-available, interactive program of tax law questions and answers and decision trees in plain English to direct the public to the web as an alternative to calling the IRS. The desired result is better-educated taxpayers leading to increased compliance. It may be difficult to measure the positive effect of this tool.

There are currently 114 Tax Law Categories (TLCs) available to IRS telephone assistors. IRSAC provided a list of recommended TLCs to be included in the initial public rollout of ITA based on IRSAC member experience. Members of the W&I sub-group met with members of the project team at each of its 2009 meetings.

The initial process to launch TLCs on ITA involves:

1. selecting the first group of TLCs to convert;
2. converting the TLCs to plain language;
3. reviewing the program by IRS subject matter experts;
4. reviewing by IRS for policy, procedures and guidance; and
5. testing by a small group of practitioners.

ITA is similar to an IRS online tool called Tax Trails, which is currently available to the public on IRS.gov. ITA is different from Tax Trails because of the interactive nature of questioning to assist a taxpayer with tax law questions. There are currently 37 questions/topics (links) on Tax Trails. Some of the Tax Trail links pose one or more questions that must be answered yes or no. Many of the Tax Trail links provide a list of suggested IRS publications, form instructions, "Tax Topics," or other parts of IRS.gov, not to interactive questions and answers. When a TLC is available on ITA, the Tax Trail link will be removed.

Recommendations

1. Change the language on the ITA home page to "Get Answers to Some of the Most Frequently Asked Tax Law Questions."
2. Promote ITA as a valuable taxpayer tool.
3. Mark all answers with an "accurate as of (date)" so that the user knows that the information is accurate and current.
4. Link all answers to the appropriate section of the most specific IRS publication where the taxpayer can obtain more information.

5. Replace all words not in common usage, such as “abode” with the more common word, “home.”
6. Include “do not know” or “unsure” as an additional choice in addition to “yes” or “no” where appropriate, and provide a link to explanatory information so that the user can answer “yes” or “no.”
7. Provide the taxpayer with alternatives to finding the answer where ITA cannot determine the correct answer.
8. Provide a “back” or previous link on every screen allowing the user to go back to the previous screen.
9. Provide the ability to print the questions asked and the answers given that were used to determine the final outcome, the printout date and the ability to save as a PDF document.
10. Introduce the ITA tool with a statement such as, “These questions are the same questions you would be asked if you called an IRS telephone assistor.”
11. Consider converting the interactive Tax Trails TLCs to the ITA format early in the process, as these topics are already in plain English and have been vetted by IRS subject matter experts.
12. Review the TLCs currently in the development stage to use the language in the existing Tax Trail TLC for appropriate language.
13. Make dedicated computer terminals with printers connected to ITA available at Taxpayer Assistance Centers, libraries and, possibly, kiosks in shopping malls.
14. List Publication 17 as a referral source wherever referral sources are listed.
15. List information (points) as bullets rather than in a paragraph layout.

16. Move the dropdown menu with the answer choices to the left side of each screen to line up with the “Continue” – “Review” – “Start Over” links.
17. Add a “Start New Topic” link at the bottom of each screen.
18. BOLD the answers on the “Review Answers” page and the printout.
19. Move the “Print” option to just below the last answer.
20. Move the Survey questions to just below the “Print” option.
21. Provide links to all words requiring definitions.
22. Provide a statement above the print link that if a taxpayer uses ITA and retains a copy of the questions and answers, relief from penalties would be available if the answers accurately reflect the facts of the taxpayer’s situation.

ISSUE FOUR: AUTOMATED COLLECTION SYSTEMS (ACS) TELEPHONE NAVIGATION

Executive Summary

The W&I Division of the IRS has asked IRSAC to provide recommendations to improve the efficiency of the Automated Collection Systems (ACS) toll-free telephone service. Research shows overall high satisfaction, but pockets of dissatisfaction relating to ease of understanding, complexity of the system, and wait time persist. IRSAC believes the recommendations below may help ameliorate these problems.

Background

The IRS toll-free numbers (1-800-829-1040 and ACS-specific numbers such as 1-800-829-3903, -0115, and others) are the primary entry points for customers to contact the collection function housed in the Automated Collection System (ACS). The ACS system handles over two million calls annually. Of these, 82% wind up being routed to a live agent and 14% result in hanging up before completion. Only 4% of the calls result in the caller's obtaining the requested information electronically and without agent assistance. The telephone script includes six options: payoff amount, obtain a credit or payment received, obtain balance due, obtain a debit or amount charged, PIN maintenance, and obtain a transcript. Of these, 64% of calls request the balance due, 16% request a debit review, 12% payoff, 4% transcript, 3% information on credits, and 1% PIN maintenance.

In the Balance Due module, 25% of calls fail because of account restrictions (e.g., manual computations may be necessary) and 10% fail because customers have delinquent returns. In this module, 90% cannot be or are not completed and are, therefore, routed to a live agent.

ACS customer satisfaction surveys (based on random sampling of these contacts at their conclusion), while showing overall high customer satisfaction, also reveal that customers consistently register high dissatisfaction responses on (1) the ease of understanding the automated self-service menus, (2) complexity of instructions, and (3) the wait time to get through to the IRS.

The W&I Division of IRS expressed the desire to improve service by providing more user-friendly modules to improve its success rate on call completions. To assist W&I, IRSAC makes the following recommendations.

Recommendations

1. State the expected wait time at the start of the call, and then state the six available services (modules).
2. Redirect the caller to a dedicated telephone number (or "touch 1 to transfer") if the call pertains to Voice Balance inquiry (64% of calls). State the dedicated number when the switch is made. Use the same technique for other modules if research reveals this would result in faster service.
3. Replace the hold music with wait-time information callers will need to improve the efficiency of the call, such as: redirecting callers to IRS.gov, information on offers in compromise, phishing warnings, paying taxes with credit cards or EFTPS, and the basics of financial information for an installment agreement.
4. Provide callers with a confirmation number, so that they can speak with the same agent on the next call (if necessary) on the same topic. Save more of the caller's

information that is provided during the first call so the information can be used if the caller is transferred elsewhere within the IRS telephone response system.

5. For “automated installment agreement” calls, save the caller’s input for 5 business days, and provide a confirmation number or tie-in to the social security number for easy access and to ensure the caller who uses this automated installment agreement system achieves the same result as a call to a live agent. Provide this caller with a choice to “start new” or “resume last session.”
6. Implement the “My IRS Account” rollout on the web, which would address the 64% of calls that pertain to balances due.
7. Create a paper tri-fold stuffer (to be mailed with the first collection notice) that is function-specific and includes the ACS applications available to the caller. Each face of the tri-fold document could feature a different ACS option, emphasizing the electronic options. Most importantly, stress the user-friendliness of the Forms 433-A “Collection Information Statement for Wage Earners and Self-Employed Individuals,” 433-F “Collection Information Statement,” and 433-B “Collection Information Statement for Business” on IRS.gov, and the time that pre-completion of these forms could save the caller.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

LARGE AND MID-SIZE BUSINESS SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC LMSB Subgroup (hereafter "Subgroup") is comprised of a diverse group of six tax professionals. The members of the Subgroup include attorneys and certified public accountants from prominent law and accounting firms, as well as the corporate tax departments of major U.S. companies. The Subgroup brings a broad range of experience and knowledge to the IRSAC, and is uniquely qualified to provide a perspective on behalf of LMSB taxpayers. The members of the Subgroup have been honored to serve on IRSAC, and appreciate both the opportunity to submit this report and to assist LMSB in the accomplishment of its important work.

The Subgroup enjoys a close working relationship with LMSB leadership. This relationship has given the Subgroup the opportunity to consult with LMSB on a variety of matters. LMSB has been extremely helpful in providing the information and resources necessary to develop our report.

During this past year, IRSAC, as well as LMSB, were focused on the economic downturn and the impact on LMSB taxpayers. With a significant increase in net operating losses, taxpayers were more concerned than ever about the speedy recovery of tax refunds. IRSAC suggested that LMSB examine the Joint Committee review process to ensure refunds were being handled as expeditiously as possible. LMSB reviewed this issue independently, and assigned greater resources to it to make sure that the refund process flowed smoothly. This was an important reaction to a changed business environment, and the Subgroup congratulates LMSB on taking appropriate action under these extraordinary circumstances.

LMSB asked the Subgroup to focus its efforts this year on (a) training and (b) enterprise compliance risk management. With respect to training, LMSB recognizes that the enormous, and still growing, complexity of the Internal Revenue Code presents continuing challenges to taxpayers in terms of technical knowledge and tax compliance efforts. It also recognizes that taxpayers are now facing unique needs and demands as a result of the current economic downturn. LMSB desires to enhance its ability to assist taxpayers in meeting these pressures and, toward that end, has asked the Subgroup (1) to report on what it is seeing currently in the marketplace; and (2) to suggest "just-in-time" training initiatives and other measures that LMSB might undertake to assure that its tax professionals are conversant with new and emerging technical tax areas and issues, and are sensitive to their impact on specific types or industry groups of LMSB taxpayers.

With respect to enterprise compliance risk management, LMSB asked for the Subgroup's assistance in determining methods for assessing compliance risk and determining the most efficient ways of approaching such audits. The Subgroup recommends that LMSB should continue to attempt to identify and manage enterprise compliance risk through the use of Pre-Audit and Initial Audit Techniques identified by the Subgroup.

ISSUE ONE: TRAINING

Executive Summary

The business world changes rapidly, especially in these extraordinary economic times. In the eleven months since the Subgroup first began discussing this year's report, there have been many major developments in the economy, most having significant tax implications. Although the Subgroup can provide some insight with regard to certain issues it currently is "seeing in the marketplace," new issues will no doubt continue to emerge -- with the result that frequent and candid communication through the educational programs discussed below is essential in order for LMSB to focus effectively on "just-in-time" training. Increased transparency and communication through these programs will provide LMSB a "fast-track" path to better understanding the industries and business dynamics of LMSB taxpayers. For taxpayers, an understanding of LMSB's concerns -- both technical and administrative -- can inform business decisions and hopefully encourage a useful dialogue over the most cost effective and efficient way in which to respond to issues ranging from specific audit requests to design of tax compliance processes.

With the current economic downturn as a backdrop, the Subgroup has also identified certain issues that all LMSB taxpayers are dealing with, as well as selected issues of particular importance that taxpayers within the specific LMSB industry groups are now facing. These issues could serve as a starting point for the development and implementation of specific educational programs along the lines recommended by the Subgroup.

Background

1. Mutual Interest in Enhanced Collaboration

Most LMSB taxpayers take their tax responsibilities very seriously. Many operate internationally in complex businesses and in complex markets. The tax ramifications of such operations are, of course, equally complex and that presents continuing and diverse challenges for both taxpayers and LMSB.

Senior corporate executives have certain expectations for their tax departments and evaluate their performance accordingly. In particular, they want to ensure that: (1) the company is fully compliant with all applicable laws; (2) the correct tax liability is determined and paid; (3) the tax department and tax collection is operationally effective and efficient; (4) robust and appropriate internal tax-related policies and procedures are in place and adhered to; and (5) perhaps most importantly, that there are no "surprises." These expectations and objectives are probably not very different from those that LMSB executives have for the IRS employees who work in LMSB.

The Subgroup believes that this common ground between taxpayers and LMSB is key to informing and shaping effective responses to the challenges and opportunities ahead. In that regard, a two-sided commitment to transparency and communication is critical. More frequent and candid communication between taxpayers and LMSB will assist us in reaching our ultimate mutual objective to create a more efficient process for compliance with, and enforcement of, the revenue laws. Working together, we can ensure that our mutual requests of each other are reasonable, and that potential constraints and objections are fully aired and understood by both sides.

The end result of this process should be "win-win." LMSB will gain information that will help it to better administer and enforce the tax laws. For taxpayers, increased communication and transparency will help provide certainty and, in the process, hopefully curb instances in which taxpayers seek inappropriately to exploit uncertainties in the tax law. Tax uncertainty is a significant source of economic inefficiency that all taxpayers should have a strong interest in reducing to the greatest extent possible.

2. Commercial Awareness Through Training and Education

The Subgroup believes that the best way for LMSB to acquire greater commercial awareness and enhanced technical knowledge is through extensive educational and training programs (e.g., quarterly conference calls or meetings) actively participated in by knowledgeable taxpayers and representatives of industry groups.

Greater commercial awareness and technical knowledge gained from such programs should permit LMSB to more efficiently administer and enforce the tax laws with limited resources. Taxpayers, also with limited resources, could benefit from applying information gained through LMSB dialog in reaching planning decisions regarding particular types of transactions and/or preventing or expediting the resolution of tax controversies.

Taxpayers would expect LMSB to approach these educational program committed to the principle of reciprocity -- that is, an open dialog on all issues of concern, coupled with a genuine effort to respond with appropriate guidance as quickly as possible. Taxpayers will not always expect the response from LMSB to be in the form of published technical guidance. They will expect, however, to receive at least an objective reaction to the issues being discussed, including disclosure of any specific problems or concerns that LMSB may have. Thus, LMSB's approach to the suggested educational programs should be as nimble as possible, particularly encompassing matters that allow taxpayers to reduce uncertainty and clarify areas of agreement and disagreement.

The Subgroup envisions an educational program consisting of two categories.

a. **Category I Education** Category I educational programs would include training and development of LMSB on general matters. For example, taxpayers may provide education to LMSB regarding the business environment, economy, or capital markets in general. Such types of programs may not require comments or responses from LMSB.

It would be useful for taxpayers and LMSB to have an informed discussion on current issues in general, including, for example, the business and tax implications of the current economic climate. Tax issues spawned by difficult economic conditions often commonly affect taxpayers in many different types of businesses -- for example, issues related to the ownership change rules of section 382 or to independent contractor status. It is not unusual in a challenging economic environment to see a significant drop in employment that is offset, at least in part, by a spike in independent contractors.

Business changes more rapidly than the tax laws, and it is therefore important for LMSB to keep pace with innovations in the private sector. Engaging in these types of discussions early on should be beneficial to both LMSB and taxpayers.

b. **Category II Education** Category II educational programs would be more targeted and specific. For example, LMSB may wish to discuss certain transactions in which taxpayers in a particular industry are engaging. Interested taxpayers and industry groups could meet with appropriate LMSB representatives in order to explain such transactions.

The overwhelming majority of corporate transactions are entirely appropriate, and do not raise difficult tax policy issues. While many corporate taxpayers do engage in complex transactions, complexity, itself, should not be considered an automatic signpost of abuse. LMSB must have sound reasons for differentiating between those transactions that it views as appropriate and those that it views as problematic.

For example, as has been extensively reported in the press, there is a renewed focus on the role that “tax haven” jurisdictions play in tax avoidance and abusive tax shelter transactions. While some such issues may be clear-cut, LMSB should not automatically assume that all matters associated with what is considered a “tax haven” jurisdiction are, *per se*, abusive. Oftentimes, entities are organized in “tax haven” jurisdictions for various legal and structuring reasons and not for tax-motivated purposes. Nonetheless, the definition of “tax haven” seems to have been lost in rhetoric and always be tainted with a pejorative connotation. A recent report by the Government Accountability Office labels jurisdictions such as Ireland as “tax havens,” notwithstanding that many taxpayers have substantial operations and offices (*i.e.*, “bricks and mortar”), pay substantial tax, and have hundreds (and, in some cases, thousands) of employees in such jurisdictions.

The Subgroup recognizes that certain Category II topics may not be conducive to a broad, industry-group discussion. Nuances and differences in fact patterns among transactions could make it difficult to reach a consensus regarding a presentation. In those situations, it may be useful to have both an industry meeting for a high-level review of the topic, and also separate “one-off’ meetings with members of the industry.

Creating Category II educational programs necessarily will involve a significant commitment of resources, including the time of high-level personnel from both taxpayers and LMSB. In making such a commitment, taxpayers will understandably want to be sure that the relationship will be conducted in a spirit of reciprocity, impartiality and fundamental fairness. In that regard, transparency cannot be one-sided in favor of LMSB. Taxpayers would view the mutual sharing of information as a necessary product of the proposed educational programs, and would expect LMSB to commit to give its reactions and opinions at the meetings, or shortly thereafter with respect to any perceived problems or tax issues.

LMSB should also discuss with taxpayers any audit initiatives, enforcement plans or other issues which they are contemplating pursuing. This may enable taxpayers to explain the business and tax considerations of an issue to LMSB at the outset of an information-gathering effort. Such early knowledge could be very useful to LMSB and lead to its dropping the issue. In any case, taxpayers might be able to make constructive suggestions concerning possible approaches to examining the issue. This benefits taxpayers in that when the IRS lacks knowledge with respect to a particular subject, it makes it particularly difficult to respond to Information Document Requests that are issued with respect to that subject.

Taxpayers would also look for a priority commitment to issue pertinent guidance within a reasonable period of time following an educational program. This would present an excellent opportunity for further collaboration between the IRS and taxpayers, as taxpayers could be consulted for reactions to potential approaches to the guidance, including its scope and the form it might take (*e.g.*, Regulation, Revenue Ruling or Procedure).

The Subgroup envisions that, by definition, Category II issues will likely involve some degree of tax uncertainty. In order for an educational program to be worthwhile and successful, LMSB must act impartially, rather than as an advocate.

The IRS mission statement includes an objective to "apply the tax law with integrity and fairness to all." Many corporate taxpayers, through both direct experience and anecdotal information, believe that this is not always "real world" practice. The type of educational programs envisioned by the Subgroup may in some instances provide LMSB with a "roadmap" of taxpayers' analysis and conclusions with respect to an uncertain tax position. LMSB must commit not to use such information for the purpose of making adjustments, or forcing the waiver of privileges or the disclosure of workpapers.

3. Impact of Current Economic Conditions

The current economic crisis has had major impacts on LMSB taxpayers. Once profitable businesses have had dramatic increases in operating losses. Many have significantly downsized their workforces and curtailed "discretionary expenses" like travel, training, and fees for outside consultants and advisors.

These changes have also had direct effects on the U.S. Treasury, in terms of reduced tax revenues. When once profitable businesses swing to a loss, there is a direct impact on corporate income tax receipts. When businesses reduce headcount, there is a direct impact on payroll and personal income taxes. And, when companies reduce their own spending, there is a direct impact on tax revenues generated by outside suppliers and vendors.

The current economic crisis is also having a direct impact on LMSB. Changes like those described above affect the staffing levels in corporate tax departments and, thus, the resources available to commit to an IRS audit or to tax planning and compliance functions generally. These decreased resources will in turn tend to slow down the response times to Information Document Requests and other requests for information; and taxpayers will likely present an increased number of claims and affirmative adjustments on audit, leading to an associated uptick in Appeals activity and litigation.

Furthermore, in this global economy, many U.S. taxpayers have operations and/or affiliates in foreign countries and engage in transactions that have tax consequences in multiple jurisdictions. The global scope of the current economic problems creates added pressure upon affected tax authorities, including IRS, to make sure that their jurisdiction is collecting its "fair share" of tax liabilities arising from cross-border transactions and operations.

These issues present LMSB with the challenge of efficiently administering the tax system in a way that collects revenue, yet at the same time allows the nation's largest business taxpayers to weather the current adverse economic climate and promote economic growth. This challenge is substantial, but not insurmountable. It presents LMSB with unique opportunities to discuss with industry groups and taxpayers ways in which to increasingly tailor audits of individual companies for focus and effectiveness. Such discussions might address, for example -

- How to continue to improve the audit planning process;
- How to improve defining the roles of various individuals in the audit process, including the Case Manager and Chief Counsel personnel;
- How to continue to effectively use the Competent Authority processes and procedures (as requests for assistance will likely increase);
- How to better use voluntary disclosure initiatives in key compliance areas;

and

- How to better use alternative dispute resolution within the examination process.

4. <u>Selected Issues Faced by LMSB Industry Groups</u>

The following provides information regarding a non-exclusive list of particular issues that taxpayers within the specific LMSB industry groups are now facing and that may be appropriate subjects for enhanced levels of discourse between LMSB and industry representatives. Although some of these issues are not "new," they have intensified as a result of the current economic conditions.

1. <u>Financial Services</u> It would be difficult to dispute that taxpayers in the financial services industry were the hardest hit by the economic downturn.

As SEC registrants, financial institutions file financial statements in conformity with generally accepted accounting principles, including Statement of Financial Accounting Standards 157, *Fair Value Measurements* ("FAS 157"). FAS 157 established a single definition of fair value and a framework for measuring fair value under generally accepted accounting principles. While FAS 157 does not determine or affect the circumstances under which fair value measurements are used, it does define fair value and specify a hierarchy of valuation techniques (Levels 1, 2, and 3) based on whether the inputs to such techniques are observable or unobservable. Level 3 assets are the most difficult to value since there are no objective, independent valuation benchmarks for valuing such assets. Thus, Level 3 assets generally are subject to valuation based on significant unobservable inputs.

During the market dislocations that occurred in recent years, certain markets became illiquid, and some key inputs used in valuing certain securities were unobservable. Contemporaneously, many securities were classified as Level 3 assets (e.g., subprime mortgage-backed securities) for purposes of FAS 157. The valuations of these assets were reported in financial statements and were reviewed by the control functions within the financial institutions, their outside auditors, and other government regulatory agencies.

For tax purposes, IRC section 475 generally requires a dealer in securities to record its inventory of securities at fair market value and to mark other securities to fair market value at the end of the taxable year with the resulting gain or loss being recognized for the taxable year. Any gain or loss taken into account under these rules is generally treated as ordinary gain or loss, and adjustments are made for subsequent gain or loss realized. The economic downturn has led many financial institutions to record very significant mark-to-market losses.

In June 2007, final regulations setting forth an elective safe harbor were published permitting dealers in securities to elect to use the values of eligible positions reported on eligible financial statements as the "fair market value" of those positions for purposes of section 475. As stated in the preamble, "[t]his safe harbor is intended to reduce the compliance burden on taxpayers and to improve the administrability of the valuation requirement of Section 475 for the IRS." To be applicable, the regulations generally require that the valuation method must recognize into income "on the income statement" the mark-to-market gains and losses and "the valuation standard used must not, other than on a de minimis portion of a taxpayer's positions, permit values at or near the bid or ask value."

All assets and liabilities, including Level 3 assets and liabilities, are required to be valued for financial statement purposes under FAS 157 at the exit price (*i.e.*, the bid price at which a financial institution would sell such assets or the ask price at which a financial institution would assign such liabilities). Thus, absent some type of an adjustment, the valuation method used for financial statement purposes would not qualify for the safe harbor.

As a general matter, “fair market value” for purposes of section 475 should be equal to “fair value” for purposes of FAS 157. This approach, we believe, achieves the broad objectives of the statute. The Subgroup appreciates that the IRS has not universally accepted this proposition. However, in light of the extraordinary current economic conditions, the IRS should nonetheless publish guidance that, with respect to Level 3 assets and for a defined period of years, “fair market value” for purposes of section 475 be considered equal to “fair value” for purposes of FAS 157. See Regs. Section 1.475(a)-4(g). This would benefit both taxpayers and the IRS in avoiding a protracted audit of the values of Level 3 assets at a future date, and consequently free up significant resources that both taxpayers and the IRS must otherwise dedicate to this issue.

2. <u>Heavy Manufacturing and Transportation</u> In the past, the trucking industry has unsuccessfully requested a safe harbor "cents per mile" per diem for drivers. Currently, there is a flat rate per diem safe harbor, which is inconsistent with the trucking industry's normal method of compensating its over-the-road drivers -- *i.e.*, on the basis of the mileage a driver travels rather than the time he spends on the job. This industry compensation practice of paying by the mile is motivated by competitive and productivity considerations. Per diems paid to drivers, when paid at all, are also commonly paid by the mile.

Reconciling such per-mile payments against the flat rate per diem is time-consuming, complicated and costly for taxpayers. The economic downturn has placed greater financial pressure on taxpayers in this industry, limiting their ability to absorb the administrative costs necessary to implement and operate a flat rate per diem reimbursement plan. The IRS should revisit this issue with industry groups and attempt to develop an allowable "cents per mile" per diem which is acceptable to both the IRS and the trucking industry.

3. Natural Resources and Construction In many instances, the buyer of a residential condominium unit signs a contract with the developer of the condominium project early in the construction or development process. The contract obligates the developer to sell and the buyer to purchase a given condominium unit at a given price upon the satisfaction of certain conditions precedent, including receipt of a certificate of occupancy and material completion of the condominium unit that is the subject of the contract. As a consequence, the contract often is a long term contract, within the meaning of section 460. Since a condominium unit historically has not qualified for the residential construction contract exception of section 460(e), the residential condominium developer is subject to the general rules of long-term contract tax accounting.

The percentage-of-completion (PCM) and percentage-of-completion/completed-cost-method (PCCM) hybrid long-term contract rules generally require the developer to include in income the anticipated profit, based upon the percentage of costs incurred for signed contracts. PCM and PCCM require income inclusion during construction, before sale, and irrespective of progress payments or whether or not the buyer actually closes at the settlement table.

The current economic recession has caused many condominium buyers to default, often leaving the developer with the sole remedy of retaining the putative buyer's deposit. Thus, PCM and PCCM often have resulted in substantial phantom income. The Subgroup believes that an appropriate remedy would be to allow condominium developers to use the accrual method and to treat each contract with a buyer as a separate dwelling. Proposed regulations dictating such treatment have been issued, but their current effective date does not provide adequate relief for affected taxpayers. Pending finalization of these regulations, taxpayers should have the option of applying the proposed regulations for any year open under the statute of limitations.

4. Retailers, Food, Pharmaceuticals and Healthcare With regard to this sector, guidance is needed with respect to the proper tax treatment of amounts received from the sale of gift cards. The proliferation of gift card programs in recent years has been very substantial and represents, for many retail businesses, an important (and sometimes the most important) component of their marketing and promotional activities. Such programs, moreover, are structured and administered in a variety of ways. For multiple-outlet businesses (*e.g.*, chain restaurants or multi-city department stores), in order to achieve economics of scale and other business efficiencies, it has become increasingly common to centralize the cash management and other administrative aspects of such programs in an affiliated or related entity -- in *e.g.*, a separate subsidiary of a consolidated return group, or a parent or other controlling entity, that does not itself maintain inventories of the goods "delivered" to customers upon redemption of the gift card. These so-called "Giftcos" typically receive the amounts paid to the retail establishments by purchasers of gift cards, subject to a continuing obligation to return such amounts to the particular store or other outlet at which the gift card is ultimately used.

The correct tax treatment of gift card sales proceeds is by no means clear. Existing published administrative guidance permits a two year (Treas. Reg. §1.451-5) or one year (Rev. Proc. 2004-34) deferral of income inclusion under prescribed conditions -- but the availability of such treatment in Giftco contexts is uncertain, as is the applicability of certain case law principles relating generally to the definition of "gross income" for federal income tax purposes.

Gift card issues are being frequently raised in IRS audit examinations, with revenue agents typically asserting in Giftco situations that the full amount of gift card sale proceeds must be taken into income in the taxable year of receipt -- even though redemptions may not occur until a later taxable year and some of the cards may never be redeemed. None of the existing authority relevant to these issues clearly dictates this audit position and, at the very least, such position would appear to violate the seminal “matching” principles of tax accounting. LMSB has assigned Tier 2 status to gift card issues, but coordinated position papers have not been issued and Appeals Officers apparently are free to settle such issues on a case-by-case basis. While a published guidance project in this area is reportedly moving forward, numerous taxpayers are in the meantime facing considerable uncertainty with respect to an important aspect of their day-to-day business operations.

In fashioning the anticipated guidance, it is important that Treasury and IRS (1) fully understand the clearly non-tax motivated reasons for using Giftcos; (2) be willing to read existing authorities expansively in order to accommodate evolving business practices; and (3) give careful consideration to whether any justifiable tax policy concern can really be seen as requiring that Giftcos be penalized tax-wise simply because the goods needed to satisfy gift card redemptions are “owned” by a related entry.

5. <u>Communications, Technology, and Media</u> The sustained economic downturn and the associated operational changes that taxpayers have been forced to make expose many technology businesses to heightened levels of uncertainty and risk surrounding transfer pricing compliance. Precipitous drops in revenues and difficulty in securing funding to support future research initiatives and core business functions are forcing taxpayers to stringently control spending and allocate resources to sustaining the business. Conventional transfer pricing models are strained as taxpayers reconsider how to share risks associated with different elements of their global supply chain. Tax departments are thus facing novel and complex transfer pricing issues at the same time they are being expected to absorb detailed new transfer pricing rules relating to intercompany services and intangible property development.

These pressures have contributed to significant variations in both the level and quality of transfer pricing documentation prepared by many technology companies, as tax departments are forced to address complex intercompany pricing decisions in real-time, with limited relevant market data available to help formulate and fashion true arm's-length, market-based responses. Plant closures, production consolidations, falling sales orders or renewal rates, business divestitures, and relocation of research and development activities to low-cost jurisdictions exacerbate these difficulties.

The combination of new U.S. transfer pricing regulations and the introduction of new compliance requirements around the globe represent additional burdens to technology companies in survival mode and leave many of these taxpayers feeling heightened transfer pricing exposure. The perceived risk of being caught between competing tax authorities is high. Preferences among tax authorities for "profit" versus "transaction-based" transfer pricing methods, alternative interpretations of chargeable versus non-chargeable headquarters activities, and questions regarding the deductibility of equity-based compensation charges factored into U.S. transfer pricing calculations all contribute to high levels of uncertainty and steep compliance burdens that many technology companies are ill prepared to address with limited resources.

Recommendation

LMSB should continue to engage, and expand its engagement with, taxpayer industry groups and interested LMSB taxpayers in order to establish educational programs, through which industry groups and taxpayers would actively assist in the training and development of commercial awareness and industry-specific technical tax skills within LMSB.

ISSUE TWO: ENTERPRISE COMPLIANCE RISK MANAGEMENT

Executive Summary

With respect to enterprise compliance risk management, LMSB asked for the Subgroup's assistance in determining methods for assessing compliance risk and determining the most efficient ways of approaching such audits. The Subgroup has identified various pre-audit and initial audit techniques for LMSB to utilize in this regard. Employing these techniques will be beneficial for both taxpayers and LMSB, and help both utilize their limited resources, since LMSB could devote more focus to areas it considers posing higher risk, and taxpayers with low-risk profiles would not be subject to the same examination process as high-risk taxpayers. The techniques recommended are not intended to be a complete list of tasks that can be undertaken in early stages of a review or audit to assist in the assessment of compliance risk. Rather, these are ideas the Subgroup believes LMSB should consider in the development of an overall enterprise risk management process.

Background

LMSB is concerned about enterprise compliance risk in large multinational enterprises, especially those employing complex organization structures and numerous partnerships and other pass-through entities. As a result, LMSB asked the Subgroup to consider ways that the IRS could better assess compliance risk in complex enterprises. With limited resources, it is critical that LMSB develop a strategy to categorize taxpayers by levels of compliance risk. This will enable a better allocation of resources, with more focus and intensity on high-risk enterprises and less focus on low-risk taxpayers.

The Subgroup has discussed various means by which LMSB could assess compliance risk without a full examination or at the beginning of an examination to assess the appropriate scope of examination. Our recommendations follow, but first we note that the Subgroup's experience indicates multinational enterprises often employ complex legal structures for valid business reasons, including limitation of liability, financing, mergers and acquisitions, and protection of intellectual property. As a result, LMSB should avoid concluding that organizational complexity implies tax noncompliance. This would lead to the unwise investment of limited resources.

As outlined below, the Subgroup has identified various risk assessment and investigatory techniques (1) to screen for higher-risk taxpayers prior to commencement of an audit (Pre-Audit Techniques), and (2) to employ at the beginning of an audit (Initial Audit Techniques) to guide LMSB in assessing compliance risk prior to a full examination. The Subgroup believes that the use of these techniques as part of LMSB's risk assessment process will provide a means by which enterprises can be assigned to a risk category (e.g., low risk, medium risk, high risk).

1. Pre-Audit Techniques

Publicly-traded enterprises provide the SEC and investors substantial information that can be analyzed prior to the commencement of an audit. Enterprises not required to disclose effective tax rate and tax payment information, and with no history of SEC filings, may require use of Initial Audit Techniques (outlined in detail below) before a conclusion can be reached regarding enterprise risk.

LMSB may employ the following techniques in developing its initial assessment of an enterprise's tax compliance risk:

- Review the history of the enterprise's federal tax compliance. Results from previous audits and the final assessments of additional tax after appeals and/or litigation may provide a useful reference to assess an enterprise's tax compliance risk. Enterprises that have historically faced large post-return assessments and collection should be categorized as higher risk. Conversely, enterprises that have a history of low post-return assessments and collection would be categorized as low risk.

- Review the enterprise's effective tax rate versus industry averages, after eliminating the impact of large, "one-time" items highlighted in SEC filings. Assuming comparability of pre-tax profits, an effective tax rate (as adjusted) substantially below peer companies may be an indicator of higher risk. An effective tax rate that is consistent with peer companies may indicate lower compliance risk.

- Compare current tax expense with current tax payments. A pattern of tax expense in excess of payments may suggest that the enterprise is engaging in transactions with questionable tax results. A review of footnote disclosures related to unrecognized tax benefits may provide further clarity relative to compliance risk. Rising levels of unrecognized tax benefits would generally indicate higher compliance risk.

An enterprise's compliance risk category may be determinable using the above techniques. Certainly, an enterprise that has a history of non-compliance, reports low effective tax rates relative to peers, and has increasing levels of unrecognized tax benefits should be categorized as high risk and face regular examinations. However, these risk indicators may not all provide the same assessment, and further Pre-Audit and Initial Audit Techniques should be used, as follows:

- Review the history of SEC compliance and other public evidence of the enterprise's reputation for compliance and internal controls. For example, there may be evidence that the enterprise is engaged in an unusually large number of non-tax-related lawsuits, an indication that the enterprise operates beyond the normal risk spectrum.

- Consider the firm's age, financial stability, credit ratings, types of shareholders, and continuity of ownership. Older, publicly traded enterprises with strong balance sheets and cash flows should be more averse to unnecessary tax risk than privately held companies and those with weaker financial positions.

- Review third-party financing arrangements and investors. Large, stable financial institutions employ stringent due diligence before investing. An enterprise that raises capital through such financial institutions is routinely asked about contingent liabilities, including taxes, as part of the investors' due diligence process.

2. Initial Audit Techniques

As noted above, enterprises that are not required to disclose effective tax rate and tax payment information, and with no history of SEC filings, may require the use of the additional techniques outlined below before a conclusion can be reached regarding enterprise risk.

- Request a list of internal committees with responsibilities related to financing, tax, risk management, and legal organization structure. Review charters of each and request minutes. (Note, however, that an enterprise may have privilege claims relating to minutes.) The mere existence of internal committees related to areas such as tax and organization structure are indicia of good operating controls and internal transparency. Enterprises with such committees should generally be viewed as lower compliance risks than enterprises without such committees.

- Request copies of legal organization structures as of the beginning of each audit period and as of the end of each period. Request an explanation of transactions during the period under audit that impacted the legal organization structure.

- Analyze the resources devoted to tax compliance. If tax returns are prepared "in-house," review ability of the in-house staff in terms of numbers and experience levels. Alternatively, ensure that the outsource service provider is reputable, and request an interview with the outsource firm to determine if the resources employed in their engagement are sufficient.

- Request a reconciliation of income before tax earned in the U.S. per the 10-K to the starting point in the U.S. income tax return. This analysis could highlight the use of transfer pricing methodologies for tax purposes that are not consistent with the manner in which the enterprise reports geographic income internally.

- Consider interviews of select executives such as the Chief Tax Officer. The interviews should focus on both tax compliance processes employed by the enterprise as well as any significant transactions or restructurings occurring during the audit cycle.

Recommendation

LMSB should continue to attempt to identify enterprise compliance risk through the use of the Pre-Audit and Initial Audit Techniques identified by the Subgroup. Using such techniques will facilitate categorizing taxpayers as low, medium or high risk. The frequency and intensity of IRS audits should be based on the risk category assigned. LMSB should conduct more intense examinations of taxpayers with high-risk ratings.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

SMALL BUSINESS/SELF-EMPLOYED
SUBGROUP REPORT

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NOVEMBER 18, 2009

INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Small Business/Self-Employed Subgroup (hereafter "Subgroup") is made up of nine tax professionals. The members of the Subgroup offer the IRS Advisory Council a variety of experiences, ranging from the representation of individuals and small business to large corporations. The Subgroup is honored to use this depth and breadth of knowledge to assist the SB/SE Division of the IRS (hereafter "SB/SE") in any way possible.

The Subgroup enjoys a close working relationship with the professionals within SB/SE. This relationship has granted the Subgroup the opportunity to consult with SB/SE on many issues outside of the regularly scheduled meetings. Some of the subjects discussed during these consultations required immediate feedback and are therefore outside the scope of this report. The Subgroup and SB/SE consulted both formally and informally on the issues contained in this report. We respectfully recommend the following:

1. **Enhancing Voluntary Compliance Through Civil Tax Penalty Reform** - Civil tax penalties encourage voluntary compliance. In 1954, there were 14 civil penalties set forth within the Internal Revenue Code. Today, there are more than 130. Penalties must be designed to encourage voluntary compliance and discourage intentional or reckless noncompliance. Inadvertent or excusable error should not be punished to the same degree, if at all, as willful misconduct.
2. **Increase Circular 230 Practitioners' Knowledge of Taxpayer Representation Processes** - In today's economy, more taxpayers may need effective representation by Circular 230 practitioners. With this in mind, we recommend

the IRS take several actions to ensure the highest level of tax practitioner competency, with an emphasis on collection procedures. These include, but are not limited to: adding more representation questions on the enrolled agent (EA) examination, also known as the Special Enrollment Examination (SEE); emphasizing collection procedures in the EA continuing professional education (CPE) requirements; increasing awareness of existing brochures for tax practitioners on collection practices; and working with stakeholder groups to increase attorney and CPA proficiency in collection procedures.

3. **Develop Lien Processes to Promote Process Efficiency and Effectiveness** - Many taxpayers have experienced problems with the lien process and lien release procedures and are stymied by the complexity of the current system. The IRS should consider the following: 1) Creating forms for the subrogation, subordination, release, discharge, and withdrawal of liens. The forms should be made available in print or electronic form that is accessible through the IRS website. 2) Implementing an enhanced process that is capable of expediting the lien release process. 3) Adding a tab to e-Services that allows the practitioner the ability to check the status of the filing, subrogation, subordination, discharge, release, and withdrawal of a lien. 4) Re-evaluating the administration process by which it considers notices of release and withdrawal of the Federal tax lien.

4. **Offer in Compromise Refinements** - There has been a continuing decline in the number of offer in compromise (OIC) submissions and acceptances. During that time, very few effective tax administration offers have been accepted. IRS policies currently discourage the submission of offers in compromise. Effective

tax administration offers are rarely accepted because of stringent IRS guidelines. The IRS should undertake a program to refine its offer program to encourage the submission of offers and to assist taxpayers in reaching the goal of an acceptable offer. It should revise its offer processing to allow taxpayers more time to support unperfected offers and train its employees to provide more assistance to offer proponents. Collection standards should be revised to account for regional differences in the cost of food, clothing and other items. IRS should emphasize and publicize the availability of installment offers in compromise and assist taxpayers in perfecting such offers. IRS should also refine its process for effective tax administration offers.

5. **Field Specialists Training, Credentials, and Contact with External Stakeholders** - Field Specialists support the examination function by conducting efficient, fair, and timely examinations[9]. There are five specialty areas: Computer Audit, LMSB Employment Tax, Economists, Engineers and Financial Products and Transactions. Field Specialists would benefit from exchanges with external stakeholders. IRS should establish External Stakeholder Councils in each specialty area so as to have a systematic dialogue with external stakeholders so as to maintain and enhance the Field Specialist's core competency in each specialty.

[1] Per IRS Website

ISSUE ONE: ENHANCING VOLUNTARY COMPLIANCE THROUGH CIVIL TAX PENALTY REFORM

Executive Summary

Civil tax penalties encourage voluntary compliance. In 1954 there were 14 civil penalties set forth within the Internal Revenue Code. Today, there are more than 130. Penalties must be designed to encourage voluntary compliance and discourage intentional or reckless noncompliance. Inadvertent or excusable error should not be punished to the same degree, if at all, as willful misconduct.

Background

In November 1987, the Commissioner of Internal Revenue established a task force to study civil tax penalties. The task force, composed of representatives from the Service and the Department of Treasury (Treasury), published a final report in February 1989 advocating that: (1) civil tax penalties be designed to encourage voluntary compliance (2) compliance and non-compliance be measured by clear standards of behavior, and (3) penalties be administered for the purpose of encouraging voluntary compliance and penalizing only knowing failures to comply [Report on Civil Tax Penalties, Commissioner's Executive Task Force on Civil Penalties, Internal Revenue Service (February 22, 1989)].

The Improved Penalty Administration and Compliance Tax Act of 1989 [IMPACT; P.L. 101-239, 101st Cong., 1st Sess. (1989); Subtitle G of the Omnibus Budget Reconciliation Act of 1989 contained the Improved Penalty Administration and Compliance Tax Act of 1989] completely revised the various penalty provisions relating to the accuracy of tax returns, and established a new penalty "structure that operates to eliminate any stacking of the penalties" [H.R. Conf. Rep. 101-386, 101st Cong., 1st. Sess. (1989) at 194]. There has been no comprehensive reform of the civil tax penalty provisions within the Internal Revenue Code since 1989.

In July 1999, the Joint Committee on Taxation (JCT) published a study on penalty and interest provisions reaffirming the principles underlying IMPACT [Joint Committee on Taxation, Study of Present-Law Penalty and Interest Provisions as Required by Section 3801 of the Internal Revenue Service Restructuring and Reform Act of 1998, JCS-3-99, (July 22, 1999)]. This report concluded that civil tax penalties "should (1) encourage voluntary compliance, (2) operate fairly, (3) deter improper behavior, and (4) be designed in a manner that promotes efficient and effective administration of the provisions by the IRS."

In July 2009, in response to a congressional request, the GAO released a Report "IRS Should Evaluate Penalties and Develop a Plan to Focus Its Efforts" [GAO Report; GAO-09-567 (July 6, 2009)] studying, in part, whether the Service is evaluating penalties in a manner that supports sound penalty administration and voluntary compliance and, if not, how the Service may be able to do so. Responsibility within the Service for administering penalty programs, collecting information to evaluate penalties and determining the effectiveness of penalties in promoting voluntary compliance falls upon the SB/SE Office of Service-wide Penalties (OSP). The GAO Report determined that OSP is unable to fulfill these responsibilities since OSP is constrained by resource limitations, methodological barriers, and limitations in available databases between the various operating divisions of the Service. Further, the GAO report concluded that OSP analysts focus on short-term issues, such as sudden spikes in assessments or abatements.

The National Taxpayer Advocate has recommended that Congress direct the Service to: (1) collect and analyze more detailed penalty data on a regular basis, and (2) conduct an empirical study to quantify the effect of each penalty on voluntary compliance noting that Congress should appropriate additional funds for this research, as necessary. Various stakeholder groups have made recommendations regarding civil tax penalty reform to promote and enhance voluntary compliance, including:

1. Implementation of systems to avoid automatic assessments of accuracy-related penalties without considering all of the facts and circumstances;
2. Clearly defining the behavior intended to be penalized;
3. Clear, transparent and detailed guidance by the Service on the interpretation of penalties and penalty administration;
4. Penalties should only be imposed which are in proportion to the misconduct;
5. Retention of reasonable cause and good faith defenses for all penalties;
6. Encouraging compliance through greater disclosure and more enforcement rather than relying on the chilling effect of vague, overly broad, and confusing penalties;
7. Penalties should not be enacted for the purpose of raising revenue or offsetting the costs of tax benefits nor merely to punish behavior without also promoting compliance;
8. Mere foot faults should not be penalized where substantial compliance is demonstrated; and
9. A single act should only be penalized once.

We support the following recommendations as a foundation for future civil tax penalty reform intended to promote and enhance voluntary compliance.

Recommendations

1. The OSP should be relocated from the SB/SE to a system-wide office having fully functional access to all databases across all operating divisions within the Service.
2. The OSP should be appropriately funded and staffed to enable it to effectively evaluate the administration of penalties and their impact on encouraging voluntary compliance.
3. The Service should establish a task force comprised of government representatives and stakeholders to analyze the possibility of updated comprehensive civil tax penalty reform as a method of encouraging voluntary compliance.

ISSUE TWO: INCREASE CIRCULAR 230 PRACTITIONERS' KNOWLEDGE OF TAXPAYER REPRESENTATION PROCESSES

Executive Summary

Especially in a downturn economy, more taxpayers may need effective representation by Circular 230 practitioners. With this in mind, we recommend the IRS take several actions to ensure the highest level of tax practitioner competency, with an emphasis on collection procedures. These include, but are not limited to: adding more representation questions on the enrolled agent (EA) examination, also known as the Special Enrollment Examination (SEE); emphasizing collection procedures in the EA continuing professional education (CPE) requirements; increasing awareness of existing brochures for tax practitioners on collection practices; and working with stakeholder groups to increase attorney and CPA proficiency in collection procedures.

Background

Circular 230 practitioners are eligible to represent taxpayers in dealings in the examination, collection and appeals units of the IRS. The area of collections is often problematic for Circular 230 tax practitioners and is the focus of much of this report. The Office of Professional Responsibility (OPR) enforces the regulations governing the practice of attorneys, certified public accountants (CPAs), enrolled agents (EAs), enrolled actuaries, enrolled retirement plan agents and appraisers before the IRS as set forth in Treasury Department Circular 230. The IRS also has jurisdiction over the SEE and licensing of EAs.

The Subgroup reviewed a sampling of questions from the IRS SEE. It should be noted that the IRS has contracted with an outside firm to create and administer the SEE. The Subgroup made several observations:

- There were too few questions regarding collections;
- Many questions appeared to merely test rote memorization; and
- Some questions and available answers contained technical errors.

We believe that improvements are needed in this area of the SEE.

Circular 230 practitioners are required to obtain continuing professional education (CPE). The Subgroup realizes that the Service is prohibited by law from licensing CPAs and attorneys, but the possibility exists that some of these Circular 230 tax practitioners may not be as proficient as they should be in the representation of clients. Therefore, the Service should do more to increase the awareness of existing brochures and materials already produced by stakeholder groups on best practices for tax practitioners on collection procedures covering such issues as offers in compromise. These publications could be used in tandem with Publication 594 “The IRS Collection Process,” in which the Service explains to taxpayers the steps the IRS may take to collect a balance due.

The IRS should consider modifying its CPE requirements for EAs to reflect an increased focus on CPE hours dealing with representation topics with emphasis on collections. The current CPE requirements for EAs are found in Circular 230 §10.7(e).

> (i) Requirements for enrollment cycle. A minimum of 72 hours of continuing education credit 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.

A minimum number of CPE hours could be required on representation topics in a manner similar to the mandated hours of ethics.

Recommendations

1. The Service should include more questions on collection procedures in its SEE.
2. The Service should reevaluate the amount of rote memory questions in the SEE and request the test vendor to include more questions that test a candidate's applicable knowledge of tax issues.
3. OPR staff should take a more active role in the initial drafting process of the questions by tax practitioners and the outside firm that creates and administers the SEE in an effort to eliminate technical errors contained in EA exam questions.
4. The Service should mandate completion of a minimum number of CPE hours in representation topics during each enrollment cycle.
5. The Service should work with stakeholder groups to increase attorney and CPA proficiency in collection procedures and their awareness of publications on best practices related to representation and collection procedures.

ISSUE THREE: DEVELOP LIEN PROCESSES TO PROMOTE PROCESS EFFICIENCY AND EFFECTIVENESS

Executive Summary

With the economic downturn, many taxpayers have experienced problems with the lien process and lien release procedures and are stymied by the complexity of the current system. The IRS should consider the following: 1) Creating forms for the subrogation, subordination, release, discharge, and withdrawal of liens. The forms should be made available in print or electronic form that is accessible through the IRS web site; 2) Implementing an enhanced process that is capable of expediting the lien release process; 3) Adding a tab to e-services that allows the practitioner to check the status of the filing, subrogation, subordination, discharge, release, and withdrawal of a lien; 4) Re-evaluating the administration process by which it considers notices of release and withdrawal of the Federal tax lien.

Background

Given the current economic situation, the current system creates inefficiencies for the subordination, subrogation, discharge, release, and withdrawal of liens. Historically there has not been an official form for the subrogation, subordination (Publication 784 “Certificate of Subordination of Federal Tax Lien”), release (Publication 1450 “Certificate of Release of Federal Tax Lien”) and discharge (Publication 783 “Certificate of Discharge of Property from Federal Tax Lien”). We have been made aware of this issue and commend the Service for beginning an initiative of creating forms for the Certificate of Subordination of Federal Tax Lien and Certificate of Discharge of Property from Federal Tax Lien. Creating online forms will maximize the efficiency of the lien processes and will be more cost effective to do electronically. The normal timeframe to process a lien release is 30 days; however, due to the economic downturn and an influx of liens releases to be processed, the timeframe has gone from 30 days to 60 to 90 days, or longer.

Adopting the proposed forms for the release, discharge, subordination, subrogation, and withdrawal will greatly standardize the lien process as well as increase the efficiency of the review and processing of liens.

The economic downturn has not only created the need for the proposed forms, but has created the need for the Service to re-evaluate its current process regarding the withdrawals of liens. Over the past few years, the Service increased its usage of Notice of Filing Federal Tax Liens, but has opted not to utilize the withdrawal of liens that are filed, thus creating serious consequences for the taxpayer as well as lessening the taxpayer's credit worthiness.[10]

Recommendations

1. Create online forms for the following:
    a. Certificate of Discharge of Property from Federal Tax Lien
    b. Certificate of Subordination of Federal Tax Lien
    c. Certificate of Release of Federal Tax Lien
    d. Subrogation of Filed Lien
2. Decentralize the process of lien release, withdrawals, discharges, subordination, and subrogation to the local Collection Advisory Groups. This will help to increase the turnaround time in the process because the local offices are more

[10] *National Taxpayer Advocate, Report to Congress Fiscal Year 2010 Objectives,* June 30, 2009.

familiar with the requirements of their local government in the filing and releasing of liens.

3. To maximize the current lien process as well as be cost effective and efficient, the Service should enhance the e-services webpage to include a tab that allows the practitioners access to check the status of a lien to determine if a lien has been filed, discharged, released, subrogated, subordinated, or withdrawn.
4. In addition to the current process of faxing the lien information to the Collection Advisory Group, the Service should enhance e-services to create an upload function that allows the practitioner to upload the proposed lien forms to the IRS web site to be sent to the designated Collection Advisory Group.
5. Reevaluate the policy for the withdrawal of liens versus the release of liens to accommodate the taxpayer whose credit report could be negatively affected if a lien is released opposed to withdrawn.

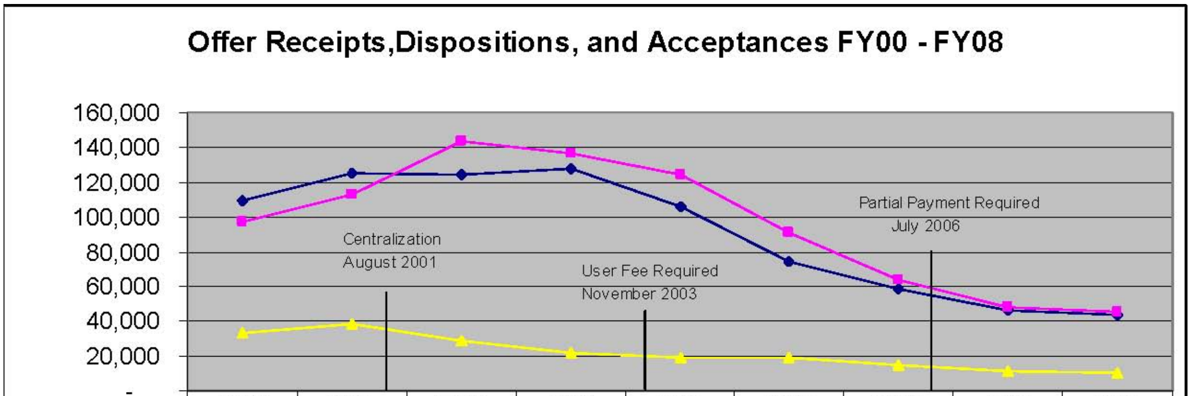
ISSUE FOUR: OFFER IN COMPROMISE REFINEMENTS

Executive Summary

There has been a continuing decline in the number of offer in compromise (OIC) submissions and acceptances over the last nine years. During that time, very few effective tax administration offers have been accepted. IRS policies currently discourage the submission of offers in compromise. Effective tax administration offers are rarely accepted because of stringent IRS guidelines. The IRS should undertake a program to refine its offer program to encourage the submission of offers and to assist taxpayers in reaching the goal of an acceptable offer. It should revise its offer processing to allow taxpayers more time to support unperfected offers and train its employees to provide more assistance to offer proponents. Collection standards should be revised to account for regional differences in the cost of food, clothing and other items. IRS should emphasize and publicize the availability of installment offers in compromise and assist taxpayers in perfecting such offers. IRS should also refine its process for effective tax administration offers.

Background

The total number of proposed offers has decreased from 125,390 in FY 2001 to 43,969 in FY 2008. The number of OICs accepted declined from 38,643 (or 34%) in FY 2001, to 11,618 (or 24%) in FY 2007, and to 10,677 (or 24%) in FY 2008. That trend has continued during the first 11 months of FY 2009 with 46,653 offers submitted and 9,624 accepted through September. The IRS has made it so difficult to secure an offer in compromise that many taxpayers and their representatives no longer choose to propose a compromise.



	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08
Receipts	109,296	125,390	124,033	127,769	106,025	74,311	58,586	46,270	43,989
Dispositions	96,763	113,209	143,102	136,822	123,970	91,343	64,169	47,719	45,163
Accepted	33,114	38,643	29,140	21,570	19,546	19,080	14,734	11,618	10,677
% Accepted	34%	34%	20%	16%	16%	21%	23%	24%	24%

Source: National Taxpayer Advocate

The reductions in submitted and accepted offers are functions of several factors including:

- Strict initial payment rules imposed by TIPRA, (Tax Increase Prevention Reconciliation Act of 2005).
- Stringent review of offers by IRS staff in Holtsville and Memphis offices.
- Requirements that taxpayer submit extensive documentation prior to any substantive consideration by the IRS.
- Strict standards imposed upon effective tax administration offer proponents.
- Strict collection standards that fail to reflect regional variances for the costs of food, clothing and other items and to reflect the requirements of IRC §7122(d)(2)(B).

Many offers that could be perfected are returned to the taxpayer by centralized processing without any attempt to assist the taxpayer in correcting problems and the default position of processors is to deny an offer. IRS employees are not trained and encouraged to assist taxpayers in submitting successful offers. Many times offer reviewers fail to assist taxpayers in perfecting offers. Offers are routinely returned to taxpayers based upon failure to provide adequate documentation. A better process would be to base initial reviews upon the Form 433-A "Collection Information Statement for Wage Earners and Self-Employed Individuals," and if some documentation is missing, allow the taxpayer adequate time to supply it. For those offers that do not appear to be adequate, taxpayers are not given adequate opportunity to modify them and/or supplement documentation supporting the offered amount. Offer reviewers fail to consider IRC §7122(d)(2)(B) which provides:

> "Use of Schedules – the guidelines shall provide that officers and employees of the Internal Revenue Service shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under subparagraph (A) is appropriate and shall not use the schedules to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses."

Reviewers fail to make every effort to make the offer processable, but instead look for defects which might render it non-processable.

Some practitioners have been informed by Holtsville reviewers that the mail box rule does not apply to submissions to that unit. That advice does not conform to §7502 which provides as follows:

> **(a) General rule.—**
> (1) Date of delivery.—If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment

> is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

Collection Standards

The IRS has created three separate schedules for collection standards, pursuant to IRC §7122 (d)(2)(B), namely: (1) food, clothing and other items; (2) local standards: transportation and (3) local standards: housing and utilities. Both transportation and housing standards are adjusted based upon local costs. Only food, clothing and other items impose a national standard. It is undeniable, however, that food and clothing cost more in high cost areas such as New York City, Alaska and Hawaii than in low cost areas like Mississippi, Iowa and Nebraska. By imposing a national standard for food, clothing and other items, the IRS has failed to meet the standard set forth in IRC §7122(d)(2)(A) which provides:

> "In General – in prescribing guidelines under paragraph (1), the secretary shall develop and publish schedules of national and local allowances designed to provide for basic living expenses."

By failing to recognize the variances in basic living costs in various locals, the current national one-size-fits-all approach fails to provide basic living expenses for taxpayers residing in high cost areas.

TIPRA (Tax Increase Prevention Reconciliation Act of 2005)

TIPRA provided that effective July 16, 2006, a new federal law will change the way the OIC program operates and its role in the Internal Revenue Service collection process. In general, this means that:

- Taxpayers submitting lump-sum offers must make a 20% nonrefundable, up-front payment to the IRS, and
- Taxpayers submitting a periodic-payment OIC must make a nonrefundable, up-front payment, plus any other proposed payments that may be due, while the IRS is evaluating the offer.

As a result of the TIPRA changes, many taxpayers have not been submitting offers based upon the belief that a 20% non-refundable down payment must accompany such submission. Many taxpayers must borrow the funds for an offer and the potential loss of this down payment prevents the submission of viable offers. The IRS has not successfully publicized the availability of installment offers with a balloon payment. More taxpayers would pursue offers if they did not face the loss of their initial down payment, but rather faced the loss of reasonable installment payments upon rejection of their offers.

Effective Tax Administration

As part of the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress added section 7122(c) to the Internal Revenue Code. That section provides that the Service shall set forth guidelines for determining when an offer in compromise should be accepted. Congress explained that these guidelines should allow the Service to consider:

- Hardship,
- Public policy, and
- Equity

Treasury Regulation 301.7122-1 authorizes the Service to consider offers raising these issues. These offers are called Effective Tax Administration (ETA) offers.

The availability of an ETA offer encourages taxpayers to comply with the tax laws because taxpayers will:

- Believe the laws are fair and equitable, and
- Gain confidence that the laws will be applied to everyone in the same manner.

The ETA offer allows for situations where tax liabilities should not be collected even though:

- The tax is legally owed, and
- The taxpayer has the ability to pay it in full

Although the effective tax administration option has been available since the passage of RRA 98, few taxpayers have been able to qualify under these provisions. In applying the Code and Regulations, the IRS has imposed very strict standards which are not appropriate for many taxpayers. The IRS has also not created sufficient examples of ETA offers to allow offer proponents to determine their eligibility for this option.

Recommendations

1. Processing Changes - The IRS should implement the following processing changes to encourage offers in compromise and to assist offer proponents in reaching an acceptable offer.
   - When processing offers, IRS should promote an attitude among offer reviewers to assist taxpayers in perfecting offers;
   - First review the offer for its potential for acceptance based upon the 433A and without regard to whether all documentation accompanies the offer;

- For those offers that have the potential for acceptance, give the taxpayer a notice allowing 45 days to supplement supporting documents;
- For those offers that do not appear to be adequate, notify the taxpayer of that fact and allow them to modify the offer and/or supplement documentation supporting the offered amount;
- The IRS should apply the mailbox rule set forth in §7502 to all correspondence regarding offers in compromise;
- In performing preliminary offer reviews, Compliance Center personnel must be trained to give due consideration to IRC §7122(d)(2)(B) with respect to allowable expenses; and
- The goal of each review should be to make every effort to make the offer processable instead of looking for defects which might render it non-processable.

2. Allowable Expense Standards –The IRS should adopt local standards for food, clothing and other items as it has for transportation and housing.
3. Installment Offers - IRS should emphasize and publicize the installment option. The option should be emphasized and highlighted in the instructions for Form 656 "Offer in Compromise." Taxpayers should be apprised of the option to make smaller installments with a lump sum final installment due in the 24th month of the installment period. Many taxpayers would be relieved of the need to borrow a down payment. IRS employees should be trained to encourage taxpayers to seek installment offers with relatively low initial payments and a final balloon payment.

4. Effective Tax Administration Offers - The IRS should revisit its regulations and provide more examples and situations which qualify for effective tax administration consideration. The IRS should revise its regulations and procedures to allow taxpayers of advanced age and/or severe health problems to more easily qualify for effective tax administration offers.

ISSUE FIVE: FIELD SPECIALIST TRAINING, CREDENTIALS, AND CONTACT WITH EXTERNAL STAKEHOLDERS

Executive Summary

Field Specialists support the examination function by conducting efficient, fair, and timely examinations.[11] There are five specialty areas: Computer Audit, LMSB Employment Tax, Economists, Engineers and Financial Products and Transactions. Field Specialists would benefit from exchanges with external stakeholders. IRS should establish External Stakeholder Councils in each specialty area so as to have a systematic dialogue with external stakeholders so as to maintain and enhance the Field Specialist's core competency in each specialty.

Background

In addition to revenue agents and team managers, Field Specialists often participate in the examination process. Field Specialists have received training in certain targeted specialties so as to provide technical support during the examination process. For example, Engineers are usually involved in valuation issues dealing with both tangible and intangible property. Economists can also be involved in valuation issues. Given that these two particular specialties are at the vortex of recent regulations concerning 6695A penalties, Field Specialists and external stakeholders would benefit from a systematic exchange of information.

Specifically, an August 18, 2009, IRS "Memorandum For all Examiners, Estate and Gift Attorneys and Appellate Officers" establishes interim guidance to ensure that relevant IRS personnel are aware of the procedures for assertion of IRC section 6695A penalties for substantial and gross valuation misstatements. These valuation

[11] Per IRS Website

misstatement procedures and requirements apply to all tax-related valuations. Under this procedure examiners are encouraged to submit referrals to LMSB Field Specialist Engineers for assistance and consultation. Further additional Engineer support may be warranted to fully develop the penalty case.[12]

Accordingly at a time when IRS is appropriately holding external appraisers more accountable for their opinions, it is essential that the Field Specialist Engineers and Economists be equally well trained and properly credentialed. Field Specialist training and credentials should be comparable to those of their external counterparts including relevant CPE as well as professional designations.

More importantly, because of the dynamic nature of each specialty, both Field Specialists and external stakeholders would benefit from systematic regular dialogue. Continuing with our example, these exchanges would be similar to ones that were held periodically with the now defunct Valuation Policy Council.

From a stakeholder point of view, the Valuation Policy Council was a successful endeavor as external stakeholders and IRS personnel exchanged technical information that allowed IRS personnel to stay up to date with changes in the body of knowledge and understand the practical issues facing external stakeholders. External stakeholders benefit from a deeper understanding of IRS policies thereby hopefully being better able to address IRS concerns, at worst and enhancing taxpayer compliance, at best.

Recommendations

1. IRS should establish a Field Specialist External Stakeholder Council (ESC) that would be a forum for the exchange of information. As each of the five specialties

[12] "Memorandum for All Examiners, Estate and Gift Attorneys Appellate Officers" August 18, 2009.

covered under the Field Specialist program is distinct, the ESC should set up subgroups to address the changing body of knowledge in each area.

2. It is important that IRS encourage the continued credentialing of its Field Specialists so as to maintain a high level of knowledge in their ever-changing specialties.
3. Field Specialists should be encouraged to participate in external stakeholder outreach so as to continue dialogue with external stakeholders.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

OFFICE OF PROFESSIONAL RESPONSIBILITY
SUBGROUP REPORT

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NOVEMBER 18, 2009

INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC OPR Subgroup (hereafter "Subgroup") is comprised of nine members either representing or actively involved in the governing bodies of national practitioner organizations, a national income tax preparation company, the software industry and the valuation industry. Members include two tax attorneys who are also certified public accountants (CPA), four other CPAs, two enrolled agents and one appraiser.

The Subgroup enjoys a very good working relationship with the Office of Professional Responsibility and provides feedback from the practitioner community on a range of issues designed to increase the transparency of OPR. IRSAC was asked to provide feedback and recommendations on the following five topics which are included in this report.

1. **Discussion of the Monetary Sanctions Under Circular 230 –** IRSAC was asked to provide recommendations to OPR regarding the proposed use of monetary sanctions against firms. The American Jobs Creation Act of 2004 expanded the sanctions the Secretary of the Treasury may impose on a practitioner to include a monetary penalty. If the practitioner was acting on behalf of a firm in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm or other entity if it knew, or reasonably should have known, of such conduct. To date, OPR has not sought any monetary sanctions against practitioners or firms; in part due to perceived ambiguity of the calculation of the penalty. The Subgroup researched the issues, reviewed the comments and analysis of practitioner organizations and proposed

recommendations to help clarify the use of the sanction in an unambiguous manner.

The Subgroup recommends that monetary penalties be treated no differently than other available sanctions under Circular 230 and should not be used in every case. Monetary penalties can be the sole sanction or in combination with other disciplinary sanctions available to OPR. The Subgroup recommends that a "safe harbor" from monetary penalties be established for a firm that can show it uses "best practices for tax advisors" as set forth in Section 10.34(b). Gross income should be limited to include only fees from those services that are directly attributable to the prohibited conduct. The "gross income" derived by a practitioner employee on a set salary or a partner whose share of the profits are not specifically based on the prohibited conduct, should be proportioned based on hours devoted to the engagement or some similar factor(s). The Subgroup also recommends the monetary penalty should be limited to the gross income from the prohibited conduct less any other monetary penalties assessed under the tax code (e.g. Sec 6694) for the same conduct. Monetary penalties should only apply to employers, firms, or other entities that engage in providing tax services or advice to others and should not be imposed for the acts of a practitioner having an agency relationship with the firm but whose prohibited conduct is outside the scope of this agency.

2. **Comments on Proposed Changes to Circular 230 §10.34 –** IRSAC was asked to provide comments on proposed changes to Circular 230 §10.34(a), aligning it with the standards contained in IRC §6694. While there are a number of

proposed changes, we focused on the language regarding the adoption of the same levels of confidence as found in IRC §6694 and the related regulations for the tax preparer penalties. We recommend adoption of a minimum standard of reasonable basis for disclosed positions, which is the same as the minimum standard in §6694. For undisclosed positions, we recommend an approach that focuses on whether the practitioner has demonstrated due diligence and due care consistent with §§10.22 and 10.52 of Circular 230.

3. **Circular 230 Applicability to Appraisers -** IRSAC was asked to provide input and feedback to OPR regarding the issue of whether appraisers are practitioners under Circular 230. The Subgroup reviewed Circular 230 and identified several ambiguities and inconsistencies with respect to its application to appraisers. The Subgroup recommends revisions to Circular 230 to resolve these issues.

4. **Enrolled Agent (EA) Lookup Feature –** The Subgroup was asked to solicit feedback from various organizations regarding the possible addition of a lookup or listing feature on the IRS website for the benefit of the IRS and the general public. The Subgroup solicited anecdotal responses from their representative professional organizations/companies regarding the pros and cons of establishing such a resource. The Subgroup recommends OPR add an EA lookup feature (not a listing) to the IRS website. The lookup feature should contain the names of EAs and their current status. The lookup feature should contain a statement that the IRS does not endorse any tax preparer, and that the lookup feature is designed to assist the general public in ascertaining the status of EAs. The page containing the lookup feature should include a statement that the status of certified public

accountants (CPAs) and attorneys can be verified by contacting the appropriate state licensing bodies.

5. **<u>Comments on the Return Preparer Review</u> –** Due to the wide ranging impact of the Return Preparer Review on the practitioner community and its possible impact on OPR, the Subgroup provided feedback on the most commonly discussed issues. The Subgroup believes OPR should be the sole organization responsible for the oversight of unenrolled tax preparers and recognizes that in order for OPR to undertake these additional responsibilities, significant additional resources must be committed to them to guarantee the success of the initiative. Circular 230 should set forth the ethical standards applicable to unenrolled tax return preparers. Some level of competency must be established by unenrolled tax return preparers and those tax return preparers who have demonstrated competency and are governed by professional ethical standards meeting or exceeding the minimum standards suggested for unenrolled tax return preparers should be grandfathered in or exempted from those standards. The Subgroup embraces the principle of having one universal identifying number for all tax return preparers and suggests that a substantial public education campaign be undertaken to educate the general public about the importance of engaging a tax return preparer who has been issued a universal identifying number.

ISSUE ONE: DISCUSSION OF THE MONETARY SANCTIONS UNDER CIRCULAR 230

Executive Summary

In 2004, the Office of Professional Responsibility (OPR) was authorized to impose monetary penalties on practitioners in addition to the other disciplinary sanctions available. The ability to impose monetary sanctions allows OPR to impose penalties on firms (not considered to be practitioners) in certain situations. However, OPR has yet to impose any monetary sanctions due to a perceived lack of clarity regarding how the sanctions should be applied and how the sanctions should be calculated. Guidance in these areas could allow OPR to begin utilizing monetary sanctions effectively and efficiently.

Background

Legislation

Section 822 of the American Jobs Creation Act of 2004 expanded the sanctions that the Secretary may impose to include a monetary penalty on any practitioner. If the practitioner 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 other 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 practitioner.

Notice

Notice 2007-39 further states that the “aggregate” amount of the monetary penalty (or penalties) may not exceed the “collective” gross income derived (or to be derived) by the practitioner and the employer, firm, or other entity. The Notice goes on to state that the monetary penalties may be imposed for a single act of prohibited conduct or for a pattern of misconduct. If a single act of prohibited conduct giving rise to a monetary penalty is an integral part of a larger engagement, the amount of the penalty will be limited by the gross income derived (or to be derived) from the larger engagement.

In determining the amount of the monetary penalty (or penalties), the Secretary will consider amounts that the practitioner, employer, firm or other entity could reasonably expect to realize, irrespective of whether the amounts have actually been received. The Secretary of the Treasury has discretion to impose a monetary penalty in an amount less than the amount allowed by statute.

In determining the amount of the penalty (or penalties), the IRS will consider several factors including the existence of aggravating or mitigating factors. The IRS will not impose monetary penalties in cases of minor technical violations (not specifically defined in the Notice).

Recommendations

1. Monetary penalties should be treated no differently than other available sanctions under Circular 230.
2. Monetary penalties should not be imposed in every case as a matter of practice, but only after careful consideration of the facts.

3. Monetary penalties can be the sole sanction or in combination with other disciplinary sanctions available to OPR.
4. There should be a "safe harbor" from monetary penalties for a firm that can show it uses "best practices for tax advisors" as set forth in Section 10.33(b).
5. Gross income should be limited to include only fees from those services that are directly attributable to the prohibited conduct. Whether services are "directly attributable" to prohibited conduct would incorporate a "but for" test of causation such that income from other services would be included in computing the monetary penalty only if the other services would not have been provided but for the prohibited conduct.
    a. Proportion the "gross income" derived by a practitioner employee on a set salary or a partner whose share of the profits are not specifically based on the prohibited conduct, based on hours devoted to the engagement or some similar factor(s).
    b. The monetary penalty shall be limited to the gross income from the prohibited conduct less any other monetary penalties assessed under the tax code (e.g. Sec 6694) for the same conduct.
    c. Monetary penalties should only apply to employers, firms, or other entities that engage in providing tax services or advice to others. Monetary penalties should not be imposed on an employer, firm or other entity for the acts of a practitioner having an agency relationship with the firm but whose prohibited conduct is outside the scope of this agency.

d. The amount of the penalty should in part be based on aggravating and mitigating factors. The following list of factors should be considered when determining the amount of the penalty:

- Mitigating – self-correcting actions before discovery by the Internal Revenue Service / Office of Professional Responsibility
- Mitigating – if an employee of the business as opposed to an owner of the business
- Mitigating – no substantial profits generated from the potentially aberrant behavior
- Mitigating – little likelihood of repeat aberrant behavior
- Mitigating – employee following the orders of a superior
- Mitigating – employee on a set salary (not directly benefitting from the aberrant activity)
- Mitigating – following standard practices in the industry
- Mitigating – firm uses best practices to identify potentially aberrant activities
- Aggravating – practitioner is undertaking actions which betray the trust of the general public
- Aggravating – part of a pattern of aberrant behavior, not an isolated incident
- Aggravating – prolific advertising of the aberrant activity (e.g. OIC mill commercials on the radio)

- Aggravating – aberrant activity is a significant part of the firm’s or individual’s overall practice

ISSUE TWO: COMMENTS ON PROPOSED CHANGES TO CIRCULAR 230 §10.34

Executive Summary

The members of IRSAC were asked to provide comments on proposed changes to Circular 230 §10.34 (a). While there are a number of proposed changes, we focused on the language regarding the adoption of the same levels of confidence as found in IRC §6694 and the related regulations for the tax preparer penalties. We recommend adoption of a minimum standard of reasonable basis for disclosed positions, which is the same as the minimum standard in §6694. For undisclosed positions, we recommend an approach that focuses on whether the practitioner has demonstrated due diligence and due care in accordance with §§10.22 and 10.52 of Circular 230. This approach is more flexible and focuses on demonstrating ethical behavior over a more mechanical satisfaction of particular level, which for example is different for tax shelters than other positions.

Background

In May 2007, changes to the IRC §6694 preparer penalty provisions were enacted that increased the standard for tax return positions from "realistic possibility of success" to "more likely than not". On September 26, 2007, Treasury published proposed changes to §10.34 Circular 230 which would incorporate the "more likely than not" standard of §6694 into Circular 230. In October 2008, the standard in §6694 was retroactively changed from "more likely than not" "to substantial authority". Circular 230 has not yet been modified to reflect this change. The question is whether Circular 230 should mirror whatever standard is found in §6694.

Section 10.34 was originally added to Circular 230 as a stand alone analog to the preparer penalties in IRC §6694. It adopted the same language, such as not frivolous for disclosed positions and realistic possibility of success (RPOS) for undisclosed positions. We were told by OPR that they have rarely used §10.34 for disciplinary actions because the RPOS standard is so easy for practitioners to meet. Instead, OPR often uses §§10.51 and §10.52 of Circular 230 to take disciplinary action against practitioners for unethical conduct.

We believe practitioners should not sign returns that contain one or more positions they know do not have a reasonable basis. At a minimum, ethical behavior requires that a practitioner have a reasonable basis for positions taken on a return. We therefore agree that the existing language which requires a reasonable basis for disclosed positions should be retained.

For undisclosed positions, we believe that Circular 230 should contain an ethical standard different than, and separate from, the standards contained in the penalty provisions of IRC §6694. Penalty statutes are designed to punish a specific position or action. Ethical provisions should instead focus on conduct and patterns of behavior. We are recommending the standard in Circular 230 be changed to focus on conduct and patterns of behavior. Judgments regarding a practitioner's conduct should take into account the reasonableness of the conduct in light of the standard of care for the industry. Ethical behavior is not defined by a bright line but by intent and the exercise of due care or diligence.

Recommendations

1. Circular 230 §10.34 should contain a separate standard for ethical behavior and not just track the standards found in the IRC §6694 penalty provisions.
2. Retain the current language which requires a reasonable basis for disclosed positions.
3. Remove the "more likely than not" standard and replace it with a general ethical requirement for undisclosed positions which requires practitioners to demonstrate they exercised due care (as defined in Circular 230 §10.52) and due diligence (as defined in Circular 230 §10.22) in arriving at the conclusion that a particular position did not need to be disclosed. The determination of accepted behavior should be based on the specific facts and circumstances.

ISSUE THREE: CIRCULAR 230 APPLICABILITY TO APPRAISERS

Executive Summary

IRSAC was asked to provide input and feedback to OPR regarding the issue of whether appraisers are practitioners under Circular 230. The Subgroup reviewed Circular 230 and identified several ambiguities and inconsistencies with respect to its application to appraisers. For example, Circular 230 authorizes sanctions against appraisers for violations but does not specifically include appraisers within the list of practitioners governed by Circular 230 or include appraisals within the definition of practice before the Internal Revenue Service (IRS). IRSAC recommends revisions to Circular 230 to address these issues.

Background

The title of Circular 230 is "Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents***, and Appraisers*** before the Internal Revenue Service." In addition, Circular 230, section 10.50(b) authorizes sanctions against appraisers for violations of Circular 230.

Despite the mention of appraisers in the title to Circular 230 (and numerous references to appraisals and appraisers throughout Circular 230), providing appraisals is not specifically included within the Circular 230 definition of practice before the IRS and appraisers are not specifically included in the list of practitioners who may practice before the IRS.

According to Circular 230, section 10.0, Circular 230 contains the rules governing "attorneys, certified public accountants, enrolled agents, and other persons *representing* *taxpayers before the Internal Revenue Service*." Circular 230 defines practice before the Internal Revenue Service in section 10.2(a)(4) as

> 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, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

Appraisers perform none of the functions described in section 10.2(a)(4). An appraisal report does not address a taxpayer's rights, privileges, or liabilities. Appraisers do not file documents, do not communicate directly with the IRS (unless ordered to do so), and do not render written advice. Appraisers do not "represent" taxpayers. They are engaged to prepare and deliver an independent report on the value of an asset.

Circular 230 defines practitioners in section 10.2(a)(5) as "any individual described in paragraphs (a), (b), (c), (d) or (e) of section 10.3." Appraisers are not listed or mentioned in any of those paragraphs. As currently written, Circular 230 does not infer that appraisers are practitioners. Rather, the document uses the terminology "practitioners and appraisers" which infers appraisers are not practitioners.

Recommendations

1. Treasury should revise Circular 230, section 10.0 to clarify that Circular 230 contains rules governing all persons who are practitioners engaged in practice before the Internal Revenue Service.

2. Treasury should revise Circular 230, section 10.2(a)(4) as follows to include appraisals within the definition of practice before the Internal Revenue Service. (Proposed revision is shown in italics.)

10.2 Definitions.

(a)(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 and 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, *rendering a written opinion with respect to the value of property for Federal tax purposes*, and representing a client at conferences, hearings and meetings.

3. Treasury should revise Circular 230, section 10.2(a)(5) to indicate that the term practitioner includes individuals described in new section 10.3(f).

4. Treasury should revise Circular 230, section 10.3 as follows to add appraisers to the list of practitioners who may practice before the IRS.

10.3 Who may practice.

Add new subparagraph (f) Appraisers and renumber the remaining subparagraphs.

(f) Appraisers.

(1) Any appraiser who is not currently disqualified from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice before the IRS is limited to rendering written opinions with respect to the value of property (tangible or intangible) for Federal tax purposes.

(3) 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 and enrolled agents.

5. Treasury should revise Circular 230, section 10.50 as follows to indicate that the sanctions applicable to appraisers are the same as those applicable to other practitioners.

(Proposed revision is shown in bold italics.)

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 ***individual described in section 10.3(a)-(f)*** 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) ***Delete***

6. Treasury should revise Circular 230 to change all references to "practitioners and appraisers" to simply refer to "practitioners" to reflect the inclusion of appraisers in the definition of practitioners.

ISSUE FOUR: ENROLLED AGENT LOOKUP FEATURE

Executive Summary

IRSAC recommends a lookup feature for enrolled agents ("EAs") on the IRS website. This will enable both the IRS and the general public to quickly ascertain the current status of EAs.

Background

Attorneys and CPAs both have state licensing bodies that maintain an updated listing of their status. EAs are licensed by the IRS pursuant to Circular 230 and the IRS is the only organization that maintains current information regarding their status.

The Office of Professional Responsibility (OPR) handles a large volume of inquiries from members of the public and IRS employees who are seeking to determine whether a particular individual is an EA and, if so, whether the individual is in good standing. OPR explained that handling these inquiries takes significant resources. If a lookup or listing feature were added to the IRS website, OPR could devote more of its resources to handling practitioner misconduct cases. Such a feature would also make it quicker and easier for members of the public and IRS employees to verify whether an individual claiming to be an EA is in fact an EA.

The Director of OPR asked IRSAC to solicit feedback from various organizations regarding the possible addition of a lookup or listing feature on the IRS website for the benefit of the IRS and the general public.

The Subgroup solicited anecdotal responses from their representative professional organizations/companies regarding the pros and cons of establishing such a resource.

The following questions were utilized to solicit responses from the various representative professional organizations/companies:

1. Should the IRS make a listing of EAs available to the public?
2. List the pros and cons to making an EA listing public.
3. Provide suggestions for the type of information the IRS should make public.

Recommendations

1. OPR should add an EA lookup feature (not a listing) to the IRS website.
2. The lookup feature should contain the names of EAs and their current status.
3. The lookup feature should contain a statement that the IRS does not endorse any tax preparer, and that the lookup feature is designed to assist the general public in ascertaining the status of EAs.
4. The page containing the lookup feature should include a statement that the lookup only includes status information for EAs and that the status of attorneys and certified public accountants (CPAs) can be verified by contacting the appropriate state licensing bodies.

ISSUE FIVE: COMMENTS ON THE RETURN PREPARER REVIEW

Executive Summary

The members of IRSAC discussed issues concerning the tax return preparer community with Commissioner Douglas Shulman, Deputy Commissioner Mark Ernst and Director, Office of Professional Responsibility (OPR) Karen Hawkins on July 23, 2009. During this meeting, the OPR subgroup provided feedback/comments on potential issues involving the regulation of tax return preparers and the standards of conduct they should follow.

Background

In June 2009, the IRS announced plans to propose a comprehensive set of recommendations by the end of 2009 regarding how the tax return preparer community can help increase taxpayer compliance and how to ensure that tax return preparers meet both uniform and high ethical standards of conduct. Notice 2009-60 invited public comments regarding the IRS's review of issues concerning tax return preparers.

To assist in developing its proposals and to ensure that input is received from a broad range of stakeholders, the IRS scheduled a number of meetings with constituent groups. The information collected from these meetings will assist the IRS in drafting recommendations.

Feedback/Comments

The OPR subgroup provided the following feedback/comments during the July 23, 2009 meeting:

1. Due to the experience and expertise available in the Office of Professional Responsibility for the regulation of Circular 230 practitioners, we believe OPR

should be the sole organization responsible for the oversight of unenrolled tax preparers.

2. In the interest of providing some form of assurance to the public, some level of competency must be established by the unenrolled tax return preparers.
3. Circular 230 should set forth the ethical standards applicable to unenrolled tax return preparers.
4. Those tax return preparers who have demonstrated competency and are governed by professional ethical standards, meeting or exceeding the minimum standards suggested for unenrolled tax return preparers, should be grandfathered in or exempted from those standards.
5. We embrace the principle of having one universal identifying number for all tax return preparers.
6. A substantial public education campaign must be undertaken to educate the general public about the importance of engaging a tax return preparer who has been issued a universal identifying number.
7. We recognize that in order for OPR to undertake these additional responsibilities, significant additional resources must be committed to them to guarantee the success of the initiative.

Internal Revenue Service Advisory Council
2009 Member Biographies

Herbert N. Beller	Mr. Beller, JD, has practiced federal tax law in Washington, DC for over 35 years and is currently a partner with Sutherland Asbill & Brennan LLP. His particular focus is on corporate tax planning and controversy work for publicly-traded and closely held entities. In addition, he frequently represents taxpayers before the IRS National Office and IRS Appeals Offices, and has litigated tax cases in the U.S. Tax Court and Federal Claims Court. He also has significant experience in the exempt organizations area. Mr. Beller is a former Chair of the ABA Section of Taxation and served as Co-Chair of the National Conference of Lawyers and Certified Public Accountants. Also a CPA, he holds a J.D. (cum laude) from Northwestern University Law School and a BSBA from Northwestern. **(LMSB Subgroup)**
David Bernard	Mr. Bernard, CPA, is the Vice President for Taxes and Real Estate for Kimberly-Clark Corporation in Neenah, Wisconsin. Mr. Bernard joined Kimberly-Clark in 1974 and has held various positions within the Tax Department, including chief tax officer for the last ten years. In 2005, his responsibilities were expanded to include the North American real estate management. His responsibilities include tax management, including tax strategies, risk management and talent development, and real estate. He has negotiated the resolution of scores of complex issues with the IRS Office of Appeals, as well as a number of issues with the Department of Justice. Mr. Bernard served as the Tax Executives Institute's ("TEI's") 2006-2007 International President and continues to serve on TEI's Board of Directors. He also serves on the National Advisory Board for the Michigan Technological University School of Business and is a member of that Board's Executive Committee. He is a CPA, and he holds a BSBA from Michigan Technological University and an MBA from the University of Wisconsin-Oshkosh. **(LMSB Subgroup)**
Michael P. Boyle	Mr. Boyle JD, LLM, recently retired as a Corporate Vice-President, Finance with the Microsoft Corporation in Redmond, Washington. Mr. Boyle worked closely with senior management and had primary responsibility for the tax department. He oversaw worldwide tax policy, tax

planning and compliance activities for the company. In addition, he created a world class tax department with professionals based in the United States, China, Europe, Japan, India and Singapore. He has experience in dealing with global and domestic tax planning, compliance audits, litigation and final resolution of complex tax issues. Mr. Boyle was highly influential in setting policy in the U.S. and globally with respect to the emerging taxation of software and e-commerce. Mr. Boyle served as the International President of Tax Executive Institute, Inc., from 2005-2006 and is an active member of the board of TEI and the Tax Foundation. Mr. Boyle holds a BSBA, (cum laude) and a J.D. from Creighton University and a L.L.M. (taxation) from Boston University. **(LMSB Subgroup)**

Michael Casey

Mr. Casey, MAAT, CPP, EA, ATP, is an accountant with West, Christensen, PC in Flagstaff, Arizona. Mr. Casey has over twenty years experience in accounting and taxation, specializing in all aspects of individual, business, non-profit and payroll taxation. His responsibilities include a wide variety of tax planning and consulting services and have extensive experience in corporate, individual and payroll tax compliance, and in representing clients before the IRS. He has been a national speaker for the American Payroll Association and has published and written numerous articles for APA and Accounts Payable journals on the subject of IRS audits. In addition, he is an associate professor for Coconino Community College and teaches the individual and business tax classes. He also serves as APA's Chapter Government Liaison Officer. Mr. Casey holds a BA in Accounting from the University of Cardiff, Wales, U.K. **(W&I Subgroup)**

Mark Castro

Mr. Castro is the General Manager of the Bellevue, Washington Office for Petz Enterprises, Inc. He has worked 18 years in the tax software field developing individual and business tax software as well as federal and state electronic filing programs. He is a member of the board of the National Association of Computerized Tax Processors (NACTP) and a member of the Council of Electronic Revenue Communication Advancement (CERCA). He has a BS in Business Administration (Accounting) from California State University, Northridge and has been a Certified Public Accountant since 1989. **(OPR Subgroup)**

Conrad Davis

Mr. Davis is a partner in the firm of Ueltzen & Company, LLP in Sacramento, CA. He has been preparing tax returns for over 17 years. He is the co-chair of the AICPA taskforce updating the Statements on Standards for Tax Services. Mr. Davis is also a board member and Treasurer of the California Society of Certified Public Accountants He has a BS in Agricultural Science and Management from the University of California and an MS in Taxation, from the Golden Gate University. **(OPR Subgroup)**

Francis X. Degen

Mr. Degen, EA is the owner of Francis X. Degen, EA in Setauket, New York. His practice includes tax preparation and tax planning for individuals and small businesses. Mr. Degen also specializes in taxpayer representation before the Internal Revenue Service and other taxing authorities. He is one of the few non-attorneys that have been admitted to practice in the United States Tax Court. In addition, he is a member and a former President of the National Association of Enrolled Agents (NAEA) and has served on the NAEA board of directors. He has testified on behalf of NAEA before both houses of Congress. Mr. Degen holds a Bachelors degree in mathematics from Iona College and a Masters from Johns Hopkins University. **(Chairman IRSAC)**

Thomas J. DeGeorgio

Mr. DeGeorgio is the Head US Tax, Director of Tax Assurance and Operations for Shell Oil Company in Houston, TX. He has over 30 years experience in taxation including Excise Tax, State and Local tax, Federal Income Tax Compliance, and Federal Income Tax audits & appeals. He is a member of the Tax Executives Institute and currently represents the Houston Chapter on their International Board of Directors. He is a member of AICPA and Texas Society of CPAs. He has a BS in accounting from the Philadelphia University and a MBA with a concentration in taxation from the University of Houston. **(OPR Subgroup)**

Teresa Douglass

Ms. Douglass is the Industry Operations Manager for H&R Block’s World Headquarters in Kansas City, MO. She is a CPA and licensed attorney with over 15 years of experience in tax practice that includes tax planning, tax return preparation and representation of taxpayers in IRS matters. Ms. Douglass serves as H&R Block’s subject matter expert on representation and Circular 230 issues.

She is a member of the Missouri Bar and serves on its taxation, probate and trust law and elder law committees. She is also admitted to practice before the US Tax Court. Ms. Douglass has a BS in Accounting and a JD from the University of Missouri-Kansas City and an LLM in taxation from the University of Florida. **(OPR Subgroup)**

Jay Fishman

Mr. Fishman is a Managing Director of Financial Research Associates and has been actively engaged in the appraisal profession since 1974. He specializes in the valuations of business enterprises and their intangible assets including: patents, trademarks, customer lists, goodwill, and going concern. Mr. Fishman has co-authored several books, including the recently released *Standards of Value: Theory and Applications* and *Guide to Business Valuations* (both with Shannon Pratt), and written numerous articles on business valuation He holds a bachelor's and master's degree from Temple University as well as an M.B.A. from LaSalle University. Mr. Fishman is a Fellow of the American Society of Appraisers, Editor of the *Business Valuation Review*, and a former Trustee of the Appraisal Foundation. **(SBSE Subgroup)**

William Frazier

Mr. Frazier is Senior Managing Director and owner of Howard Frazier Barker Elliott, Inc. in Dallas, TX. He has thirty years of experience in business valuation and corporate finance. He is a member of the American Society of Appraisers (ASA) and is a member of their Business Valuation Committee. Mr. Frazier has a BS in Commerce from Spring Hill College and a Master of International Management from the American Graduate School of International Management. **(OPR Subgroup)**

Lonnie Gary

Mr. Gary is a Director of RSM McGladrey in Mountain View, CA. He has been a professional tax practitioner for 20 years, fifteen as an enrolled agent. He has qualified as a non-attorney to practice before the US Tax Court. He is a member of the National Association of Enrolled Agents and is presently on their Board, the California Society of Enrolled Agents and the East Bay Association of Enrolled Agents. He has a BS in Electrical Engineering with a business minor from the Illinois Institute of Technology. **(OPR Subgroup Chair)**

Larry Gray

Mr. Gray is owner and partner of AGC-Alfermann, Gray & Co., CPAs LLC in Rolla, MO. Mr. Gray has been a tax professional for 30 years as well as a seminar instructor and tax author. He is a member and past-president of the National Association of Tax Professionals, a member of the American Institute of CPAs, the National Society of Accountants, the Missouri Society of Certified Public Accountants, Accreditation Council for Accounting and Tax, the National Association of State Board of Accountancy and the Missouri State Board of Accountancy. He has a BS in Business Administration from the University of Missouri-Columbia. **(OPR Subgroup)**

Dean Heyl

Mr. Heyl, JD, is an attorney and Director, of Government Relations for Direct Selling Association in Washington, DC. He represents a variety of corporations and associations; develops and implements national legislative strategies; testifies before committees and regulatory boards; and monitors and analyzes legislative/regulatory actions with a strong focus on tax and accounting issues and negotiates contracts. Direct Selling Association is a national trade association of the leading firms that manufacture and distribute goods and services sold directly to consumers. Mr. Heyl holds a J.D. from the University of South Dakota Law School and a BS in Journalism from South Dakota State University. **(SBSE Subgroup)**

Marshall Hunt

Mr. Hunt, CPA, currently serves as Director, Tax Assistance Program for the Accounting Aid Society in Detroit, MI. Mr. Hunt directs one of the largest free tax assistance programs in the nation for low-income taxpayers. His responsibilities include volunteer recruitment, retention, training, publicity, outreach, tax site selection, scheduling, and return preparation procedures. Under his direction Accounting Aid served over 13,500 low-income seniors and families in southeastern Michigan in 2009. He is also an adjunct lecturer in taxation at the University of Michigan-Dearborn. Prior to joining the Accounting Aid Society, Mr. Hunt was a Territory Manager for Heavy Manufacturing, Construction & Transportation, for the Large and Mid-Size Business Division at the Internal Revenue Service. Mr. Hunt holds a Masters of Science Degree in Taxation from Walsh College in Troy, MI and a BBA Degree from the University of Michigan-Dearborn. **(W&I Subgroup)**

Marc Korab	Mr. Korab, JD, LLM, is a Senior Vice President – Corporate Tax for Citigroup Inc., in New York, NY. Mr. Korab's responsibilities include providing tax counsel and advice to the corporation on a variety of matters, with a focus on representing Citigroup before the IRS in its Federal tax audits. Prior to joining Citigroup, he practiced law with the New York office of the law firm DLA Piper US LLP, representing taxpayers in complex federal, state, and local tax controversies and litigations. Mr. Korab holds an LL.M. from Georgetown University Law Center, a J.D. from Rutgers School of Law, and a B.A. from Rutgers College. He is a member of the New York, New Jersey, and District of Columbia Bars. **(LMSB Subgroup Chair)**
Joan LeValley	Ms. LeValley, EA, is the owner of JCL and Company in Park Ridge, IL. She has been an accountant, tax preparer and financial consultant for more than 30 years. She is a member of the National Society of Accountants and Chaired the Federal Taxation Committee the past two years and was a member of the IRS Advisory Council (IRSAC) 2005-2007. She is the recipient of the "2008 NSA Accountant of the Year" award and the "2008 Person of the Year" award by the Independent Accountants Assn. of IL. Ms. LeValley has a BA in Business Administration and Accounting from Manchester College. **(OPR Subgroup)**
David Lifson	David A. Lifson, CPA, is a Co-Managing Partner with Hays & Company LLP (Globally: Moore Stephens Hays LLP) in New York City, NY. Mr. Lifson is a tax specialist who helps businesses and individuals manage their tax responsibilities and business opportunities. Experienced in both domestic and international matters, he spends much of his time helping monitor ongoing tax and related operating issues for clients, and helping them manage changes to their personal or business circumstances. Industries served are broad including communications; food/beverage manufacturing, distribution and resale; import/export; marketing/advertising; professional firms; real estate; securities and commodities brokerage; trading and shipping. Mr. Lifson is currently President of the New York State Society of Certified Public Accountants (NYSSCPA). He has written numerous articles, testified before Congress, is a frequent lecturer and panelist and regularly appears in the media, representing the American Institute of CPAs and the NYSSCPA. Mr. Lifson holds a

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Carol Markman

Ms. Markman, CPA, is a Partner with Feldman, Meinberg & Company, LLP in Syosset, NY. She is responsible for tax-related correspondence and audits, supervising staff and serving individuals, professionals, small businesses, estates and not-for-profit clients. Prior to joining Feldman, Meinberg & Co., LLP, Ms. Markman was the owner/manager of Carol C. Markman, CPA. Her firm provided general accounting and income tax return preparation and tax planning to individual, small businesses, professionals, estates and not-for-profit organizations. In addition, she represented clients before taxing authorities for audits and provided litigation support services in matrimonial and other matters. Ms. Markman is a Past President of the National Conference of CPA Practitioners. In 2005 she was named among the Top 100 Most Influential People in Accounting by both *Accounting Today* and *CPA Magazine*. She holds a MS in Accounting from C.W. Post Center Long Island University and a BS in Mathematics from City College of New York City, NY. **(W&I Subgroup)**

Robert McKenzie

Mr. McKenzie is a Partner of the law firm of Arnstein & Lehr LLP of Chicago, Illinois, concentrating his practice in representation before the Internal Revenue Service and state tax agencies. He has lectured extensively on the subject of taxation. He has presented courses on representation before CPA's, attorneys and Enrolled Agents nationwide. Prior to entering private practice, Mr. McKenzie was employed by the Internal Revenue Service, Collection Division, in Chicago, Illinois from 1972 to 1978. He was Vice Chair Professional Services of the ABA Tax Section (2003 – 2005) and currently serves as Chair of its Pro Bono Committee. He is past Chairman of the Chicago Bar Association Federal Tax Committee. Mr. McKenzie is the author of “Representation Before The Collection Division Of The IRS And Coauthor Representing The Audited Taxpayer Before The IRS” and “Representation Before The United States Tax Court”. Mr. McKenzie has received an AV rating from Martindale and Hubbell and has been selected for listing by Law and Leading Attorneys. He has been elected to the American College of Tax Counsel and serves on its Board of Regents. Mr. McKenzie received his J.D. with High Honors from the

Illinois Institute of Technology, Chicago Kent College of Law. **(SBSE Subgroup)**

Daniel T. Moore

Daniel T. Moore, CPA operates the Accounting Solutions Division of The Moore Agency, Inc, a family owned company, in Salem, Ohio. Mr. Moore provides tax preparation and accounting assistance to families, individuals and small business. Mr. Moore also operates a payroll preparation and payroll compliance service. Mr. Moore graduated from Kent State University with a Bachelor of Business Administration degree in Accounting. He also has a Master's Degree in Public Administration from Gannon University. Mr. Moore is a member of the AICPA, Ohio Society of CPAs and the American Payroll Association. In 2008, Mr. Moore was selected as one of five MVP's for the Mahoning Valley 40 individuals under 40 awards. The 40 under 40 awards recognizes individuals for their commitment to community service. **(W&I Subgroup Chair)**

Robert G. Nath

Mr. Nath, JD, is the managing member of Robert G. Nath, PLLC in McLean, Virginia. He is a recognized tax attorney with 30 years' experience, including eight with the Tax Division, U.S. Department of Justice, and is active in numerous aspects of tax practice. He concentrates in tax controversies, litigation, procedure, and representation between the Internal Revenue Service, United States Tax Court, other federal courts, and state tax authorities. Mr. Nath is the author of a book and numerous professional articles on IRS practice and procedure. Mr. Nath holds a Master of Laws in Taxation from Georgetown University, a J.D. from the University of Pennsylvania, and a Bachelor of Arts (cum laude, with Honors), from Yale University. **(W&I Subgroup)**

Charles Rettig

Mr. Rettig, JD, LLM, is an Attorney with Hochman, Salkin, Rettig, Toscher & Perez, P.C. in Beverly Hills, CA. Mr. Rettig specializes in tax controversies as well as tax, business, charitable and estate planning, and family wealth transfers. His representation includes Federal and state civil and criminal tax controversy matters and tax litigation of individuals, business enterprises, partnerships, limited liability companies, and corporations. He served as tax counsel in numerous administrative tax disputes throughout the United States and in litigation with California and in the

United States Tax Court. He is a frequent lecturer before national, state and local professional organizations and has authored articles in many national, state and local publications. In addition, he has written numerous articles and writes a regular column for CCH Journal of Tax Practice and Procedure on tax-related matters. Mr. Rettig holds a LL.M in Taxation from New York University, a J.D. (cum laude) from Pepperdine University and a BA in Economics from the University of California at Los Angeles. **(SBSE Subgroup)**

Donna Rodriguez	Ms. Rodriguez, CPA, JD, is the managing manager of Donna L. Rodriguez, PLLC located in The Woodlands, Texas, where she operates a full service accounting and tax practice focusing on start up and small to medium companies. She is an attorney and Certified Public Accountant with a diverse background as corporate counsel, chief financial officer for an international conglomerate, Special U.S. Attorney/Assistant Attorney General-Guam, and with Ernst & Young. As a special US Attorney assigned to prosecute tax crimes in Guam, she became very familiar with the Tax Code. Ms. Rodriguez has a Juris Doctorate from the University of Oklahoma and a BSBA degree in Accounting from the University of Texas. **(SBSE Subgroup Chair)**
John S. Satagaj	Mr. Satagaj, JD, is a solo law practitioner in Washington, D.C. Mr. Satagaj specializes in small business, trade association and tax matters. Mr. Satagaj also serves as President of the Small Business Legislative Council (SBLC), a position he has held since 1985. The SBLC is an independent coalition of nearly 80 trade and professional associations that share the commitment to the future of small business. He earned his Juris Doctor Law degree from the University of Connecticut and a subsequent LL.M in Taxation from George Washington University. **(SBSE Subgroup)**
Bonnie Speedy	Ms. Speedy is the National Director of AARP Tax-Aide at the AARP Foundation in Washington, DC. Ms. Speedy is a professional manager, coordinator and trainer with many years of professional experience in areas dealing with: strategic planning, policy development and application, grant-funded programs, accounting, the application of monitoring of federal regulations dealing with tax law, pensions and 501 (c) organizations with grant-funded

programs. In addition, she directs all aspects of AARP Tax-Aide, serving over two million taxpayers a year, including program outcomes, policy development, implementation strategies, evaluation of effectiveness and communication to program volunteers. Ms. Speedy holds a Bachelor of Science degree from the University of Maryland and attained Certified Pension Consultant status. **(W&I Subgroup)**

Philip M. Tatarowicz

Mr. Tatarowicz, JD, LLM, has worked in the tax field for 30 years and is a Partner and Ernst & Young's National Director of State and Local Tax Technical Services in Washington, DC. He is responsible for assisting the firm's clients and offices worldwide in multi-state tax matters, coordinating the development and quality of its state and local tax practice, and ensuring that E&Y's services reflect the latest regulatory and precedent-setting developments. In addition to being the former chairman of the American Bar Association's Subcommittee on Interstate Transactions, Mr. Tatarowicz is Chair of the ABA's Committee on State and Local Taxation, a member of the American Institute of Certified Public Accountants, and an adjunct Professor of Law at Georgetown University Law Center. He holds a BA in Accounting and Business Economics; a Juris Doctorate (Northern Illinois University College of Law) and LLM (Tax) from Georgetown University Law Center. **(Vice Chairman IRSAC & LMSB Subgroup)**

Joni Terens

Ms. Terens, EA, is the President of Accurate Bookkeeping & Tax Service Inc., in Tustin, CA. Her responsibilities include tax preparation and tax planning for individuals and businesses. She also specializes in taxpayer representation before the Internal Revenue Service and state taxing agencies. Ms. Terens teaches IRS Small Business Seminars, VITA classes and FEMA workshops. In addition, she has taught IRS Exit seminars at local military bases and specializes in tax issues for the military. She is the chairperson of the Southern California IRS/CSEA Practitioner Seminar. Ms. Terens holds an A.A. Degree in Accounting from Saddleback College, Mission Viejo CA. **(W&I Subgroup)**

Madeleine Townes

Ms. Townes, JD, is currently a Tax Manager with NYK Logistics (Americas) Inc., in Memphis, TN. Her responsibilities include filing Canadian income taxes, filing property, income, and miscellaneous taxes for the

Corporation. She is also responsible for obtaining Business Licenses for local offices in 26 states. She is experienced in the design and delivery on innovative, bottom-line change management programs through account reconciliations that generate over $80 million annually through the restructuring of internal operations business processes consistent with short/long term organizational objectives. In addition, she provides visionary leadership in turning under-performing operations and start-up opportunities through team leadership, building key alliances, and implementing quality control management systems. Ms. Townes holds a J.D. from The University of Memphis, Cecil C. Humphreys School of Law and a Bachelor of Science Degree in Business Administration (Emphasis-Accounting) from Fisk University in Nashville, TN. **(SBSE Subgroup)**

Carolyn Turnbull

Ms. Turnbull, CPA, is the Director of Tax for Moore, Stephens and Tiller in Atlanta, GA. Ms Turnbull has extensive and broad experience assisting clients and other professionals in her firm with highly technical and complex federal, multi-state, and international C corporation, S corporation, partnership and individual tax issues. Her clients operate in a variety of industries, including manufacturing, warehousing and distribution, real estate, construction, health care, and professional services. Ms. Turnbull is a frequent lecturer for various professional organizations. She serves on a national level for the American Institute of Certified Public Accountants as a discussion leader, technical reviewer, and presenter for AICPA continuing education courses, and as well as a participant on various corporate, international, and partnership task forces. She is a past Chair of the AICPA Corporations and Shareholders Technical Resource Panel and outgoing member of the editorial board of the Tax Advisor. Ms. Turnbull holds an MS-Taxation and a BBA-Accounting (Cum Laude) from the University of Wisconsin-Milwaukee. **(LMSB Subgroup)**

Brian Yacker

Mr. Yacker is a Partner with Windes & McClaughry Accountancy Corporation in Long Beach, CA. He has practiced as a tax attorney/CPA for the past 16 years primarily focusing upon tax-exempt organization clients and international tax issues. He is a member of the AAA-CPA and is currently a member of their IRS Tax Liaison Committee. He also is a lead instructor for the CalCPA

Education Foundation. Mr. Yacker has a BS from McIntire School of Commerce, University of Virginia and JD from Indiana University School of Law. **(OPR Subgroup)**